

July 5, 2019

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25 Market Street  
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**Re: New Jersey Schools Development Authority – Report on Investigation into Allegations of File-Tampering**

Dear AAG Cohen:

This report summarizes the results of our investigation into allegations of “file-tampering” within the Human Resources (“HR”) department of the New Jersey Schools Development Authority (“SDA”). The allegations we were engaged to investigate appeared in a letter dated March 7, 2019, signed by five former SDA employees, who requested in the letter that their “names not be disseminated beyond those to whom the letter is addressed and directly copied.” With the exception of signatory Sameer Shah, who has raised his file-tampering allegations in public settings and who has expressly agreed to allow us to refer to him by name in our report, we will abide by that request.

A copy of the letter (hereafter, “the March 7 Letter”) is attached hereto, with signature lines redacted, as Exhibit A. In it, the signatories assert, among other things:

- “We ... have been alerted that personnel files at [SDA] are being tampered with by, and likely at the direction of, members of SDA’s management.”



- And, “We have been informed that the SDA’s human resources personnel and managers are the ones who are carrying out the tampering with the files.”

We were engaged by your office to investigate those file-tampering allegations, and hereby report on our findings.

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### Executive Summary

Our investigation failed to turn up any hard or compelling evidence of “file-tampering” within the HR department of the SDA. Rather, our investigation revealed that file-keeping within the HR department has suffered from a lack of clear, written policies regarding what exact documents and records are to be kept within departmental files and what documents are *not* to be kept within them.

Our investigation also revealed the likely source of suspicions of “file-tampering.” As has been widely reported, on September 20-21, 2018, fifteen SDA employees were terminated. Thereafter, one terminated employee complained about her termination to CEO Lizette Delgado-Polanco. In response to that complaint, Ms. Delgado-Polanco directed Patricia Cabrera, who then held the title of Special Projects Director, to review the personnel files and employment history of the terminated employee, and report back. Ms. Cabrera, after conducting her review, recommended that the terminated employee be re-hired. CEO Delgado-Polanco then assigned Ms. Cabrera the task of reviewing the HR files relating to the other terminated employees – which she proceeded to do.

The presence of Ms. Cabrera, a newcomer acting at the CEO’s direction, in the HR department, pulling the personnel files of the terminated employees (which Ms. Cabrera reviewed in her own office, not in the physical space of the HR department), appears to have given rise to speculation among agency staff about what she was doing, and generated suspicions of file-tampering. Those suspicions may also have been fueled by other activities that were occurring within the HR department around that same time, including the assignment of two new hires (who were not at the time assigned to the HR department) to a special project entailing the review of all

active SDA personnel files. Given the agency's state of turmoil during this time period,<sup>1</sup> the assignment of two new hires to pull and review HR files seems likely to have bred misgivings and rumors among the rank and file – especially since, around this same time, the HR Director was terminated and two long-time HR employees were re-assigned to different departments.

We were able, through our investigation, to substantiate several claims made by Sameer Shah, including a claim that a [REDACTED] form executed by former CEO Charles McKenna, [REDACTED] was not to be found in his official personnel file. But we were also able to determine the reason why that form was not to be found in Mr. Shah's personnel file: our investigation revealed that the form never made it into Mr. Shah's personnel file in the first instance, because [REDACTED]

[REDACTED] The history of that [REDACTED] form is set forth in further detail *infra*.

Based on our investigation, we recommend that a formal written policy be adopted to regulate and regularize the file-keeping practices of the current HR department of the SDA. In our interview with HR Director Miguelina Diaz, she agreed promulgation of such a written policy should be undertaken, but said the many competing demands imposed on her and her department in the current environment (*see* f.n. 1) have made it impossible to allocate the needed resources for that undertaking. Real and non-stop as the competing demands have been, the need for a written policy seems an agency priority that warrants the allocation, or reallocation, of resources to accomplish it.

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<sup>1</sup> Over the past eight months, as news accounts have reported, the agency has been the subject of numerous investigations, some of which are still ongoing. To avoid interfering with or working at cross-purposes to other investigations, we have attempted, insofar as possible, to limit our investigation solely to the specific charges of "file tampering" made within the March 7 Letter.

### Scope of Our Investigation

In the course of our investigation, we conducted face-to-face interviews with 20 present or former SDA employees, as well as telephone interviews with four other present or former employees. We wish to express our thanks for the cooperation of all of the interview subjects, none of whom was under any legal obligation to speak with us, and many of whom might have had reasonable reluctance to do so. We wish to thank, in particular, Cecelia Haney, who acted as our principal agency liaison and who was invaluable in helping us locate and contact former SDA employees, and in assisting us with the scheduling of interviews of current SDA employees.

#### **1. Overview**

Unsurprisingly, our interviews did not always yield consistent or clear accounts and recollections of specific events. Viewed as a whole, however, they yielded a clear picture regarding the following major issues and key points:

- No one we interviewed reported having been asked to tamper with, doctor or otherwise do anything improper with respect to a file kept within the HR department.
- No one we interviewed reported being aware of a formal written policy governing what specific files are to be kept within the HR department, and how they are to be kept.
- Everyone we interviewed who had knowledge of the files kept within the HR department reported that, in addition to an official personnel file for every SDA employee, the HR department also houses and keeps “confidential” files, sometimes referred to as “employee relations” files or “investigatory” files, on many employees. The “confidential” files are kept under lock and key, and only two people – the Director and Deputy Director of HR – have the key to those files. No written policies or guidelines govern the keeping of those files.

In contrast to those points of clarity and consistency, certain issues emerged during our investigation that generated conflicting information or accounts. A good, and somewhat important, example would be with respect to an allegation that former HR Director Maribell Osnayo-Lytle occasionally or regularly took HR files home to work on them. Ms. Osnayo-Lytle flatly denied

ever taking physical files home but admitted she did sometimes work remotely from home, which she said was permitted under agency policies. Several interview subjects reported, in contradiction of Ms. Osnayo-Lytle's denial, seeing Ms. Osnayo-Lytle take files home on occasion. Whether or not Ms. Osnayo-Lytle sometimes took HR files home – an issue on which we can reach no firm conclusion – we found no evidence that she ever engaged in purposeful doctoring or tampering of personnel files, anywhere.

Likewise, accounts varied on Ms. Osnayo-Lytle's in-office file-keeping skills and practices. In her interview with us, Ms. Osnayo-Lytle presented as a knowledgeable, well-organized human resources professional. She provided us, in our interview of her, with a crisp description of what records were supposed to be kept in the agency's official personnel files. Yet, several interview subjects, including Ms. Osnayo-Lytle's successor as HR Director, Miguelina Diaz, advised us that, after Ms. Osnayo-Lytle was terminated in early November 2018, it was discovered that the HR files were in a general state of disarray and that, inside Ms. Osnayo-Lytle's office, many files were found that needed attention and organization.

We were not able to reach any clear-cut conclusion on Ms. Osnayo-Lytle's general file-keeping practices. Plainly, however, the HR department could have benefited from a written record-keeping policy – which is something it lacks even today.

## **2. Interviews of the Signatories to the March 7 Letter**

The first phase of our investigation involved interviewing the five former SDA employees who signed the March 7 Letter.

On questioning, the four signatories other than Mr. Shah advised us they had no direct personal knowledge of any HR or personnel records within SDA having been tampered with. They had not observed any such conduct themselves and had no documentary evidence to offer of

tampering. Rather, in signing the March 7 Letter, they primarily relied upon reports from Mr. Shah – reports they found to be credible.

Mr. Shah, during our first interview of him, acknowledged he had not observed any “tampering” conduct himself, but did make the following specific assertions:

- He claimed [REDACTED], an SDA employee who works within the HR Department, told him managers within SDA were taking HR files to review them in their offices rather than reviewing them in the HR Department.
- He claimed [REDACTED] also told him former HR Director Maribell Osnayo-Lytle regularly took HR files home to work on them – to “clean them up.”
- He claimed that a [REDACTED] form executed by Charles McKenna, former CEO of the SDA, [REDACTED] was missing from his personnel file, along with other positive recommendations.
- And he claimed SDA employee [REDACTED] told him his superior, [REDACTED] was pressured to change, and in fact changed, his evaluation of [REDACTED] – the suggestion being that the change was made to justify retaining [REDACTED] while other SDA employees were being terminated.

**3. Interviews of Other Former and Present SDA Employees**

After interviewing the five signatories to the March 7 letter, we conducted interviews of 19 other former or present SDA employees, specifically:

Shilpi Kumar
Jane Kelly
Vishal Maher
Corrado Minervini
Maribell Osnayo-Lytle
Miguelina Diaz
Karen Clark
Sameer Shah (second interview)
Charles McKenna
Patricia Cabrera
Jenna Arcela
Riya Arora
Joel Guzman
Manny DaSilva
Manny Castillo

Marcia Longmore
Garrison Keck
Lizette Delgado-Polanco
Al Barnes

In addition to interviewing the above-listed individuals, we also reviewed the personnel file of Sameer Shah and were able to confirm that the [REDACTED] form executed by former CEO McKenna is not to be found in it. We asked, however, that a search be made for the document, which did result in its being located; a copy is attached hereto as Exhibit B.

From our investigation, our conclusions regarding the specific allegations of file-tampering raised in the March 7 Letter and by Mr. Shah in his two interviews with us are as follows.

**Findings as to Specific Allegations**

1. [REDACTED]

In our initial interview with him, Sameer Shah asserted that, prior to his departure from the agency, former CEO Charles McKenna had executed an agency form calling for Mr. Shah [REDACTED]. He asserted, further, that the [REDACTED] form was missing from his personnel file – an absence he attributed to file-tampering.

We were able to confirm, from interviews with Charles McKenna, Jane Kelly, and Maribell Osnayo-Lytle (and ultimately from a review of the document itself), that Charles McKenna did in fact execute a [REDACTED] form (hereafter, “the [REDACTED] Form”<sup>2</sup>) calling for



[REDACTED] Our investigation also substantiated Mr. Shah's assertion that the [REDACTED] Form was not to be found in his official personnel file. It did not substantiate, however, the assertion that the absence of the form from that file was attributable to file-tampering.

CEO Delgado-Polanco has stated publicly, and re-affirmed in her interview with us, that she had no awareness of the [REDACTED] Form prior to her termination of Mr. Shah on September 20, 2018, and was thus unaware that CEO McKenna had formally [REDACTED]

[REDACTED] Other interview subjects – Jane Kelly and Maribell Osnayo-Lytle – maintain that CEO Delgado-Polanco was made aware of the [REDACTED] Form at a meeting that was held on August 7, 2018, to discuss whether Mr. Shah [REDACTED] (hereafter, “the August 7 meeting”). While recollections differ over CEO Delgado-Polanco's awareness of the [REDACTED] Form, the attendees of the August 7 meeting all recall that, at the meeting, the final decision made by CEO Delgado-Polanco was [REDACTED]<sup>3</sup> For that reason, the [REDACTED]

[REDACTED]

Former HR Director Osnayo-Lytle advised us that, after the August 7 meeting, she wound up with possession of the [REDACTED] Form. Since it was not a completed form and since the [REDACTED] by the new CEO, she did not put it in Mr. Shah's

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<sup>3</sup> CEO Delgado-Polanco advised us that, in making that decision, she relied on the advice of upper managers Al Alvarez, Jane Kelly, and Maribell Osnayo-Lytle, who all recommended against [REDACTED] Mr. Shah. Ms. Kelly and Ms. Osnayo-Lytle, by contrast, advised us that, before making the decision [REDACTED] CEO Delgado-Polanco looked at Mr. Alvarez and said, “Is this that thing you were telling me about?” When Mr. Alvarez answered in the affirmative, CEO Delgado-Polanco responded, “Yeah, we're not doing that.” The differing recollections regarding the decision [REDACTED] are immaterial to our investigation, so no conclusions are reached as to whose recollection is more accurate.

“official” personnel file. Rather, she made a copy of it and put one copy in his confidential “employee relations” file (*see* discussion *infra* of these files), and one copy in a three-ring binder, which she described as an “overflow” file for Mr. Shah.

The accuracy of Ms. Osnayo-Lytle’s recollection of putting a copy of the [REDACTED] Form into Mr. Shah’s confidential “employee relations” file has been confirmed, conclusively, by the fact that it was ultimately found there (once the file itself was found). The “overflow” file described by Ms. Osnayo-Lytle has also been located, but did not contain a copy of the [REDACTED] Form when found. Thus, either Ms. Osnayo-Lytle’s recollection of placing a copy in that file is in error or at some point it was removed from that file. Irrespective, the absence of the [REDACTED] Form from the “overflow” file cannot be considered evidence of “file tampering,” in our view. The “overflow” file was not a standard or regular HR file at all, but rather a sort of “breakout” file or sub-file that Ms. Osnayo-Lytle kept for some employees whose “confidential” files became too large or unwieldy to manage; no strict guidelines governed the contents of such files.

In short, our investigation revealed that outgoing CEO Charles McKenna, in the waning days of his tenure, executed a [REDACTED] form that [REDACTED]. That form was not completed, i.e., fully executed, prior to the commencement of incoming CEO Delgado-Polanco’s tenure, and upper management within the agency accordingly reviewed with the new CEO whether [REDACTED]. CEO Delgado-Polanco decided [REDACTED] and the uncompleted [REDACTED] Form was filed away by HR Director Osnayo-Lytle in the confidential employee relations file for Mr. Shah. The form never made it into the official

personnel file for Mr. Shah because it was never completed and [REDACTED]

[REDACTED]

One final note on this topic: Mr. Shah claims that a number of commendations and favorable write-ups that he received were likewise not to be found in his official personnel file. We were unable to reach any firm conclusion regarding the merits of that claim for two reasons: 1) our investigation did not yield a clear or consistent answer to the question of whether a letter of commendation is a document that, according to standard agency practice and procedure, should be placed and kept in an employee's official personnel file; and 2) we could not ascertain what letters of commendation Mr. Shah claims should have been in his file that are assertedly missing. Further investigation might yield clearer answers to those two questions, but from our investigation we could not conclude that any positive or commendatory materials had been deliberately and improperly removed from Mr. Shah's official personnel file, as opposed to not being put into it in the first instance.

## **2. Patricia Cabrera's Special Assignment to Review HR Files**

The March 7 Letter alleges that, at the direction or with the participation of SDA's upper management, the agency's HR files were being tampered with. As previously stated, our investigation did not find any such program of file-tampering to have been undertaken or to be ongoing at SDA. However, the investigation did reveal that, beginning in October 2018, a number of events took place within or relating to the HR department that, in the turbulent circumstances then prevailing at the agency, may have given rise to suspicions or speculations of file-tampering.

One such event was a special assignment that CEO Delgado-Polanco gave Patricia Cabrera in early October 2018 to review the HR files of the employees who were terminated on September 20-21, 2018. Ms. Cabrera and former CEO Delgado-Polanco both advised us that Ms. Cabrera

received that assignment from CEO Delgado-Polanco after she (Ms. Delgado-Polanco) came to have second thoughts about one of the termination decisions she made.

Ms. Cabrera became an employee of SDA on September 10, 2018, and initially held the title of Special Projects Director (she is currently the Deputy Chief of Staff). One of her first assignments at the agency was drafting the letter informing the terminated employees of their termination, she advised us. After the terminations were announced, one terminated employee managed to contact CEO Delgado-Polanco, and claimed that her termination was unjustified. CEO Delgado-Polanco asked Ms. Cabrera to look into the claim and report back. Ms. Cabrera, after looking into it, recommended that the employee be rehired – and she was.

This led CEO Delgado-Polanco to question or have second thoughts regarding the other termination recommendations she had received, and she therefore assigned Ms. Cabrera to review the personnel files of each terminated employee. Ms. Cabrera told us that, in carrying out that assignment, her practice was to review each employee's files in her office and then make a recommendation to the CEO regarding the termination decision that was made. Thus, the allegation made in the March 7 letter that upper management at SDA was reviewing HR files outside the HR office area is well-founded in fact: Ms. Cabrera did review HR files in her own office.

Ms. Cabrera's review of the personnel files required her to go to Maribell Osnayo-Lytle, then the Director of Human Resources, and to request that she be provided with the necessary files. Ms. Cabrera told us she received some pushback from Ms. Osnayo-Lytle regarding her requests for files, but in the end was able to gain access to the files. (Ms. Osnayo-Lytle, in her interview with us, questioned whether Ms. Cabrera should have been looking at HR files because Ms. Cabrera's daughter-in-law, Jenna Arcila, was then working in the HR department, and Ms. Cabrera

was ethically recused from supervising Ms. Arcila. Ms. Cabrera, by contrast, did not view her ethical recusal with respect to Ms. Arcila to mean that she was prohibited from obtaining and reviewing HR files. In any event, it is clear that Ms. Cabrera did obtain the HR files she was seeking to review.)

Notably, it was Ms. Cabrera's execution of her special assignment from CEO Delgado-Polanco that led to the temporary misplacement of the "confidential" file for Sameer Shah, in which the [REDACTED] Form was found. Our investigation revealed that, in reviewing the termination decision that was made with respect to Mr. Shah (a decision Ms. Cabrera ultimately advised CEO Delgado-Polanco she disagreed with), Ms. Cabrera took possession of the confidential "employee relations" file for Mr. Shah, as well as a separate file on him maintained by the agency's Ethics office. As to the latter file, Ms. Cabrera had a subordinate, Garrison Keck, retrieve it for her, so that she could review its contents.

After completing her review of those files, Ms. Cabrera stored them in one of her own locked file cabinets, rather than returning them immediately to the HR department and the Ethics office, respectively. She then forgot about them. When the agency undertook a top-to-bottom search for the then-missing [REDACTED] Form, the Ethics office reminded Mr. Keck that he had taken possession of the Ethics file on Mr. Shah; Mr. Keck, in turn, reminded Ms. Cabrera that he had provided the Ethics file to her. At that point, Ms. Cabrera searched her file cabinet and located both the Ethics file and the confidential employee relations file for Mr. Shah – in which the "missing" [REDACTED] Form was found.

While Ms. Cabrera's failure to return the Ethics file and confidential employee relations file for Mr. Shah to the offices from which she had borrowed them is problematic, it appears, from our investigation, to have been a product of inadvertence. Also troubling is the fact (related to us

by Mr. Keck) that Ms. Cabrera initially requested Mr. Keck to take responsibility for her own failure to return the Ethics file to the Ethics office. But the confidential employee relations file for Mr. Shah does not appear to have been tampered with while in Ms. Cabrera's custody (as the discovery of the [REDACTED] Form within it reflects), and Ms. Cabrera, when questioned by us, squarely denied having altered the contents of the file in any way.

To recap: the assignment of Ms. Cabrera to review the HR files of the employees who were terminated on September 20-21, 2018, does substantiate one important factual assertion made in the March 7 Letter, namely, that a member of upper management was removing HR files from the HR department and taking them to her own office. For an employee like Mr. Shah, who believes he was wrongly terminated, to view that activity with suspicion, and to attribute a nefarious purpose to it, is hardly surprising. Understandable as Mr. Shah's view may be, the actual purpose of Ms. Cabrera's special assignment, according to both Ms. Cabrera and Ms. Delgado-Polanco, was to take a second look at the termination decisions that were made in September 2018, not to alter or tamper with existing files of the agency.

### **3. Unusual Events Within the HR Department**

#### **a. The Re-assignment of Marcia Longmore and Hiring of Jenna Arcila**

In late September 2018, Marcia Longmore, who had worked in the HR department of the SDA for 15 years, was transferred to the Program Operations department. Shortly thereafter, in October 2018, Jenna Arcila was hired and assigned to the HR department. Since Ms. Arcila is the daughter-in-law of Patricia Cabrera, this shift of personnel, when viewed in combination with the special assignment that Ms. Cabrera was then carrying out for CEO Delgado-Polanco, appears to have given rise to perceptions within the agency of questionable activities taking place in the HR department.

**b. The Special Assignment of Joel Guzman and Riya Arora to HR, and the Termination of Maribell Osnayo-Lytle**

In our interview with her, Patricia Cabrera advised us that, when she was reviewing the HR files in the course of her special assignment, she repeatedly came across medical records that she felt did not belong in the files, as she viewed the medical records to be confidential. She advised Miguelina Diaz, who had been hired as the Deputy Director of HR on October 15, 2018, of her concerns in this regard, and suggested that a review of all active HR files be undertaken to remove medically sensitive records from them. Ms. Diaz advised that she would need extra staffing to undertake such a review – with the result that two recently hired employees, Joel Guzman and Riya Arora, were assigned to HR on a special-project basis to undertake the review. (Initially, a third employee was also slotted to be loaned to HR, but the supervisor of that third employee intervened and the third employee was taken off the assignment.)

On or around November 2, 2018, as the “medical records review” project was ongoing, CEO Delgado-Polanco terminated HR Director Maribell Osnayo-Lytle. We did not seek, in our investigation, to delve deeply into the circumstances surrounding that termination, as the scope of our investigation did not include the review of personnel decisions made by CEO Delgado-Polanco during her tenure. We did ascertain, however, that the decision to terminate Ms. Osnayo-Lytle did not stem from any concern or charge of file-tampering; rather, it related to and stemmed from an incident of insubordination or perceived insubordination.

According to Ms. Diaz, after the departure of Ms. Osnayo-Lytle, she (Ms. Diaz) came to discover that many HR files resided in Ms. Osnayo-Lytle’s office, and that those files were (in Ms. Diaz’s word) a “mess.” In consequence, the special project to which Mr. Guzman and Ms. Arora were assigned was expanded to include going through the files left in Ms. Osnayo-Lytle’s office, and putting them in proper order.

Mr. Guzman and Ms. Arora, in their interviews with us, advised that, since neither of them had prior experience with HR files, they were supervised on their special project primarily by a “temp” named Victoria (no longer with the agency), who did have experience working in the HR department. Both Mr. Guzman and Ms. Arora were asked to sign, and did sign, agreements they understood to be “confidentiality agreements” in connection with this assignment. From other interviews, we were able to ascertain that it became common knowledge within the agency that Mr. Guzman and Ms. Arora had been asked to sign “confidentiality agreements,”<sup>4</sup> and this seems to have become a source, again, of suspicion and speculation – above and beyond the speculation that might arise just from the assignment of two newly-hired employees from outside of HR to review all active personnel files. After the completion of the special project, which Mr. Guzman and Ms. Arora estimated as lasting three weeks, Ms. Arora was given a permanent assignment outside of HR, while Mr. Guzman stayed on and still works in HR today.

So far as we were able to ascertain, neither Mr. Guzman nor Ms. Arora was provided with written instructions or guidelines regarding what documents should be removed from the personnel files they were charged with reviewing. The lack of such written instructions makes it impossible to confirm, with certainty, the scope and purpose of the special project to which Mr. Guzman and Ms. Arora were assigned. Nonetheless, Mr. Guzman, Ms. Arora, Ms. Cabrera, and Ms. Diaz all advised us that the special project entailed (first) the removal of medically sensitive documents

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<sup>4</sup> In actuality, it appears Mr. Guzman and Ms. Arora may merely have been asked to sign “Employee Acknowledgement” forms, acknowledging they had received and reviewed the SDA employee manual. In our interviews with them, they said they had signed confidentiality agreements, and HR Director Diaz likewise said they had signed confidentiality agreements. Perhaps most importantly, the widely held belief within the agency was that they had been required to sign confidentiality agreements – which was certainly out of the ordinary.



from personnel files and (second) the review of files left or found in former Director Osnayo-Lytle's office.

**c. Karen Clark's Re-assignment Outside of Human Resources**

On November 16, 2018, Karen Clark, another long-time HR employee, was transferred out of HR. Ms. Clark had enjoyed a close working relationship with Maribell Osnayo-Lytle, and apparently her relationship with Ms. Diaz, after the termination of Ms. Osnayo-Lytle, was not a good one. Ms. Clark requested a meeting with Chief of Staff Roy Garcia to discuss the issues she was having with Ms. Diaz and, shortly thereafter, Ms. Clark was transferred out of the HR department.

**d. Summary of the Unusual Activities in the HR Department**

Thus, within the two-month span after the terminations of September 20-21, 2018, the following events all took place within the HR department:

- An incoming upper manager (Patricia Cabrera) received a special assignment that called for her to review the HR files of the terminated employees, and she conducted that review in her own office.
- Two new hires were assigned to a special project that called for the review of all active personnel files within the agency, and the removal of medically sensitive documents from them; the two employees assigned to the project were required, in conjunction with it, to sign an agreement that was widely understood in the agency to be a confidentiality agreement.
- The HR Director was terminated, two long-time HR employees were re-assigned out of the HR department, and two new hires were assigned to it. Both new employees would reasonably be perceived by holdover employees as having ties to or connections with the incoming CEO and her top advisers.

It is not surprising, in the face of that combination of events, that suspicions of file-tampering arose. And, thus, while our investigation did not yield proof of any file-tampering, it did reveal a reasonable objective basis for suspicions of it. On investigation, it turned out to be

true (as the March 7 Letter alleged) that an upper manager was removing files from the HR department and reviewing them in her own office – pursuant to a special assignment from the new CEO. It also turned out to be true that two new hires were assigned the task of going through active personnel files and removing documents from them – specifically, medically sensitive documents.

To anyone familiar with the workplace dynamics of a large public agency, those activities would be expected to raise concerns and suspicions among agency personnel, and to be a distraction from the agency mission. The failure to anticipate and manage that foreseeable consequence appears, in the end, to have compounded its effect and, in our view, gave rise to the allegations of file-tampering raised in the March 7 Letter.

#### 4. Allegations Regarding [REDACTED] Performance Evaluation

Mr. Shah, when asked to provide a specific example of file-tampering, asserted he had been told the evaluation of an SDA employee, [REDACTED], had been altered by his supervisor, [REDACTED] – the purpose of the alteration being to raise [REDACTED] rating to [REDACTED], so that, when compared to the evaluations of terminated employees, the retention of [REDACTED] would not stand out as an anomaly. (A rating of 3.0 equates to “meets expectations”; a rating of 2.0 equates to “needs improvement.”)

To investigate this assertion, we conducted interviews of [REDACTED] and [REDACTED], reviewed the evaluations in [REDACTED] personnel file, and also reviewed the available draft evaluations of [REDACTED] retained by the HR department. [REDACTED] personnel file contains both a signed and unsigned (presumably a draft) evaluation for the year 2017 – which would have been the last evaluation completed before the terminations of September 2018. Both show an overall rating of [REDACTED]. The signed (and presumably final) evaluation includes [REDACTED]

ratings in it; the unsigned (and presumably draft) one has [REDACTED]

From both an arithmetical and practical standpoint, the two evaluations seem interchangeable.

[REDACTED], in our interview of [REDACTED], squarely denied that [REDACTED] evaluation had been altered or inflated in any way. [REDACTED] denied having told anyone, ever, that [REDACTED] evaluation had been altered or inflated.

Our investigation did not substantiate Mr. Shah's allegation that the evaluation of [REDACTED] for 2017 was purposefully altered or inflated, but it also did not disprove it conclusively. The inclusion of what appears to be a draft evaluation in [REDACTED] personnel file raises some questions, as we were advised that draft evaluations are not generally kept in an employee's official personnel file,<sup>5</sup> and the draft does contain [REDACTED] than the final. Both evaluations have the same overall rating of [REDACTED], however. We found [REDACTED] and [REDACTED] to be credible in our interviews of them, but plainly Mr. Shah was told something about [REDACTED] evaluation that led him to point us to it. Thus, our finding regarding the [REDACTED] evaluation is that Mr. Shah's claim of artificial inflation was neither substantiated nor conclusively disproven.

#### **Findings as to Files Kept Within the HR Department**

From our investigation, we learned that, by longstanding practice, the HR Department of the SDA keeps "confidential" files on employees under lock and key, to which only the HR Director and Deputy Director had access. As far as we were able to ascertain, no written standards or guidelines govern the keeping of such "confidential" files but, from our interviews of former HR Director Maribell Osnayo-Lytle and current HR Director Miguelina Diaz and other persons

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<sup>5</sup> One issue that could beneficially be addressed in a written policy regarding the files and records to be maintained by the HR department would be whether draft evaluations should be permanently retained anywhere. Reasonable arguments could be made either way, and since the question falls outside the scope of our engagement we make no recommendation regarding it.

who have worked within the HR department, we gather that they generally contain materials that may be relevant to an employee's employment history, but that do not fit or fall within the types of documents typically filed in the employee's official "personnel" file.

We recommend that a fresh look be taken at the established practice of keeping such "confidential" files within the HR department. If it is concluded that there is a managerial need for such files to be maintained, we suggest that written policies and guidelines be developed and implemented, so that all agency employees will be assured of uniformity of practice and general consistency regarding what files and records are kept on them within the HR department.

### **Conclusion**

Our investigation into allegations of file-tampering within the HR department of the SDA failed to turn up any hard or compelling evidence of such activity. It did reveal, however, a lack of written policies or guidelines governing what files are to be kept within the HR department, and what specific documents are to be kept in those files.

Our investigation also revealed a sequence of unusual events occurring within the HR department of the SDA that, when viewed in combination, could give rise, and in our view did give rise, to reasonable suspicions of possible mischief. In particular, the assignment of then Special Projects Director (now Deputy Chief of Staff) Patricia Cabrera to review the personnel files and employment history of the employees who were terminated in September 2018, and the assignment of Joel Guzman and Riya Arora (two non-HR employees) to review all active personnel files in the agency, were, from an office-perception standpoint, bound to raise questions among the agency's workforce. The manner in which those assignments were carried out (in Ms. Cabrera's case, by taking HR files to her own office, and in the case of Mr. Guzman and Ms. Arora, by having them sign so-called "confidentiality agreements") might well raise questions

among the rank and file in the best of times and circumstances – and these were far from the best of times and circumstances for the SDA.

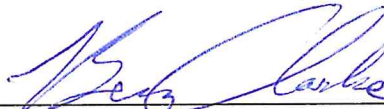
We recommend that, going forward, the agency adopt written policies and guidelines regarding what files are to be kept within the HR department, and how they are to be kept. If the practice of keeping “confidential” files within that department is left in place, then written guidelines to govern the practice would seem not just warranted but a necessity.

We thank you for the opportunity to conduct this investigation, and hope this report is sufficient for your purposes and responsive to your needs. If you need anything further, or have any questions, please let us know. Thank you.

Very truly yours,

**DeCOTIIS, FITZPATRICK, COLE & GIBLIN LLP**

By: \_\_\_\_\_



Benjamin Clarke

BC/ts

# EXHIBIT A

March 07, 2019

Robert A. Nixon  
Chairman of the Board  
New Jersey Schools Development Authority

Adam Sternbach, Esq.  
Associate Counsel  
Governor's Authorities Unit

Heather V. Taylor  
Chief Ethics Officer  
Office of the Governor

Mark T. Holmes, Esq.  
Executive Director  
New Jersey State Ethics Commission

Dear Chairman Nixon:

We, the undersigned, have been alerted that personnel files at the New Jersey Schools Development Authority ("SDA") are being tampered with by, and likely at the direction of, members of the SDA's management. This activity is being conducted by human resources managers and staff. It is our understanding that these are the files of former SDA employees who were (wrongfully) terminated when then Chief of Staff Albert Alvarez conducted a politically motivated purge at the SDA on September 20, 2018. We have also been advised that files belonging to current SDA employees such as directors and other senior level staff are also being tampered with. This illegal tampering of confidential personnel files is clearly related to the turmoil currently surrounding the improper hiring & firing practices and related improper and unethical activities at the SDA.

We are appalled, as you should be, that SDA leadership is taking this illegal action, and we demand your immediate assistance, intervention, and protection.

We demand that immediate drastic action be taken to preserve these files in their entirety. An outside independent agency must take control of and remove these files from the SDA's offices to preserve the integrity of the contents of these files. We understand that this letter is being presented on a Friday, and that there is little time to arrange for an outside agency to become involved before the weekend. Therefore, we recommend that, at a minimum, all personnel files be secured by the SDA Information Systems Director, Anthony Gilfillan, and by Lori Gilmore, SDA Central Records Manager, who should work in tandem and with specific instructions to preserve this evidence.

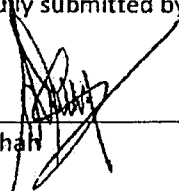
The files and records to be preserved and protected should include: the personnel files for any and all former SDA employees who were terminated after Albert Alvarez became Chief of Staff at the SDA; any and all SDA employees who had their position/duties/title/compensation changed since Mr. Alvarez came to the SDA; all personnel hired after Mr. Alvarez first came to the SDA, including the files for Mr. Alvarez and SDA CEO Lizette Delgado—Polanco; and the personnel files for all SDA employees with a rank of deputy director (or similar title) or higher, including vice presidents, most of whom have had numerous allegations of improper conduct raised against them. These records should include the complete personnel files for these individuals, as well as documents not within the personnel file per se, which pertain to the employee's performance and any allegations made against them. As the SDA has recently hired new personnel who do not have the same level of qualifications of those employees let go, it is imperative that all of these personnel files be preserved while this matter is being investigated at your direction.

We have been informed by witnesses that the SDA's human resources personnel and managers are the ones who are carrying out the tampering with the personnel files. Therefore, we also demand that all current human resource employees, specifically those hired during Ms. Delgado-Polanco tenure as CEO of the SDA, be immediately placed on administrative leave, with pay, and removed from the premises to prevent further tampering. It is also specifically requested that the SDA's chief counsel, Albert Barnes, Esq., and all members of his section, as well as Jane Kelly, Esq., SDA Ethics Officer and Vice President for Governance, and all members of her Department be excluded from and prohibited from gaining access to or reviewing any of these personnel files.

We also hereby submit the following request. Each and every former employee of the SDA who was involuntarily terminated after Mr. Alvarez joined the SDA shall be provided with a complete and accurate copy of their own personnel records at SDA expense. This request is hereby being made in addition to and as an Open Public Records Act (OPRA) request for each of the undersigned. This OPRA request is for the entire personnel file for each of the requesting former employees, listed below, for their own file.

While the former and current employees of the SDA who are aware of the illegal actions being undertaken by SDA HR are appalled by these actions, we are not surprised given the hyper-political, unethical, and obstructionist manner in which the current SDA leadership team has, and are, conducting themselves. Given the demonstrated willingness and efforts to make false statements as well as abuse and violate the rights of SDA employees while protecting senior members from allegations against them, we ask that our privacy be protected and that our names not be disseminated beyond those to whom this letter is addressed and directly copied.

Respectfully submitted by:

  
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Sameer Shah

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CC: Sen. Stephen M. Sweeney, President, New Jersey Senate  
Assemblywoman Holly T. Schepisi, Assistant Republican Leader, New Jersey Assembly  
Brian T. Wilton, Esq., Deputy Chief Counsel, Director of Authorities, Office of the Governor



# EXHIBIT B

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