



State of New Jersey
Commission of Investigation

SCHOOLS **DEVELOPMENT** **AUTHORITY**

**Mismanagement, Questionable
Hiring Practices and Weak
Oversight of New Jersey's
School Construction Program**

September 2020

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September 2020

Governor Phil Murphy

The President and Members of the Senate

The Speaker and Members of the General Assembly

The State Commission of Investigation, pursuant to N.J.S.A. 52:9M, herewith submits for your information and review a report of findings stemming from an investigation into the New Jersey Schools Development Authority.¹

Respectfully,

A handwritten signature in black ink, appearing to read "J. Scancarella".

Joseph F. Scancarella
Chair

A handwritten signature in black ink, appearing to read "R. Burzichelli".

Robert J. Burzichelli
Commissioner

A handwritten signature in black ink, appearing to read "Rosemary Iannacone".

Rosemary Iannacone
Commissioner

¹ Commissioner John A. Hoffman was formally recused from this matter and did not participate in any aspect of the inquiry.

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Executive Summary

New Jersey's School Construction Program is the largest public construction program ever undertaken by the State of New Jersey, and to this day, the \$12 billion-plus herculean effort remains one of the biggest school construction programs ever commenced in the nation.

When the New Jersey Schools Development Authority (SDA) was created in 2007 to reform earlier missteps in managing such a massive effort, the taxpayer-supported body arrived with an honorable mission and a public promise to “effectively manage the fiscal resources provided by New Jersey’s taxpayers” and “set nationwide best practices for the development of schools.”

But a dozen years later, such a hopeful outlook is but a faded memory as the SDA, its leadership and its alleged overseers are once again operating under a cloud and facing an uncertain future, this time over a series of incompetent hiring decisions, failures in oversight and other mismanagement.

At the center of this scandal are the actions of former SDA Chief Executive Officer Lizette Delgado-Polanco, a woefully inexperienced CEO placed in charge of the multi-billion-dollar Authority, and the individuals, policies and practices that were supposed to keep the politically-connected appointee and the entity she oversaw in check. The Authority and those responsible for it were also supposed to ensure that public tax dollars rightly flowed toward providing safe, healthy and sustainable schools for many years to come.

Instead, Delgado-Polanco's brief tenure at the SDA featured questionable administrative actions, suspect hires and outright managerial malfeasance. These included the firing of more than a dozen long-time employees, the rewarding close friends and relatives – some with little to no qualifications – with high-paying government jobs and the exclusion of top staff and the board leader in major management decisions.

The State Commission of Investigation conducted an investigation into this debacle and found that despite having legislative hearings, an internal audit, and a pair of independent legal inquiries – all of which delved into aspects of Delgado-Polanco's activities as CEO – only part of the story has been told so far.

To date, prior examinations – along with in-depth reports by the media – exposed a litany of policy infractions, ethical lapses and poor management choices at the SDA. As a result of such findings, the SDA governing board adopted new bylaws to give it greater oversight of the CEO in hiring decisions and other personnel-related matters. Furthermore, those inquiries put a spotlight on numerous additional organizational weaknesses inside the SDA that are ripe for improvement.

Yet, despite the considerable time and effort expended uncovering and documenting Delgado-Polanco's problematic actions at the SDA – not to mention the taxpayer dollars spent hiring attorneys from outside state government to probe it and the more than a half-million dollars the State spent to settle a lawsuit that sprung from it – the public still does not have the full picture of both the individual and systematic breakdowns inside and outside an agency charged with a vital primary mission: building educational facilities for New Jersey's 31 poorest

school districts.² Case in point: an inquiry conducted by a private law firm at the behest of the State Office of the Attorney General after a whistleblower complaint about irregular hiring practices failed to include interviews with individuals who worked inside the Governor’s Office and had direct oversight responsibilities for the SDA.

To provide a more comprehensive examination of the events that occurred during Delgado-Polanco’s tumultuous nine-month leadership of the SDA – along with identifying gaps in oversight and accountability to safeguard against a repeat performance – the Commission utilized the investigative powers granted to it under state law. In its work to date on the SDA, the Commission issued more than two dozen subpoenas to obtain records and compel testimony. In total, the Commission took sworn testimony from or conducted field interviews with, 57 individuals. In addition, Commission staff reviewed and analyzed tens of thousands of pages of documents, such as phone records, emails, personnel records, memorandums, internal and external reports and various other SDA-related correspondence.

The investigation led the Commission to uncover findings not revealed in prior examinations. Most significantly, the Commission found that a far wider universe of individuals than had been previously disclosed was involved in Delgado-Polanco’s decisions as CEO. Records obtained by the Commission indicate a steady stream of frequent communication – via phone and text message – between Delgado-Polanco and top-ranking members of Gov. Phil Murphy’s staff throughout her employment at the SDA. Delgado-Polanco and her top deputies testified

² In April 2020, the State reportedly paid more than \$500,000 to settle a lawsuit filed by the former Human Resources Director Maribell Osnayo-Lytle, who complained of improper hiring at the SDA and that Delgado-Polanco wrongfully terminated her.

before the SCI that she always kept the Governor's Office informed of her administrative activities. In testimony before the Commission, those Murphy administration employees said they did not authorize every detail of Delgado-Polanco's managerial decisions but their actions, and in some cases, inaction, made it clear that she conducted her overall activities as CEO with the tacit approval of the Governor's Office.

Consistent with previous inquiries, the Commission found Delgado-Polanco's overhaul of the SDA's administrative structure was executed in relative secrecy within the Authority, fraught with improper human resources practices, and conducted without consultation with, or input from, the SDA executive staff. Her excessive focus on securing the reauthorization of funding for the Authority led Delgado-Polanco to make a series of poor choices related to hiring and staffing issues, including placing individuals in jobs for which they lacked the requisite professional background and diverting money from the SDA's core mission to fund her outreach campaign. In certain instances, new hires secured leadership roles despite having virtually no experience in the given discipline.

On more than one occasion, Delgado-Polanco made statements about her actions at the SDA that were completely contradictory to the accounts provided by others involved in those matters. The most notable of these were public comments she made claiming senior executives at the SDA were involved in all personnel-related decisions. That point was strongly disputed by several senior staff members – in both written documents and sworn testimony before the SCI – leading the Commission to question the veracity of some of Delgado-Polanco's statements.

Toward the end of her tenure, Delgado-Polanco's ability to respond publicly to questions about her actions as CEO was curtailed by the Governor's Office and by the fact that an external investigation was underway examining improper hiring practices under her watch. This meant that questions from state legislators and the press – regarding patronage hires and other matters – were left unanswered, hampering the public's ability to obtain information about what was going on inside an authority whose debt costs New Jersey taxpayers just over \$1 billion each year.³

Not only did Delgado-Polanco bypass senior SDA staff in many of her managerial decisions, but the Commission also found the governing board of the SDA was largely left in the dark. The Board, which is supposed to ensure that the Authority complies with specific legal, regulatory and ethical requirements and properly spends monies allocated to it, received only cursory details about the planned internal reorganization, new hires – most of whom filled non-construction-related roles – and other administrative matters. During her first SDA Board meeting – mere weeks after she was appointed CEO – Delgado-Polanco announced several promotions and title changes for existing staff and welcomed new hires. Inside the Authority, those changes to the organizational structure – which ultimately included the firing of 15 employees – created major turmoil.⁴ However, it would be more than two months before concerns about the hiring process for new employees would reach the Board Chairman after a

³ The amount that New Jersey taxpayers must pay annually in debt service on bonds to fund the SDA.

⁴ Osnayo-Lytle testified before the Commission that Delgado-Polanco's Chief of Staff Al Alvarez told her that under the new structure her relationship with then-Vice President of Corporate Governance and Operations Jane Kelly, who was also the chief ethics officer, was over. Kelly testified that her oversight of Human Resources was removed from her job duties because she objected to Delgado-Polanco's hiring practices.

member of the SDA executive team had already filed a complaint about the hiring process with the State Ethics Commission.

While Delgado-Polanco ultimately resigned from the SDA on April 26, 2019, the revelations about the controversial administrative practices and other dubious goings-on that transpired during her watch prompt broader questions about the structure and operation of the Authority itself. Are proper safeguards in place – including reforms adopted after the SDA’s recent internal audit – to ensure these types of managerial misdeeds do not occur again under another regime? Or should more robust oversight mechanisms be installed? Most importantly, what, if any impact, do these concerns have on the SDA’s ability to uphold the important mission entrusted to it? Is the Authority still the most appropriate government entity to fulfill this role, or is another agency better equipped to handle those responsibilities?

The ultimate objective of the Commission’s investigation is to not only provide legitimate answers to questions like those outlined above but to arm the Governor, lawmakers and taxpayers with the necessary facts to ensure that the SDA in the future can operate in a reliable and trustworthy manner that protects the substantial investment of public dollars in its care. The obligation to fulfill that expectation is even more imperative given the fact that the SDA is at a critical juncture, and in a precariously fragile state. The bottom line is this: the SDA may cease to exist altogether unless the State can restore lost public trust that will enable it to obtain a new round of large-scale public financing regardless of the pathway deemed legally necessary to secure those funds – whether it occurs through an act of the Legislature or by a public vote.

With all this in mind, the Commission presents this public report, the first dispatch in an ongoing examination into the SDA. Moving forward, as part of this continuing inquiry, the Commission will investigate the operational side of the SDA, which currently manages an expansive portfolio of construction projects and properties across the state valued at more than \$2 billion. Once the investigation is completed, the Commission will issue a final public report that will present additional findings and a series of comprehensive recommendations for legislative and regulatory reforms.

History of the SDA

On August 6, 2007, then-Gov. Jon Corzine signed legislation into law that dissolved the New Jersey Schools Construction Corporation (SCC) and created the SDA to replace it, transferring all the functions, powers, duties and employees of the shuttered agency to the new authority.⁵ The fledgling SDA was tasked with executing the statewide School Construction Program begun in response to the New Jersey Supreme Court's 1998 decision in *Abbott v. Burke*, which required every school building in the state's poorest districts be made safe and educationally adequate.⁶ This landmark series of rulings eventually led to the adoption of the Educational Facilities Construction and Financing Act in 2001, which authorized up to \$12.5 billion in taxpayer-funded bonds to fund remediation and construction projects across the state.⁷ Of this total, \$8.9 billion would legally go toward improving facilities in 31 low-income school

⁵ *L. 2007, c. 137*

⁶ *Abbott v. Burke*, 153 N.J. 480 (1998)

⁷ Educational Facilities Construction and Financing Act, *L. 2000 c. 72*

districts referred to as the “Abbott Districts,” another \$3.45 billion for other districts and the rest of the \$150 million, reserved for the state’s vocational schools.⁸

The SDA was created to effectively turn the page for the administration of the state’s legally-mandated school construction program. Under its predecessor, the SCC, had become less known for building schools than it was for being a symbol of colossal government waste.⁹ Rife with mismanagement, the SCC had squandered hundreds of millions of dollars on cost overruns and overpayments to contractors and had become a home for the politically connected. A year after its 2002 creation, it was completely out of money and unable to complete further projects – blowing through approximately \$8.6 billion allocated to the school construction program in its initial round of funding.

Soon after the SDA’s creation, the Legislature approved a second phase of school construction funding by authorizing an additional \$3.9 billion. Bond proceeds pay for all aspects of the SDA’s operations, including construction costs, real estate fees and administrative costs, such as salaries and health benefits for employees.

On paper, the law that created the SDA was supposed to infuse it with an enhanced governance structure and better internal controls. The reform law did increase the number of public members of the 15-member Board from seven to 11.¹⁰ It also sought to increase the level of professionalism by requiring the public Board members to have background in construction,

⁸ These 31 districts are now referred to as “SDA Districts.”

⁹ N.J.S.A 52:18A-235 to -261.

¹⁰ The Board also includes four ex-officio members, who are the following: The Commissioner of Education, the Commissioner of the Department of Community Affairs, the executive director of the Economic Development Authority and the State Treasurer.

education or finance. But while the reforms placed more rigorous requirements in the selection of its members, it did little else to enhance the Board's powers or to give it a true watchdog role over the SDA's CEO and executive team actions.

As currently constructed, the SDA Board's primary role is to oversee the Authority's operational actions by monitoring school construction projects, land acquisitions and other fiscal matters. It holds only nominal authority over the executive strategy employed or SDA's administration, outside the annual budget's approval and, more recently, in hiring and staffing decisions.¹¹ At the same time – though it is not a cabinet-level agency – the state's Governor holds much more real and implied power over its activities. The Governor appoints all public members of its Board with the advice and consent of the Senate and names a chairperson from among the public members. Most significantly, the Governor holds the power to veto any action taken by the Authority's Board.

Over the past decade, largely through practice than any written rule or law, the Governor has typically chosen the SDA's CEO. The procedure for selecting and appointing the Authority's CEO – set out in statute and its bylaws – conflicts with this practice. The SDA's operating statute states that the Authority “shall employ an executive director who shall be its chief executive officer.”¹² Meanwhile, the SDA's own bylaws state the Authority “shall appoint and employ” the CEO.¹³ Unlike the specific professional qualifications mandatory for Board members, no such

¹¹ New bylaws adopted in September 2019 gave the Board oversight in hiring and staffing decisions. It also required new oversight provisions for executive-level staff to prevent the CEO from making unilateral decisions on hiring, transfers and promotions.

¹² N.J.S.A. 52:18A-237e

¹³ The Authority's Bylaws, Section 4.2 states the following: “The Authority shall appoint and employ an Executive Director who shall be its Chief Executive Officer.”

standards are required for the CEO. The appointment does not require the advice and consent of the Senate to approve it. The procedure for naming the CEO has varied among New Jersey governors, with some administrations giving the Board a role in selecting and vetting potential candidates. In contrast, others have simply submitted the name of an individual to the Board for consideration. The Board formalized the appointment of the CEO with a vote.

Since the creation of the SDA, there have been six CEOs. When Corzine was Governor, SDA Board Chairman Robert Nixon recalled that the Board had a role in selecting and vetting potential candidates. In recent years, the Governor's Office has taken charge of the entire process. Under Gov. Chris Christie's administration, the Board had no participation in the CEO selection process whatsoever when he named former federal prosecutor Marc Larkins to the post in 2010 or replaced Larkins with the Governor's Chief Counsel Charles McKenna in 2013.

A New Governor, a New SDA CEO

Gov. Murphy followed his predecessor Gov. Christie's lead when he recommended his own SDA CEO nominee, Lizette Delgado-Polanco, to serve as McKenna's replacement in August 2018, doing so without consulting the SDA's board of professionals.

Initially, when Delgado-Polanco was named to take SDA's helm in August 2018, there was nothing about the proposed appointment that immediately raised any red flags – publicly in Trenton or elsewhere. Inside the political class circles she traveled, Delgado-Polanco built a record of accomplishments in government and politics. She spent decades toiling inside the machinery of the New Jersey Democratic Party, working on political campaigns and climbing the ranks in two major labor organizations. A former Assistant Secretary of State in the

administration of Gov. Jim McGreevey in the mid-2000s, Delgado-Polanco went on to serve on Gov. Phil Murphy's gubernatorial transition team. At the time of her hiring at the SDA, she served as the vice-chair of the Democratic State Committee. Further, she was also familiar with the impoverished school districts most served by the SDA since she raised her children in one. But Delgado-Polanco had neither an advanced degree, which was preferred for the CEO candidate according to the SDA's job description for the position, nor a bachelor's degree. Further, she had no construction-related experience or any background in running a multi-faceted organization like the SDA.

Nixon, appointed to the Board by Gov. Corzine in 2009, testified before the Commission that Gov. Murphy's office contacted him sometime in July 2018 and told him that Delgado-Polanco would be the next CEO. Nixon explained that while the Board can reject a CEO candidate, that had never occurred in the ten years he has served on the panel. It is worth noting that the Governor has the power to nullify any Board action by vetoing the meeting minutes.

While there appears to be no dispute that Delgado-Polanco was the candidate favored by the Murphy administration to take over the reins at the SDA, the Commission's efforts to obtain a full accounting of the events that led to her appointment were thwarted, in part, because key decision-makers in that process failed to provide meaningful testimony. Pete Cammarano, Murphy's former Chief of Staff, who initially reached out to Delgado-Polanco and subsequently offered her the job – could either not recall or was precluded from answering questions regarding crucial details of the hiring process during sworn testimony before the SCI.

Cammarano, a long-time veteran of state government, worked as Chief of Staff to Sen. Richard J. Codey, D-Essex, for ten years, also serving in that same role when Codey took over as Governor after Gov. McGreevey resigned in 2004. After departing state government, Cammarano started a lobbying firm and worked in that capacity until he became Chief of Staff to Murphy in 2018.¹⁴ He testified that he did not know Delgado-Polanco well but had been familiar with her in the realm of Trenton politics for about a decade. At the time she was approached about the position at the SDA, Delgado-Polanco was working as the political director for the Northeast Regional Council of Carpenters Union, managing units in five states.

Delgado-Polanco testified to the Commission that Cammarano first approached her about the CEO position in July 2018 when he called and asked if she would be interested in leading the SDA.¹⁵ While she had served as the Chair of the Labor Committee for Murphy's gubernatorial transition team, Delgado-Polanco said she did not submit her resume for consideration for a position in Murphy's administration until after receiving Cammarano's call. At the time, she was happy with her job at the Carpenter's Union and did not envision returning to state government. After the initial phone conversation, Delgado-Polanco testified she had a one-on-one interview with Cammarano at his Trenton office. During the interview, Cammarano told her then-CEO McKenna was leaving and that, given the fact that she is a minority woman, had experience working with people in the SDA districts and had a background in labor she would be a good fit for the Authority. It would be the only interview she underwent before being offered the job.

¹⁴ Cammarano resigned from his job as Chief of Staff effective Jan. 15, 2019.

¹⁵ The testimony Delgado-Polanco provided to the Commission was consistent with statements she made earlier during testimony before the Legislative Select Oversight Committee in January 2019.

Delgado-Polanco testified that in the interview with Cammarano he told her that Al Alvarez was the Chief of Staff at the SDA. She already knew of Alvarez through their previous joint involvement in Latino-based Democratic organizations and their political campaign work over the years. She had no qualms about working with him. Delgado-Polanco testified that she asked the Governor's Chief of Staff why Alvarez was not being considered for the CEO position and Cammarano told her that Alvarez was planning to leave state government. Delgado-Polanco testified that Cammarano made no mention there were sexual abuse allegations against Alvarez.¹⁶ Those allegations, made by a female colleague whom Alvarez had worked with on Phil Murphy's gubernatorial campaign in 2017, would become a scandal that led to Alvarez's eventual resignation.¹⁷

During his testimony, Cammarano confirmed that he interviewed Delgado-Polanco in July 2018, but either could not recall, or was precluded by the Governor's counsel from providing details to the Commission about her hiring. Cammarano testified that he could not recall if he or his staff contacted the Authorities Unit to advise them of the interview even though the unit is responsible for overseeing the SDA. He could not remember if anyone else was present during his interview with Delgado-Polanco, or who contacted her to offer her the CEO position, but speculated it could have been him. Similarly, Cammarano did not know how the SDA Board knew to hire Delgado-Polanco but acknowledged that he could have called Chairman Nixon to advise

¹⁶ Delgado-Polanco testified before the Legislative Select Oversight Committee that she was not aware of the allegations until Alvarez abruptly resigned from the SDA prior to the Oct. 14, 2018 publication of the article in the *Wall Street Journal* in which the victim claimed that authorities, including those in Murphy administration, did not adequately address the alleged assault.

¹⁷ In May 2020, the State of New Jersey and the Murphy campaign agreed to pay \$1 million to settle a lawsuit filed by the former campaign worker.

him that she was being recommended for the job. Further, Heather Taylor, serving as the Governor's Office legal representative, precluded Cammarano's testimony numerous times by asserting executive privilege in response to the SCI's specific questions related to the process used to identify Delgado-Polanco as a candidate and her selection as CEO.¹⁸

The SDA Board unanimously approved Delgado-Polanco's nomination to become CEO on Aug. 1, 2018, and she began working at the Authority's Trenton offices shortly thereafter.

A New Sheriff in Town

During her first week of employment at the SDA, the Authority's previous CEO McKenna remained on-site, wrapping up office matters before departing the Authority for good. Delgado-Polanco testified that she met with McKenna in her initial days on the job and he told her more about the Authority and its initiatives. McKenna showed her a diagram of the SDA's organizational chart outlining the hierarchy and reporting lines at the Authority.¹⁹ McKenna also explained to Delgado-Polanco that the SDA was nearly out of money and that it would need a big-cash infusion in the form of the reauthorization of its public funding to continue operation.

Andrew Yosha, the Executive Vice President of Program Operations and Strategic Planning further reinforced concerns about the SDA's impending financial uncertainty for Delgado-

¹⁸ New Jersey law recognizes both the executive communications privilege and the deliberative process privilege. The executive communications privilege protects against the disclosure of certain communications that the Governor or his senior staff makes to fulfill his or her constitutional obligations and duties. The deliberative process privilege allows, in this instance, the Governor or senior staff, to withhold information that reflects the advice, recommendations and deliberations that comprise the process by which governmental decisions and policies are formulated.

¹⁹ Delgado-Polanco testified that she did not fully grasp the organizational chart until she looked at a paper version of it later and found that the reporting lines did not make sense to her.

Polanco in her initial days on the job.²⁰ Delgado-Polanco testified that Yosha informed her that not only was the Authority almost out of cash but that there needed to be a reauthorization bill – seeking \$5 billion to \$6 billion in new taxpayer-funded bonding – put before members of the Legislature by January 2019. This new development led Delgado-Polanco to conclude that ensuring that the SDA secured a new round of funding was to be her top priority as CEO. She testified to the following:

That's what was dropped on me. And there is no mechanism in place, other than a hope or a prayer from the [L]egislature to get this done.

As noted earlier in this report, a state law in 2000 had given the New Jersey Economic Development Authority approval to issue \$12.5 billion in bonds for the State's school construction program. After an initial funding authorization allocated \$8.6 billion to the program, legislation was enacted in 2008 that approved \$3.9 billion in additional funding. Of the funds that remain, the majority is committed for projects through 2024, with only approximately \$60 million left over to cover emergent project costs.²¹

Despite the need to carry out the State's mandate to build schools in low-income districts, and given the fact that the SDA was nearly out of money, there was apparently no clear plan – developed either by Authority staff or by the Murphy administration – to make certain that the SDA received new funding. This occurred, in part, over uncertainty about the mechanism to

²⁰ Yosha received a promotion to become Chief Operating Officer under Delgado-Polanco's leadership of the SDA. The February 2020 SDA Board meeting agenda indicated Yosha has resumed his prior title as Vice President, Program Operations and Strategic Planning.

²¹ Delgado-Polanco testified that this was the value of remaining funds during the Assembly Budget Committee hearing on April 10, 2019.

obtain the financing. Internal hand-wringing over whether the funding request needed to go on the ballot, instead of simply gaining approval from lawmakers and the Governor, hinged on the existence of an obscure amendment to New Jersey's Constitution that altered how state government may borrow money. In 2008, New Jersey voters approved a constitutional amendment that prohibited the Legislature from unilaterally authorizing the creation of a debt for an autonomous public corporate entity – such as an independent State Authority – without voter approval.²² The internal debate inside the Murphy administration and over at the Legislature involved the so-called “Lance Amendment,” named after its primary sponsor, former state Sen. Leonard Lance, R-Hunterdon. The big question: would the “Lance Amendment” apply to the SDA's new funding request or could lawmakers without voter endorsement authorize the bonds. The matter became “an open question” within the administration, according to testimony provided to the Commission by Adam Sternbach, the Governor's former associate counsel to the authorities unit, who served as the liaison between the administration and SDA staff. Delgado-Polanco testified to the uncertainty at the time:

So we were kind of stuck in limbo, that's why the bill never went in front of the [L]egislature from the beginning because the folks in the [L]egislative office and OLS [Office of Legislative Services] were concerned about this not being only the sole authority of the [L]egislature to approve as it was in previous times when they [the SDA] were authorized. They were concerned, and the Attorney General's Office was concerned that this would probably have to go to a public referendum.

²² N.J. Const. art. VIII, § 2, ¶ 3, subsection b. The Lance Amendment prohibits the Legislature from enacting legislation authorizing State Appropriation obligations payable from other than constitutionally dedicated sources unless such legislation is submitted and approved by a majority of legally qualified voters of the State voting in a general election.

Delgado-Polanco told the Commission that the decision was ultimately made, in consultation with the Governor's office, to proceed as if the Legislature needed to authorize the bonding. The fallback position was that if that was not the case, the SDA would be prepared with a strategy – focused on building grassroots public support for the SDA – if the funding request needed to go to the voters.

Organizational Shakeup

With a single-minded focus on ensuring the SDA obtained new funding, Delgado-Polanco dove headfirst into putting the pieces in place to make it happen. Employing a strategy not unlike those used by union or political organizers, Delgado-Polanco decided to launch a public awareness campaign to show how the SDA was improving the quality of life and quality of education for New Jersey school children. The idea revolved around building up the Authority's public profile by increasing its social media presence and touting its good works in the community to garner public support for a referendum. To execute this initiative, Delgado-Polanco decided she needed to hire more people. The Authority already maintained a communications department, but Delgado-Polanco testified that she did not believe the existing SDA staff was qualified to do what she needed. Thus, she created a new external affairs unit and tasked it with "externally painting the picture of the issue and the urgency that the agency will be out of money." Delgado-Polanco testified:

...External Affairs Division was created because we had to get into those districts and work with parents and stakeholders and ministers and everyone to create a groundswell in order for this to pass if it had to go to a public referendum

To allow Delgado-Polanco to have direct oversight of its activities, the new unit was placed directly under the supervision of the CEO and her Chief of Staff, who remained Alvarez at the time.

But a new external affairs unit was not the only change Delgado-Polanco decided to make only weeks into her tenure at the SDA. Bulldozing ahead, she decided to undertake a larger restructuring of the Authority's reporting lines. She testified that when she had an opportunity to look closer at the organizational chart, the hierarchy did not make sense to her and that, with just a brief time in her new role, she thought the wrong managers were overseeing certain areas.

As she did with all of her managerial decisions at the SDA, Delgado-Polanco had run plans to reorganize the authorities' inner-workings past the Governor's Office. Then-Chief of Staff Alvarez testified that it was fair to say Delgado-Polanco always communicated directly with the Murphy administration before taking any action to ensure "they were on board." Alvarez further testified:

I would say Ms. Delgado-Polanco consulted the governor's office at every step of the way in the entire reorganization process, so they were made aware of all the decisions that were being contemplated before they were actually executed.

Yet, within the walls of the SDA, Delgado-Polanco's plans were known by only a select few.

Within weeks of her arrival at the SDA, Delgado-Polanco had asked Maribell Osnayo-Lytle, the SDA's Acting Director of Human Resources, if she had someone on her staff that she trusted who could help work on the organizational chart because she wanted to "play with it." This was

not an unusual request, according to Osnayo-Lytle, because other CEOs had also re-examined the chart, but the covert way the project was to be executed was peculiar. Delgado-Polanco told Osnayo-Lytle that the duty could involve working nights and that the trusted employee would need to keep quiet about the project. The more junior human resources employee eventually assigned to the job received a designated laptop and worked on the project in a specific conference room. Osnayo-Lytle testified that the employee later said Delgado-Polanco told her not to discuss her work with anyone, including her.

Delgado-Polanco testified that she made changes to the organizational chart, in part, because the configuration of the structure was “cluttered and convoluted.” It made more sense to her to reconfigure it so that all related job functions remained together, such as having the Vice President of Construction oversee all project managers and employees involved in construction. More specifically, she felt that then-Vice President of Corporate Governance and Operations, Jane Kelly, maintained oversight of too many support functionalities within the Authority. At the time, Kelly supervised information technology (IT), human resources, legal, facilities, ethics and communications. Meanwhile, then-Chief of Staff Alvarez only managed a few people. In the revised organizational chart, along with the responsibility for overseeing the new external affairs unit, the Chief of Staff and the CEO also supervised communications and human resources.

Questionable Hiring Practices

In her first weeks at the SDA, before she had completed the review of the reporting hierarchy, Delgado-Polanco already started giving Osnayo-Lytle resumes of individuals she

wanted to hire. While it was not uncommon for a new CEO to bring on a few new people, the hiring carried out by Delgado was far different from what had occurred previously at the SDA. It was not only the sheer volume of individuals hired but also the lack of professional qualifications many of them had for the jobs they were hired to fill, as well as Delgado-Polanco's complete disregard for established hiring protocols at the SDA that raised internal concerns. Compounding this, was the fact that a large number of these individuals had some type of personal or professional relationship ties with Delgado-Polanco or her best friend, Patricia Arcila Cabrera, who was among the first of the new hires made at the SDA.

On Sept. 10, 2018, Cabrera was hired to the post of "Director-Special Projects" at a salary of \$117,000. A retired New Jersey director for the Service Employees International Union (SEIU), Cabrera met Delgado-Polanco when the two worked together at the SEIU union. Cabrera's resume states her job duties at the union involved handling complaints and other contract-related matters. The SDA's own job description for the special projects' position requires the jobholder to possess a bachelor's degree, or equivalent experience, with a Master's degree preferred. Like the SDA's CEO, Cabrera does not hold a college degree.

In sworn testimony before the Commission, Cabrera, who described Delgado-Polanco as her best friend, said she was hired to visit the SDA districts and meet with community members to see the needs in those areas. The job description for the position states that the jobholder's primary duty is carrying out the SDA's outreach strategy and leading the development of community partnerships. Approximately one month later, Cabrera became Deputy Chief of Staff to Delgado-Polanco and received a bumped-up salary of \$130,000 a year.

Osnayo-Lytle testified that she had pushed back on Cabrera's hiring, objecting to both her lack of experience for a director position and the proposed starting salary, which was higher than some of the other SDA directors at the time. Osnayo-Lytle had also argued against several other employees' hiring because they either lacked the qualifications and/or received job offers at salaries above the SDA's guidelines. Nevertheless, Osnayo-Lytle testified that Delgado-Polanco repeatedly told her to push them through.²³ One job candidate that she specifically protested was Cabrera's daughter-in-law, Jenna Arcila, hired as a Human Resources Project Coordinator. Arcila does not have a college degree and had only a limited background in human resources, yet received a starting salary of \$60,000, which under SDA pay ranges required five years' experience in a human resources specialty, either recruiting, benefits or payroll.

The SDA has rigorous Human Resource standards for hiring employees that Delgado-Polanco completely bypassed. The procedures require hiring managers to identify any staffing needs and go through a series of steps before the hiring process begins. Each existing job, as well as newly created positions, must have a job description. To find candidates, the positions are posted both internally and externally. There are protocols for screening and assessing candidates. Once a potential hire has been identified, a consensus meeting – that may include the hiring manager, human resources personnel and other staff – is held to make a final decision on the candidate. There are salary guidelines that set pay ranges for specific job titles. Finally, there are rules on how the Authority presents the job offer and secures the candidate.

²³ In testimony before the Commission, Delgado-Polanco disputed Osnayo-Lytle's claims that she objected to many proposed hires.

Kelly, the SDA's Vice President of Corporate Governance and Legal Affairs, told the Commission in her testimony that, in the past, other CEOs would often have one to three people considered "must hires." Although there may not have been job postings for the positions they filled, such individuals were always vetted and interviewed. "There was a process," Kelly said.

While Osnayo-Lytle testified that she had continually objected to Delgado-Polanco's hiring plans, in one particular instance, Alvarez joined her in her opposition. Both opposed the decision to hire Frank DiBartolo as the Deputy Director of the Contract Management Division. A former branch manager at ABM Industries, a facility management company that provides unionized labor, DiBartolo knew Delgado-Polanco when she worked at the SEIU. While they did not have any professional dealings together, they met through a mutual friend – Delgado-Polanco's best friend Cabrera – who was his main contact at the union.

At the SDA, the contract management division effectively serves as the gatekeeper for reviewing construction change orders over \$75,000. The unit's responsibilities extend to reviewing estimates for capital construction projects, professional service consultants and all capital projects' schedules. ²⁴ Along with holding a bachelor's degree, the Deputy Director of Contract Management is supposed to have five years' experience in the construction industry and extensive knowledge in construction, as well as working with consultants and architectural contracts. DiBartolo did not meet the job description's minimum standards because he lacked sufficient construction experience and never completed college. At ABM, he oversaw employees

²⁴ The previous occupant of the deputy director position had several advanced degrees and was considered a subject matter expert in the field of contract management. He was fired on Sept. 20, 2018, along with a group of other SDA employees who had a history of job performance issues, for either personnel or job-related matters.

who provided landscaping and maintenance services to commercial businesses. Before that, he worked for a number of parking companies.

During DiBartolo's hiring process, there was no effort to vet him as a potential candidate or to have him undergo interviews with other SDA personnel – as was the Authority's typical procedure for new hires. Instead, Delgado-Polanco conducted the entire process. DiBartolo, who had been laid off from his job at ABM after 16 years, testified that he received a call from Delgado-Polanco telling him about the contract management position. Soon after, they met at a café in Trenton where she told him what his role would be at the SDA.

She told me I would [be] working with architects and engineering [sic] and more or less what I would be doing. And she represented to me it was like an audit-type of role. And that was it.

Both Osnayo-Lytle and Alvarez believed that the position required specialized knowledge and that DiBartolo's lack of construction background would be a liability.²⁵ Alvarez told Delgado-Polanco that he felt DiBartolo was unqualified for the job, but Delgado-Polanco did not share the same concerns. Over their objections, DiBartolo started as Deputy Director of Contract Management on Oct. 22, 2018, at a salary of \$110,000.

All told, the SDA allocated more than \$2.7 million in salaries for new employees during Delgado-Polanco's regime. Most of the new hires had job duties outside the Authority's core mission.

²⁵ Osnayo-Lytle was fired on Nov. 2, 2018, for insubordination for allegedly not completing paperwork for an employee's salary increase. The State reportedly agreed in April 2020 to pay Osnayo-Lytle \$550,000 to settle a wrongful termination lawsuit. Three other lawsuits pertaining to SDA personnel-related matters are still pending.

An Open Line of Communication

While this flurry of hiring activity occurred at the SDA, Delgado-Polanco remained in close contact with Murphy administration officials. Delgado-Polanco testified that she relied on the counsel of her Chief of Staff, Alvarez, who had been at the SDA since the start of the Murphy administration. Alvarez told her the Governor's Office must approve all hires. Her Deputy Chief of Staff Cabrera testified to the following:

So every hire that Lizette, you know, every person that Lizette hired, salary, she didn't do any – she didn't take any step without calling the governor's office. And this is interesting, because nobody is talking about that but me, being that I was the deputy chief of staff, I was always in her office, she constantly called in, they knew everything that was going on, everything, every hire, every move.

Sternbach, the Deputy Counsel to the Authorities Unit in the Governor's Office, was in regular communication with Delgado-Polanco and testified that he was generally aware of her plan to hire new employees to carry out a public relations campaign to assist the SDA in securing a funding reauthorization.²⁶ He informed his supervisor of Delgado-Polanco's reorganization plans but did not know if that information reached top-level aides in the Governor's office. At some point in the fall of 2018, Sternbach recalled first becoming aware that the Authority had hired a large number of new employees rather quickly. Sternbach told the Commission:

So I did not have knowledge of how these people were being hired, just the fact that there were a lot of people in a relatively short amount of time who were now working at the SDA.

²⁶ Toll records indicate there were 91 completed cell phone communications, which include texts or phone calls, between Delgado-Polanco and Sternbach between Oct. 9, 2018, and April 24, 2019.

Former Murphy Chief of Staff Cammarano testified that he had heard rumors – but could not recall when exactly – that Delgado-Polanco had hired individuals with whom she had close personal or professional relationships.²⁷ He testified that he called Delgado-Polanco to ask if the rumors were true. Cammarano testified to the following:

The answer was that the rumor was not true, that that's not what was happening. And I assured her that it can't happen, and then that really ended the conversation. I was satisfied at the time that that was the case.

Salary Increases for Staff

Given that the SDA was virtually out of money, it would be reasonable for fiscal constraints to be in place. Nonetheless, Delgado-Polanco did not scrimp on spending. In addition to giving generous salaries to new hires, she also boosted the pay of many existing employees.

Delgado-Polanco decided to give the salary increases, in most cases after consultation with the former human resources head, Osnayo-Lytle, Chief of Staff Alvarez and other top management at the SDA. Some raises were tied to promotions, such as the \$27,000 increase given to Osnayo-Lytle after she was named Director of Human Resources, raising her salary to \$127,500. SDA Vice President Yosha received \$14,800 extra in salary when he was elevated to Chief Operating Officer making \$185,000 a year. Among the largest of pay increases went to Alvarez, who saw his salary as Chief of Staff jump from \$140,000 to \$170,000 after a \$30,000 raise. Delgado-Polanco told the Commission that she pegged Alvarez's raise to what she

²⁷ Toll records obtained by the Commission indicate 110 completed communications, which include text messages and phone calls, between Delgado-Polanco and Cammarano from Aug. 1, 2018 to Dec. 21, 2018.

understood to be an across-the-board increase for employees who served as chiefs of staff in the Murphy administration. Alvarez received the substantial bump in pay in August 2018, about two months before allegations of sexual assault against him by a Murphy campaign worker became public, but long after the allegation was known inside the administration, according to testimony Cammarano provided to the Legislature.

Delgado-Polanco testified that while she regularly consulted with the Governor's Office on her administrative moves, she did not advise the administration or the Board about either Alvarez's salary increase or the raises given to other SDA employees, until after the fact. Delgado-Polanco justified the significant taxpayer-supported salary increases because they remained within the amount that she understood was allocated in the SDA budget for salaries. In total, the promotions and other salary bumps handed out by Delgado-Polanco would increase the total amount spent on salaries for SDA employees by more than \$500,000.

September 2018 Terminations

The Commission heard testimony from a number of witnesses that a collection of employees with chronic performance or personnel issues – referred to by some as "the dead wood list" – had been in existence before Delgado-Polanco arrived at the SDA. Sometime in early September 2018, Delgado-Polanco called for a meeting of top management inside the SDA to discuss the possible termination of underperforming or problematic employees. Numerous witnesses who testified before the Commission verified that the vice presidents were asked to assess and discuss specific employees in their departments who should be under consideration

for firing. During the meeting, a group including Osnayo-Lytle and Alvarez, discussed each employee individually and reviewed their past performance evaluations. The group decided whether the individual went on a performance improvement plan or ended up on the termination list.

After compiling the final list, Alvarez testified that he and Delgado-Polanco met with Sternbach and his supervisor at the Governor's Office to discuss the list of employees and the plan to terminate them. That sequence of events was confirmed by Sternbach, who told the Commission that while the authorities unit did not approve the firings, the Governor's Office was kept informed of the planned terminations and the decision-making process that led to it. Former Murphy Chief of Staff Cammarano testified that he was also aware of the planned terminations.

The Commission's investigation found that the mass firing of 15 SDA employees, which included the termination of 14 workers on a single day – Sept. 20, 2018 – was done under the leadership of Delgado-Polanco and had occurred after consultation with top SDA executives, then-Human Resources Acting Director Osnayo-Lytle, Alvarez and representatives with the Murphy administration.

The SDA Board: Left in the Dark

While she kept the Governor's office in the loop as to her administrative activities, it was a far different story when it came to Delgado-Polanco's relationship with the SDA's Board. Delgado-Polanco was not explicitly required to inform the Board of her personnel actions – under the SDA's operating statute or its bylaws – and because of this fact she treated the oversight panel as little more than an afterthought.

As mentioned earlier, the SDA Board is comprised of four ex-officio members and 11 public members appointed by the Governor with the advice and consent of the Senate.²⁸ It is statutorily required that at least one of the Board members is to have knowledge of law enforcement and the other members are to have expertise in real estate development, construction management, finance, architectural, building or a related field. Board members are unpaid. While the governor appoints the chairperson from the public members, the Board members vote on the other officers. Some SDA executive staff members serve as officers, such as Vice President Jane Kelly, who is also the Assistant Secretary to the Board. The Board has three committees – audit, school review and real estate – that review SDA-related matters in those specific areas. The audit committee has the most clearly defined role, with responsibility for ensuring the integrity of the Authority’s financial statements and its annual audit, among other things. The bylaws make plain that the committee’s role, however, is merely advisory and its actions are non-binding.

Although the bylaws give the CEO broad powers and specific duties related to directing and supervising the overall activities of the Authority, the Board’s responsibilities are vague. The SDA’s operating statute states that “action may be taken and motions and resolutions adopted by the development authority” at any Board meeting with at least eight members, which represents a quorum. By practice, the Board approves, among other things, the Authority’s annual budget and a statewide strategic plan for the SDA districts. Its primary function, according to Board Chairman Nixon, is to serve as a fiduciary, particularly concerning the expenditure of

²⁸ During Delgado-Polanco’s tenure, there were only seven public members on the Board.

public monies based on the SDA's capital plan, which lists projects that address some of the most critical school construction needs across the state.

On the Board since 2010, Nixon had served as Acting Chairman for several months before Gov. Murphy named him as Chairman in December 2018. Soon after Delgado-Polanco's arrival at the SDA, Nixon – a long-time Trenton lobbyist – asked to be included in any reauthorization discussions and meetings but it never happened.²⁹

From time to time she would report at a Board meeting that she met with certain legislators about reauthorization and that was the first I was hearing of it. And I would say again, 'Look, just fill me in here. This is my expertise, I might be able to be helpful.'

It was not until mid-November when Nixon first learned about questionable administrative activities at the Authority through Jane Kelly, the Vice President of Corporate Governance and Legal Affairs. Kelly told him there were irregular and potentially illegal hiring practices occurring at the SDA since the arrival of Delgado-Polanco in August 2018. As the SDA's Ethics Liaison Officer, she advised Nixon that she had filed a complaint with the State Ethics Commission.³⁰ When Nixon contacted Sternbach to discuss Kelly's complaint, he said Sternbach told him that because it involved an ethics matter, the ethics commission would handle it, but he offered to talk to Delgado-Polanco. Sternbach testified that he communicated with Delgado-

²⁹ Nixon serves as the registered government affairs agent for the New Jersey State Policemen's Benevolent Association. His appointment on the Board fulfills the need for a member to have law enforcement expertise.

³⁰ The complaint ultimately resulted in an investigation by the law firm of Carmagnola & Ritardi LLC. The report of its findings was issued on July 18, 2019. Kelly filed three additional complaints on Dec. 17, 2018, Jan. 15, 2019 and Jan. 28, 2019.

Polanco and/or Al Alvarez – whether it was by phone, in person or by email, he could not recall – and made it clear to her that the hiring needed to stop.

A few days later, the SDA audit committee met to review the Authority’s annual operating budget. Typically, these meetings are uneventful, with the budget gaining the committee’s support before going to the Board for approval in December. Although most of the line items were ordinary, there was one exception: the communications budget, which had jumped from \$1,800 to \$295,000. The increased funding was for media relations, social media, events, advertising and marketing. For the first time in his decade on the Board, Nixon intervened in the budget process. Nixon testified he told Communications Director Tony Bianchini, who served in the same role at the Carpenter’s Union and was hired by his former co-worker Delgado-Polanco to lead her external affairs plan at the SDA, “You have to sharpen your pencil because there’s no chance this is happening.” Shortly afterward, a revised budget was submitted that cut the proposed communications spending down to \$200,000. Nixon again balked at the cost and the budget was held. He then contacted Cammarano in the Governor’s office to voice his concerns.

I said, ‘I want to let you know that I’m doing this because it’s out of the ordinary. I am going to ask for an interim budget, but we’re not adopting this with this number in there.’

Nixon testified that he reached out to the Murphy administration because he did not want to put the SDA’s entire operating budget in jeopardy if the Governor decided to veto it. He also wanted to make it known that he thought Delgado-Polanco was “way off the mark.” His actions resulted in significant pushback from Delgado-Polanco and Bianchini who maintained the higher

communications spending was critical for getting the message out about the need for the funding reauthorization. Nixon testified that he told both of them the following:

I said 'You keep coming to board meetings telling us you're meeting with legislators. I know lobbying. You're not going to win it by how many Facebook clicks you have. You have to go to the source. You have to sit with legislators and talk about what we do. You don't need to spend a dime to do that.

Nixon's efforts temporarily delayed the budget process, but ultimately a budget was approved in January 2019 with a reduced line item for communications at \$100,000 – a more than 5,000 percent increase from the previous \$1,800-line item.

Sometime in December 2018, Nixon learned that Delgado-Polanco received a subpoena to testify before the Joint Legislative Select Oversight Committee examining why the Murphy administration failed to adequately investigate allegations of sexual assault made against Alvarez.³¹ During her testimony before the committee on Jan. 8, 2019, Delgado Polanco said that when she began working at the SDA in August 2018, no one told her about the allegations made against Alvarez, only that he was planning to leave the SDA in the upcoming months. During her testimony, Delgado Polanco also revealed that she gave Alvarez a \$30,000 pay raise – increasing his salary to \$170,000 – despite knowing he was soon to depart state employment but hoping the higher pay would draw a strong candidate to replace him. Delgado Polanco testified that if she knew about the allegations against Alvarez she would have asked him to leave the SDA and would never have authorized the pay raise. She noted that Alvarez was not the only SDA

³¹ This special committee was established to review, among other things, the policies and procedures for dealing with an allegation of sexual assault in the context of public employment. It also sought to examine the Murphy administration's reasons for its failure to conduct an investigation into the matter, the decision to hire Alvarez and the decision to direct him to leave the SDA.

employee who received a bump in pay and that other senior employees at the SDA received salary increases around the same time. Prompting further concerns about her administrative practices, Delgado Polanco, in response to a committee member's question about the SDA's nepotism policy, confirmed that she had given her second cousin a job.³²

It was from listening to Delgado-Polanco's testimony in the hearing that Nixon first found out that an EEO (Equal Employment Opportunity) lawsuit had been filed against the SDA.³³ The lawsuit was filed by Osnayo-Lytle, who was fired on Nov. 2, 2018, for insubordination. Nixon emailed Delgado-Polanco asking for a full briefing on the lawsuit, but did not receive information about the pending complaint until weeks later at an audit committee meeting. Nixon testified that he met with Delgado-Polanco on Jan. 25, 2019 to discuss her reauthorization plan, where he again asked her to include him in any legislative meetings. Nixon testified he did not receive an invitation to any subsequent meetings.

On Feb. 6, 2019, Nixon received an anonymous email that made general complaints about the SDA's hiring practices and management. Upon receiving it, Nixon set up a conference call with staff in the Governor's office to make sure administration officials were aware of the issues. During the call with Sternbach and Counsel Heather Taylor, who was also the administration's Chief Ethics Officer, Nixon found out there were several current and former SDA employees who made complaints to the Governor's office about the Authority's hiring practices. He also learned

³² Kenia Nunez-Acuna was hired on Oct 15, 2018, as the Deputy Director of Grants Administration. Nunez-Acuna had been accused of sexual misconduct in her last job as the Township Administrator in Buena Vista. She resigned from the SDA before the allegations became public in a Feb. 8, 2019 media report.

³³ In a federal lawsuit, Osnayo-Lytle claimed Delgado-Polanco wrongfully terminated her in order for her to hire fellow Hispanics, who lacked the proper qualifications. Osnayo-Lytle further claimed she was retaliated against for opposing Delgado-Polanco's hiring decisions.

– nearly two months after it was initiated – that the Office of the Attorney General in December 2018 had hired an outside legal firm to conduct an investigation into the SDA’s internal policies.³⁴ Nixon testified that he offered to order an internal review of the organization but administration officials asked him to hold off and to wait for outside counsel to complete their interviews and to issue a report.

I raised my concerns about hiring procedures and was told by Adam [Sternbach] that the Governor’s offices [sic] instructed Lizette to stop hiring ‘sometime last year’...I informed them [Sternbach and Taylor] that I was told the hiring has continued and suggested that they reach out again to reinforce it.

After weeks went by with no new information, Nixon grew impatient. He testified that he called in Ernst & Young, the Authority’s outside financial auditor, and Peter Green, the Authority’s internal auditor, to initiate an internal audit of the SDA’s hiring practices. The scope of this Human Resources audit was to examine the hiring policies at the SDA, going back to January 2018. In his testimony, Nixon said the order for the audit came before a news media report published on Feb. 25, 2019 that exposed the questionable hiring that occurred under Delgado-Polanco.³⁵ Nixon was blindsided by the news report and was unaware that Delgado-Polanco participated in an interview for the article. When he asked then-Chief of Staff Roy Garcia whether appropriate hiring procedures were followed, as was claimed by the “Authority” in the article, Nixon testified that Garcia told him that everything had been run through human resources.

³⁴ Carmagnola & Ritardi, LLC.

³⁵ A news report with the headline, “Cleaning house to install family, associates: Questionable Murphy admin hires continue” appeared on NorthJersey.com on Feb. 25, 2019.

Nixon planned to announce the internal audit at the next SDA Board meeting on March 6, 2019. Prior to the meeting, as a courtesy, Nixon testified that he shared the statement he planned to make at the meeting with Delgado-Polanco. He testified that Delgado-Polanco told him she would reciprocate and send her remarks to him but she did not, instead informing him that she intended to state publicly she was fully cooperating with the audit.

Nixon, who was away at a conference, attended the March 6 Board meeting via conference call. During his announcement of the audit, Nixon remarked that it was unfortunate that the SDA had faced talk about something other than its public mission in recent weeks. He stated the SDA must focus on building schools and anything that distracts from this must be corrected.

During the meeting, Delgado-Polanco delivered her own remarks in which she touted her commitment to communities the SDA serves. She expressed confidence in her decision-making during her time as CEO. She also stated that all of her administrative actions were done in consultation with the executive staff at the SDA:

Personnel decisions work [sic] regarding re-organization, terminations, promotions, salary increases were made with the assistance and the input of our Chief Operating Officer Andrew Yosha, Office of the Chief of Staff, the Human Resources Department, Counsel's Office, the SDA Vice Presidents that are sitting here at this table – Don Guarriello, Manny DaSilva, Jane Kelly and Tom Schrum. All of them were in place before I got here.

Delgado-Polanco's statement prompted outrage from Kelly, Guarriello, Schrum and Chief Counsel Al Barnes. Following the meeting, Kelly, writing on behalf of her colleagues, fired off an

email to Nixon, Sternbach and Taylor in which they categorically denied their role in any of the administrative decisions beyond those made in the initial weeks of the Delgado-Polanco regime.

Kelly stated the following in the email:

Please be advised that, while we participated in discussions regarding existing staff promotions, salary increases and terminations (as we did during past transitions), we had no involvement in the 2018 restructuring/reorganization of the Authority, the selection of new hires, the creation of new positions, or the establishment of new employee salaries or decisions regarding new hire promotions. We were not privy to a reorganization plan (if one exists) and, to date, have not been provided with a current Organizational Chart.

We are taking the extraordinary step of writing to you with the request that you ensure that the above false statements are not repeated and that no further inaccurate information regarding our involvement in this process is disseminated to the general public.

The Reckoning and the SDA's Future

At an April 10, 2019 hearing before the Assembly Budget Committee – a normally staid proceeding reviewing programmatic and other government spending by a state entity – legislators grilled Delgado-Polanco about the organizational restructuring and how certain individuals, some of whom were clearly not qualified, were hired under her watch. Delgado-Polanco answered few questions directly, stating that specific matters that occurred during her tenure at SDA were under review by outside counsel and that she could not comment further. Two weeks later, on April 23, 2019, Delgado Polanco's short-lived stint at the SDA came to an abrupt end when she submitted a letter of resignation and left the post days later. Delgado-

Polanco told the Commission she was not pressured by the Murphy administration to resign and did so because she did not want to hinder the Authority's ability to obtain new funding.

On July 23, 2019, days after the completion of the SDA's internal audit and publication of a report by Carmagnola & Ritardi, LLC, that found Delgado-Polanco, "must shoulder a majority of the blame for what ultimately occurred" at the SDA, Gov. Murphy fired 30 SDA employees, including 27 that were hired by Delgado-Polanco. Speaking about the firings, interim CEO Manuel Da Silva stated at the August 2019 SDA Board meeting that the positions were eliminated due to deficiencies in the hiring process and a desire to refocus the Authority on its core mission – to build quality schools for communities across the state.

These actions concluded a tumultuous and disconcerting chapter for the SDA. While it would be easy to say all is well now that Delgado-Polanco is gone and that it is time to move on, the events that occurred during her brief term exposed significant shortcomings in the statutory framework and regulatory apparatus that governs the Authority, particularly related to the selection, appointment and oversight of the CEO. In its current form, the Board, has limited power, and as such, is unable to ensure that taxpayers' interests are being met and that actions taken by management are mindful of that need. Even though reforms have been implemented to give the Board more influence over such matters, it remains to be seen if these new powers extend far enough. Further, certain activities that occurred during the Delgado-Polanco era raise questions about whether restrictions should be placed on how the Authority spends the publicly-financed bond proceeds that fund it. In particular, any mandate on expenditures should require that monies go toward construction-related costs and not for spending outside the SDA's core mission.

These and many other questions remain unanswered about the SDA and its future. It is an entity that has a State-mandated obligation to fulfill a vital educational mission yet is facing a diminishing financial bank of resources with no clear answers on how to obtain that funding. With those concerns in mind, the Commission will continue to investigate matters related to the SDA and will issue a final report with additional findings regarding its operational and construction activities as well as comprehensive recommendations to resolve the systemic problems revealed during the fact-finding investigation.

N.J.S.A. 52:9M-12.2 provides that:

- a. The Commission shall make a good faith effort to notify any person whose conduct it intends to criticize in a proposed report.*
- b. The notice required under subsection a. of this section shall describe the general nature and the context of the criticism, but need not include any portion of the proposed report or any testimony or evidence upon which the report is based.*
- c. Any person receiving notice under subsection a. of this section shall have 15 days to submit a response, signed by that person under oath or affirmation. Thereafter the Commission shall consider the response and shall include the response in the report together with any relevant evidence submitted by that person; except that the Commission may redact from the response any discussion or reference to a person who has not received notice under subsection a. of this section.*
- d. Nothing in this section shall be construed to prevent the Commission from granting such further rights and privileges, as it may determine, to any person whose conduct it intends to criticize in a proposed report.*
- e. Notwithstanding the provisions of R.S. 1:1-2, nothing in this section shall be deemed to apply to any entity other than a natural person.*

The following material was submitted pursuant to those statutory requirements.

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September 25, 2020

Via facsimile (609) 633-7366

Mr. Chadd Lackey
Executive Director
Commission of Investigation
28 West State Street
PO Box 045
Trenton, New Jersey 08625-0045

Re: *Notice of Proposed Report*
Dissemination Number 20-09-004


Dear Mr. Lackey:

This office is counsel to Peter Cammarano in connection with his testimony before the State Commission of Investigation's investigation of the employment practices, personnel policies, and procedures of the New Jersey Schools Development Authority. Enclosed pursuant to your letter of September 9, 2020 is Mr. Cammarano's response to that portion of the proposed Commission report provided to him.

Please do not hesitate to contact me if we can be of further assistance.

Very truly yours,

WHIPPLE AZZARELLO LLC

By: 
John A. Azzarello

cc: Peter Cammarano (via email)

This letter is submitted pursuant to the Commission's invitation to respond to the proposed Report regarding the State Commission of Investigation's review of the School Development Authority's practices, personnel, and procedures. After reviewing that portion of the proposed Report that was provided to me, I ask that the following be included in the Report:

Language in the Report that is subjective or sensationalized, such as the use of the word "thwarted" or the phrase "failed to provide meaningful testimony" when referring to my impact on the Commission's efforts, imbues an inference of obstructionism that is belied by the facts. While the word "thwart" may draw the media's attention to the Report, it detracts from the Report's proper focus on the facts. The disclosure of phone records without any context further drives the narrative that media attention, not exploration of facts, is the Report's true focus. The use and reference to a subpoena to compel witnesses to appear also drives a narrative of resistance to the Commission's goals that, in my case, is untrue and contradicted by my previous conduct.

Having served as Chief of Staff to two Governors, I have always believed it to be my obligation to voluntarily participate in and cooperate with any inquiry or investigation regarding events that I could have knowledge of, if deemed appropriate by my legal counsel. This is why I voluntarily participated in hearings conducted by the Legislative Oversight Committee in December 2018 and January 2019, providing testimony on three separate dates that cumulatively spanned over nine hours, not including time spent reviewing relevant documents in preparation for the hearings. Additionally, I voluntarily provided documents and records relevant to the investigation so the legislators could properly prepare for the hearings. At no time was a subpoena necessary to compel either my testimony or my production of documents.

The SCI hearings were no different. I would have appeared voluntarily before the Commission to give testimony and provide documents had I been invited to do so. The use of a subpoena was unnecessary and therefore supports my belief that its goal was to generate attention, not my appearance.

Second, the Report seemingly signals me out as a key decision maker and then: 1). focuses on my imperfect recollection of the details of events that had transpired a year previous; and 2). takes umbrage with the directive given to me, by the Administration's counsel, that I not respond to certain questions on the basis of executive privilege.

The testimony I provided was a complete and honest recollection of facts as I recalled. The fact that my testimony was taken more than one year after most of the events transpired certainly explains why some details could not be recalled. Moreover, the timeline of events when viewed in the context of the work of the Governor's office is important. On any given day, the Chief of Staff and others in the Governor's office deal with a multitude of issues across state government that require attention and decisions. Recalling the details of one of those issues a year later is very challenging.

Aside from the busy normal course of business in the Governor's office, the period of time in question included additional pressures due to extensive preparations for testimony and hearings before the Legislative Oversight Committee, as well as my own transition preparations related to my pending departure as Chief of Staff. I admit my recall of certain details was imperfect.

However, to the extent I have certain specific decision-making recollections, I was directed not to answer those questions by the Administration's counsel. The assertion of privilege was exercised by the

Governor's office and I was obligated, pursuant to applicable statutes and rules, to follow their directive. My only intention was to comply with my legal obligations. Any language in the Report that suggests I failed to provide meaningful information to the Commission when I was specifically instructed not to answer certain questions is both inflammatory and misleading.

As I did testify, truthfully, I was briefed on the Schools Development Authority's restructuring on a global basis. The goal, as was stated to me, was to consolidate functions resulting in an overall reduction in the number of employees at the Authority. I was not informed of specific salary increases or of the identities of personnel that were part of the reduction.

Specifically, with respect to Mr. Alvarez, I reiterate my testimony before the Commission that I had no knowledge of the increase in his salary until after allegations about Mr. Alvarez were made public in October 2018.

Finally, the draft Report points out that there were "110 completed communications" between myself and Lizette Delgado, insinuating a level of coordination. To the extent the Commission desires to invite readers to conclude there was some level of coordination, the invitation is unwarranted, unfair and misleading. Of those alleged completed communications, the report fails to explain toll records do not provide the Commission with the substance of any purported text messages or telephone communications. Indeed, I must conclude the Commission declined to show me any substantive texts during my testimony because there were none. I also believe the number "110" significantly overstates the number of alleged "completed communications" when toll records list even a 10-second phone call as a communication. Moreover, the report fails to acknowledge it is eminently reasonable to infer that many of these communications were unrelated to the subject matter of the Commission's investigation, and without the relevant facts the inclusion of this number again serves a sensationalistic narrative.

I raise these issues to respectfully ask the Commission to properly focus on the facts and remove any superfluous and subjective language from the draft report.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

A handwritten signature in black ink, appearing to read "Peter F. Cammarano", with a long horizontal flourish extending to the right.

Peter F. Cammarano

Dated: September 24, 2020

POST POLAK, P.A.

FREDERICK B. POLAK (028911980)

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ATTORNEYS FOR RESPONDENT, LIZETTE DELGADO-POLANCO

OUR FILE NO. 6368.00001

**IN THE MATTER OF THE INVESTIGATION OF
THE NEW JERSEY SCHOOLS DEVELOPMENT
AUTHORITY**

**STATE COMMISSION OF INVESTIGATION
RELEASE # 20-09-005**

**AFFIDAVIT OF LIZETTE
DELGADO-POLANCO**

Lizette Delgado-Polanco, of full age, hereby affirms as follows:

1. The State Commission of Investigation ("SCI") has forwarded to me selective excerpts of the "Executive Summary" of the Investigation into the New Jersey Schools Development Authority, Release #20-09-005. The SCI has elected not to provide me with the entire Executive Summary. Pursuant to N.J.S.A. 52:9M-12.2, I have the right to respond to what the SCI has sent to me, and, accordingly, I submit this response to the "Executive Summary" of the proposed Commission Report. I do so with the caveat that without access to the full report, or at least the complete Executive Summary, I am unable to adequately respond.

2. While I understood the SCI's charge was to investigate the New Jersey Schools Development Authority ("NJSDA"), it appears from even the minimal sections of the Executive Summary that the SCI chose to make available to me that this "investigation" amounts to a "hit job" on me, undertaken as a means to smear me, and, from what I can gather, the Governor and the Governor's Office regarding my appointment. The Executive Summary pages the SCI elected to forward to me for comment read more like a novella than an investigation, mischaracterizing and dramatizing my tenure at the SDA as that of an autocrat ruler who

accepted input only from the Governor's Office. This storyline, however, cannot be further from the truth, and it is remarkable that for the praise the investigators bestow upon themselves for the extensive investigation undertaken, from what the SCI selectively sent to me for comment it appears it indicts no one but me for decisions made at the SDA from the period of August 2018 through April 2019. But no decisions were made in a vacuum, and if the "ultimate objective of the Commission's Investigation is to not only provide legitimate answers to questions . . . but to arm the Governor, lawmakers, and taxpayers with the necessary facts to ensure that the SDA in the future can operate in a reliable and trustworthy manner," then, based on what was provided to me, this investigation missed the mark.

3. I must also state that to the extent I do not respond herein to every allegation made against me in the Executive Summary excerpts I received, that should not be deemed an admission to the veracity of the statement; rather, given the extensive attacks on me, my inability to access all relevant documents, and the imposed time constraints, I am limited in my ability to respond.

4. As I stated at length during my testimony over two sessions, which testimony seems to be almost entirely discounted or dismissed by the SCI, I was recommended by the Governor's Office and appointed by the Board of the SDA on August 2018. I was not "woefully inexperienced," and over my thirty plus years in public service and politics I certainly had the experience required to manage a multi-faceted governmental agency. I served previously as Director of Special Projects for then Sen. Jon Corzine and as Assistant Secretary of State for Governor James McGreevey, a position in which I directed day-to-day operations of 11 divisions. I started my own public affairs firm in 2004. I was also Executive Director of the New Jersey Service Employees International Union and political director of the Northeast

Regional Council of Carpenters, overseeing the political staff in five states. The fact, however, that the SCI is determined to spend so many pages attacking my appointment and experience is telling as to what appears to me to be the SCI's real motives – smear me and smear the Governor.

5. The Report refers to me as “the new sheriff in town.” One can legitimately ask whether this is the language of an objective investigative conclusion or indicative of a concerted effort to smear me. I never made any decision, whether it be hirings, firings, reorganizations, or raises, without the consultation of others at the SDA. I simply could not make those decisions since I was “new in town.”

6. It is also telling that the Investigative Report determined to cover the “hirings” before the “firings,” even though most of the firings occurred very early in my tenure and before the hiring, undoubtedly in an effort to hide and gloss over, at the back of the Report, that not only were numerous others involved in the decision to terminate a number of SDA employees, those individuals (many who continue to work at the SDA), essentially determined who would be fired. My involvement in large part was limited to signing the paper. As briefly discussed, but certainly not highlighted, at page 23 of the report, the Executive Summary concedes that I did not put together the “deadwood” list. In fact, I was informed it was created prior to my arrival by the former HR Director. Of course, at the beginning of my tenure, I had no knowledge of who might be, as others put it, “deadwood.” It was for the most part the Executive Vice Presidents who made the recommendations as to which people should be terminated. The Executive Vice Presidents also made recommendations as to which employees should be put on probation and which employees should receive raises. As I recall it, included among those who made that list of those who should receive raises were the Vice Presidents, the then HR Director

and the Chief Operating Officer. The Executive Vice Presidents were also involved in the reorganization and made recommendations thereto.

7. While I acknowledge recommending people for hiring, there is also no mention in the Executive Summary, notwithstanding the documentary evidence, that I prepared and submitted Ethics Recusal forms related to any hirings where I perceived there may be a conflict of interest and that I (along with the HR Director) consulted the Kinship Chart before I made recommendations regarding hirings that might implicate allegations of nepotism. Once I provided the resumes to the HR Director, it was up to the HR Director and then Chief of Staff to do the interviewing and processing. While the Executive Summary on numerous occasions raises claims allegedly made by the former HR Director that she "pushed back" about hirings, there are no references to any documentary evidence corroborating her alleged concerns. I also did not see any discussion about the legitimate reasons for her termination as verified by the Carmagnola Investigation other than a footnote on page 20.

8. Indeed, based on a review of what was selectively provided to me, the whole "investigation" appears undermined by what seems to be an unwillingness to examine any of the actions of the Executive Staff at the SDA. It defies credulity to principally blame me for all the problems at the SDA, while at the same time, at least based on what was forwarded to me by the SCI, there does not appear to be any substantive attempt to review, let alone account for, the actions of others. Staff that were involved in much of the decision making at the SDA undeniably benefitted from promotions and raises during my tenure. Yet, there are no questions raised about their "contributions" to the concerns raised in the Report. In that regard, I see no mention of the fact that being new to the SDA, I had no choice but to rely upon my HR Director, my COO, and my Vice Presidents to provide guidance.

9. The Executive Summary also goes to great lengths to criticize me (6 full pages) for keeping the "Board in the Dark," (again words used that suggest a directed narrative as opposed to an objective analysis), an observation that would otherwise be of no moment since the Board, per the By-Laws, is not involved in personnel actions. The SCI concedes this fact, yet spends an additional 5 pages relaying Robert Nixon's¹ alleged conversations with me and his impatience with the audit process. Since the By-Laws explicitly state that the personnel actions are not within the purview of the Board, it strains understanding why the SCI would spend so much time relaying the self-serving statements and phantom conversations that I had with the Chairman, if not just to extend the smear campaign.

10. Finally, the Investigation goes to great lengths to criticize me regarding my efforts to push to the forefront the necessity for the SDA to be reauthorized and receive new funding. I did not accept the position to have a cushy bureaucratic State job, but to attempt to effect positive impact and change for school children, whose struggles are similar to my own growing up. We could not fulfill the mission of the SDA without reauthorization and funding. In my short tenure, and despite the controversies, the work of the SDA never stopped and I continued to push forward with the mission. The people I recommended for hiring were those that I had worked with previously in public outreach and community engagement/external affairs, with experience that cannot be taught in the college classroom. In my time at the SDA I visited over 100 school districts, met with many legislators, and worked to improve the organizational structure of the SDA. Any honest investigation cannot lay the principle blame on me; nor should my testimony be the only testimony scrutinized for its veracity. If the SCI continues "to investigate matters related to the SDA," it is well advised to look further than my doorstep and to make concerted

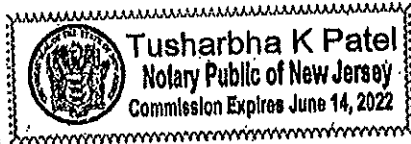
¹ Mr. Nixon is a prominent member of the Republican Party and active in South Jersey Politics until his abrupt resignation from the Jackson Township Council after a lawsuit was filed against him.

efforts to eliminate what appears from what was provided to me the bias that is prevalent in this Investigative Report.

I hereby affirm that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed and sworn to before me this
24th day of September, 2020

NOTARY PUBLIC
STATE OF NEW JERSEY



LIZETTE DELGADO POLANCO



***State of New Jersey
Commission of Investigation***