



SUPERIOR COURT OF NEW JERSEY
VICINAGE 1

Bernard E. DeLury, Jr.
Presiding Judge

Criminal Division
Criminal Court Complex
4997 Unami Boulevard
Mays Landing, N.J. 08330
609-402-0100 ext. 47360

July 9, 2025

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Re: **State v. Constance Days-Chapman, Motion to Dismiss the Indictment**
Ind. No. 24-09-02900-I

Dear Counsellors:

INTRODUCTION

This matter comes before the Court on the motion of Defendant Constance Days-Chapman to dismiss Indictment No. 24-09-02900, alleging multiple counts of official misconduct, endangering the welfare of a child, hindering apprehension or prosecution, and engaging in a pattern of official misconduct. The indictment arises from Defendant's alleged conduct as principal of Atlantic City High School during January 2024, specifically regarding her failure to report, and alleged efforts to conceal, disclosures of child abuse made by a student, J.S.

On September 11, 2024, the Atlantic County Grand Jury returned the present indictment detailing discrete acts and omissions committed by Defendant in her official capacity. On

February 4, 2025, Defendant filed the instant motion, arguing, among other grounds, that the charges are unsupported as a matter of law, that her alleged duties arose only as a private citizen, that certain grand jury instructions were improper, and that various counts are facially deficient. Oral argument occurred on June 12, 2025. Following oral argument, the Court entered an order allowing the parties to file post-argument submissions.

Having reviewed the parties' submissions and grand jury record, and considered the arguments presented during oral argument, the Court finds no basis to dismiss the indictment. For the reasons set forth below and in the accompanying analysis, the Court concludes that the indictment is legally and factually sufficient, that the offenses charged properly relate to duties inherent in Defendant's public office, and that any alleged instructional or procedural errors do not warrant dismissal at this stage. Accordingly, Defendant's motion is **DENIED**.

STATEMENT OF FACTS¹

On January 22, 2024, then sixteen-year-old J.S., a female student at the Atlantic City High School, attended a school assembly concerning mental health. At the conclusion of the assembly J.S. completed an "exit ticket." On the "exit ticket," J.S. wrote that she experienced "abuse," and she asked to speak with a counselor. That same day, a counselor at the high school spoke to J.S. in the hallway. J.S. disclosed that she had been physically abused and hit with a broom. J.S. also stated that her "dad is a big guy," and that she "already spoke with Principal Chapman (hereinafter "Defendant") about some choices. Mrs. Small, J.S.'s mother, is the superintendent of Atlantic City Schools and the Defendant directly reports to Mrs. Small. Further, the Defendant is Mr. Small's campaign manager and the chairperson for the Atlantic City Democratic Committee. Aside from their professional relationships with the Defendant, the Defense describes their personal relationships as "close friends."

After speaking to J.S., the counselor learned that J.S. was the daughter of the Smalls. The counselor also discussed J.S.'s disclosure with a senior member of the high school staff. Together, the counselor and the senior staff member met with Defendant on January 22, 2024. The certification labels this as the "First Meeting." During the First Meeting, the counselor advised Defendant of J.S.'s disclosures that she had been physically abused and hit with a broom. The Defendant stated that "J.S. never mentioned the abuse to her," and that she would report J.S.'s disclosure to the Division of Child Protection and Permanency (hereinafter "DCPP"), as required by law and Atlantic City Board of Education's District Policy #8462.

On February 16, 2024, the Superior Court approved a (1) Communications Information Order for toll records in reference to all outgoing and incoming calls and text message communication to and from Verizon Wireless, and (2) a search warrant for video surveillance from cameras located outside the residence of Mr. and Mrs. Small. On March 15, 2024, Verizon Wireless produced the records by response of the Communications Information Order. The records revealed an outgoing call to Mrs. Small's cellphone on the day of the First Meeting. The call lasted one minute. Additionally, video surveillance showed that the Defendant drove to Smalls' home the same day. Both Mr. and Mrs. Small entered the Defendant's car and then

¹ Statement of Facts derived from Detective Choe's Certification in Support of a Search Warrant of Defendant's electronic devices.

exited approximately thirty minutes later. Thereafter, the Defendant drove away from the Smalls' residence.

The next day, January 23, 2024, the counselor and the senior staff member again met with the Defendant. The Certification labels this as the "Second Meeting." During the Second Meeting, the Defendant stated that she had gone to the Smalls' residence and had notified them that J.S. disclosed having been physically abused by them. Just as occurred in the first meeting, the Defendant promised the counselor and the senior staff member that she would contact DCPD. The counselor recalled that the Defendant made it seem as if she was going to make the call to DCPD right then and there as they were leaving her office.

That same day, a social worker employed by a private mental health services program received a referral to speak to J.S. According to the social worker, the Smalls contacted the mental health services program to arrange a telehealth appointment for J.S. Intake documents from the program showed that Mrs. Smalls provided the program with a personal email address and a phone number. Later in the investigation, the same phone number and email address were found in medical records pertaining to a visit by J.S. to the Atlantic City Regional Medical Center on January 16, 2024.

According to the social worker, J.S. disclosed during the telehealth appointment that she was being physically abused by her father and mother. J.S. reported that the abuse occurred inside the family home between December 2023 and January 2024. On January 24, 2024, the social worker's supervisor contacted DCPD to report J.S.'s disclosure the day prior. The same day, DCPD went to the Smalls' residence. During the visit, Mrs. Small indicated to DCPD that she knew they were reporting to her residence to speak with J.S. because a "good friend" has told her about DCPD involvement. However, Mrs. Small did not disclose the identity of her "good friend."

Subsequent to the DCPD referral on January 24, 2024, the Atlantic County Prosecutor's Office (hereinafter "ACPO") initiated an investigation concerning J.S.'s disclosures of child abuse and whether the Defendant committed Official Misconduct by failing to report those disclosures to the authorities, and by notifying the Smalls that their daughter disclosed having been abused by them. The detectives conducted interviews, including interviews of J.S., DCPD staff, the social worker, the counselor, and the senior staff member.

During the interview with J.S., she disclosed that her parents had been physically abusing her in the home. J.S. advised the detectives that she had already disclosed the physical abuse to the counselor at her school and added that she believed the counselor told the Defendant because not long after the Defendant asked her "how she was doing."

On the same day detectives interviewed J.S., the Defendant communicated with Mr. Small approximately 23 times according to her cellphone records. Additionally, investigators obtained surveillance footage from the high school revealed that Mr. Small was outside the high school speaking on his cellphone and walking toward the main entrance of the school.

Prior to obtaining a court order, the Defendant's cellphone number was confirmed from reports of her assistance in other child abuse investigations when she worked as Vice Principal of

Pleasantville High School. The Verizon wireless records disclosed that between December 1, 2023, and January 22, 2024, over 100 outgoing and incoming telephone calls and text messages were exchanged between the Defendant's cellphone number and cellphone numbers belonging to the Smalls. Including the cellphone number of Mrs. Small which was found by detectives in the intake documents and the hospital records of J.S.

Ultimately, ACPO and DCPD determined that a referral was never made to DCPD by the Defendant, or anyone from the Atlantic City Board of Education, concerning J.S.'s disclosure on January 22, 2024, that she was physically abused. Rather, the only referral of the abuse on record was on January 24 by the social worker's supervisor.

In March of 2024, investigators were granted warrants to search the Defendant, her office at the Atlantic City High School, her car, and seize any electronic devices found in those locations. Upon executing the warrants at the high school, detectives seized the Defendant's iPhone, her Samsung cellphone, and her Apple Watch.

On March 20, 2024, ACPO Detective Daniel Choe of the Professional Standards and Accountability Unit authored the Certification, which details his training and experience investigating child abuse incidents and official misconduct, and further summarized the facts and circumstances of this case giving rise to probable cause to believe that the Apple Watch, Apple iPhone, and Samsung cellphone contained digital evidence relating to ACPO's investigation.

On September 11, 2024, an Atlantic County Grand Jury returned Indictment Number 24-09-02900-T, charging the Defendant with second and third-degree crimes committed between December 2023 and January 2024. Specifically, two counts of second-degree official misconduct for failing to report child abuse to the New Jersey State Central Registry (Counts 1 and 4); two counts of second-degree official misconduct for failing to report child abuse to law enforcement authorities (Counts 2 and 5); second-degree endangering the welfare of a child (Count 3); second-degree official misconduct for notifying the Smalls about their daughter's disclosures of abuse (Count 6); third-degree hindering in the prosecution of another (Count 7); and second-degree engaging in a pattern of official misconduct for failing to report J.S.'s disclosures (Count 8).

DEFENSE ARGUMENT

The Defense urges the Court to dismiss the Indictment in its entirety.

I. SUBMISSIONS²

The Defense provided the Court with its initial brief dated February 4, 2025, reply brief dated March 13, 2025, and post-argument submission dated July 7, 2025, in addition to the following exhibits in its application to dismiss the Defendant's Indictment:

² The Court has considered the arguments presented during oral argument on June 12, 2025, as well as all written submissions made by the Defense in support of the application.

- **Exhibit 1:** January 24, 2025, DCPD Supervisor email correspondence to the Special Victim's Unit.
- **Exhibit 2:** DCPD Investigative Summary.
- **Exhibit 3:** Defense Counsel Correspondence to First Assistant Prosecutor, Erik Bergman.
- **Exhibit A:** Defendant's Verizon Wireless Records
- **Exhibit 4:** Affidavit of Probable Cause
- **Exhibit 5:** Grand Jury Transcript

II. LEGAL ARGUMENTS³

Defendant first submits that her prosecution is precluded under the statutory immunity provision pursuant to N.J.S.A. 9:6-8.13. She contends that the immunity from criminal liability afforded to any person who makes a report of child abuse to DCPD is to be read broadly and liberally, a proposition endorsed by the Appellate Division in F.A. by P.A. v. W.J.F., 280 N.J. Super. 570 (App. Div. 1995). Defendant maintains that she discharged her reporting obligations by communicating the relevant information regarding J.S.'s allegations of abuse to a DCPD supervisor, Bianca Dozier, by telephone over multiple conversations. Defendant argues the statute requires only a report "by telephone or otherwise" and imposes no requirement that such report be made exclusively via the designated DCPD hotline. She contends that the State's prosecution is premised upon impermissibly reading additional requirements into the statutory scheme and further asserts that the State failed to instruct the grand jury on the immunity provision, in violation of due process principles as articulated in State v. Hogan, 144 N.J. 216 (1996).

Turning to Defendant's constitutional argument, she advances several theories under the rubric of due process and equal protection. She argues that the statutory scheme, specifically N.J.S.A. 9:6-8.14, deems failure to report child abuse a disorderly persons offense, except in cases of sexual abuse, and that no reasonable person would have fair notice that such conduct could be prosecuted as second-degree official misconduct with a five-year mandatory minimum sentence. She submits that to charge such conduct as a serious indictable crime violates her right to fair warning and to a proportional and predictable statutory scheme.

Defendant further contends that the State's application of the law violates equal protection principles, as the charging scheme exposes public school employees to drastically harsher penalties than similarly situated private school employees or other citizens, for identical conduct. She argues there is no rational basis for this disparate treatment, and that such disparity is unsupported by any legislative history or policy rationale.

Defendant next invokes the doctrine of fundamental fairness, maintained in State v. Njango, 247 N.J. 533 (2021), reasoning that the arbitrary and selective exercise of prosecutorial discretion in this matter, targeting her while declining to prosecute other public employees who failed to report, warrants judicial intervention. She alleges that the prosecution is further

³ The Defense's Legal Arguments are derived from the Defense's brief in support of the Defendant's application to dismiss the indictment dated February 4, 2025, the Defense's reply brief in support of the Defendant's application to dismiss the indictment dated March 13, 2025, and the Defense's post-argument submission.

undermined by the selective or retaliatory motivation of State actors, given her political associations and documented disagreements between education officials and county prosecutors.

With respect to specific charges, Defendant argues that the duty to report child abuse is a general duty imposed upon all residents of New Jersey, not a particularized obligation "inherent in the nature of [her] office" as a principal or public servant as contemplated by the official misconduct statute, N.J.S.A. 2C:30-2. She asserts that neither administrative code nor district policy can convert this generally applicable duty into one that is unique to her public office. She further contends that she was subject to conflicting obligations, namely, to report to the Superintendent (the parent of the alleged victim) pursuant to school policy, and simultaneously forbidden from doing so under other policies. As such, Defendant maintains that she could not have knowingly and unlawfully exercised unauthorized official power under N.J.S.A. 2C:30-2(a).

Additionally, with respect to the endangering the welfare of a child count, Defendant maintains that only parents, guardians, or those who have assumed a parental-level of responsibility are subject to the second-degree enhancement, and that she, as principal, does not meet the criteria. She argues that the hindering count fails as a matter of law, as mere non-reporting does not constitute "suppression by way of concealment" under the statute. Finally, she submits that the pattern of official misconduct count must fall with the other deficient predicate offenses.

On July 7, 2025, Defendant filed an additional brief pursuant to the Court's order allowing the parties to file post-argument submissions. Defendant argued that recently produced discovery, a March 29, 2024, audio recording of a phone conversation between Sergeant Ryan Ripley and a DCPD hotline agent, constitutes exculpatory evidence that should have been presented to the grand jury under State v. Hogan, 144 N.J. 216 (1996). During the recorded call, the DCPD agent states: "Cause, I mean, I always hear, you know, that they're going to be prosecuted for failure to report but I've never actually heard of anybody ever getting charged, you know, with failure to report." It is undisputed that Sgt. Ripley, the sole grand jury witness, did not testify about this statement.

Defendant contends that this evidence is material, credible, and "so clearly exculpatory" as to require disclosure to the grand jury, citing Hogan, 144 N.J. at 236. She asserts that the DCPD agent's comment, expressing surprise and indicating that such prosecutions are unprecedented, is a material fact, and that withholding this information "affect[ed] the grand jurors' ability to make an informed decision whether to indict." Id. at 229.

Moreover, Defendant submits that this omission, when viewed in combination with previously identified omissions, supports dismissal of the Indictment under Hogan.

STATE ARGUMENT

The State urges the Court to deny the Defendant's application to dismiss the indictment.

I. SUBMISSIONS⁴

The State provided the Court with its initial brief dated March 3, 2025, in addition to the following exhibits in opposing the Defendant's application to dismiss the Indictment:

- **Exhibit 1:** Grand Jury Transcript.
- **Exhibit 2:** The Uniform State Memorandum of Agreement Between Education and Law Enforcement Officials.
- **Exhibit 3:** Email Correspondence to all Atlantic City School Principals regarding Mandatory Reporting Requirements.
- **Exhibit 4:** Atlantic City Board of Education District Policy #8462.
- **Exhibit 5:** Transcript of Dozier Interview.
- **Exhibit 6:** State v. E.P., 2010 W.L. 5376878 (N.J. Super. App. Div. 2010).
- **Exhibit 7:** Indictment Number 24-09-02900.
- **Exhibit 8:** Letter from Prosecutor Reynolds to Dr. Small.
- **Exhibit 9:** Letter from Dr. Small to Prosecutor Reynolds.

II. LEGAL ARGUMENTS⁵

The State counters that the indictment is validly returned and supported by ample evidence of criminal conduct. The State first maintains that Defendant is not entitled to immunity under N.J.S.A. 9:6-8.13, as she never made a report to the State Central Registry (SCR) or DCPD in the manner required by statute and school policies. The State submits that the designated method for such reporting, calling the DCPD hotline, was repeatedly communicated to Defendant via statute, administrative code, board policy, and the Uniform Memorandum of Agreement between law enforcement and school districts. The State argues that Defendant's private, incomplete conversation with Bianca Dozier, lacking names and essential details, does not satisfy the statutory reporting obligation or entitle her to immunity. The State further asserts its obligation to present immunity to the grand jury under Hogan did not arise, as there was no factual or legal basis for such an instruction.

With respect to the constitutional claims, the State maintains that Defendant's prosecution for official misconduct and related crimes is firmly rooted in the legislature's intent to punish abuses of public office and is not simply premised on a technical failure to make a report. The State asserts that Defendant, acting in her capacity as principal, deliberately intervened to prevent other school employees from reporting, failed to report in violation of law

⁴ The Court has considered the arguments presented during oral argument on June 12, 2025, as well as all written submissions made by the State in opposition of the application.

⁵ The State's Legal Arguments are derived from its brief in opposition of the Defendant's application to dismiss the indictment dated March 3, 2025.

and district policy, and proactively warned the alleged abusers about the allegations, thereby securing an unlawful benefit for them and herself. The State emphasizes that such actions represent a betrayal of the fiduciary trust inherent in her office and are squarely the type of conduct the official misconduct statute was intended to address, citing State v. Saavedra, 229 N.J. 39 (2015), and State v. Schenkolewski, 301 N.J. Super. 115 (App. Div. 1997).

The State contends that indictments are presumed valid and should only be dismissed on the clearest and plainest grounds, and that its evidential burden before the grand jury was merely to present a *prima facie* case, which it has satisfied. The State argues that all factual allegations, including Defendant's repeated failures to report, her role in impeding other public officials, her unauthorized notification of the suspects, and her purpose to secure a benefit for herself and the Smalls, were presented to and credited by the grand jury. The State disputes that public school employees are subject to disparate or arbitrary treatment, asserting that the legislative purpose behind official misconduct statutes is precisely to impose enhanced penalties for public servants who abuse their positions. The State maintains that school principals have clear statutory and regulatory duties to report abuse and that Defendant's conduct, taken in its totality, amply supports each count of the indictment, including the charges for official misconduct, endangering the welfare of a child, hindering, and pattern of official misconduct.

LEGAL ANALYSIS

I. GENERALLY APPLICABLE LAW

Defendants may bring a Motion to Dismiss an Indictment based on a legal insufficiency or an evidential insufficiency. Evidential insufficiency motions are reserved for the pretrial stage in accordance with R. 3:10-2 cmt. n.3.2.3 (2010).

The defendant must clearly and plainly prove that the indictment is "manifestly deficient or palpably defective." State v. Hogan, 144 N.J. 216, 228 (1996). Every reasonable inference is to be given to the State when determining the sufficiency of the evidence to sustain the indictment. State v. Schenkolewski, 301 N.J. Super. 115, 137-38 (App. Div. 1997); State v. Morrison, 188 N.J. 2, 12-13 (2006). The Court in Hogan held that the State may not deceive the Grand Jury, nor may the State present "half-truth[s]." Hogan, 144 N.J. at 236.

When moving to dismiss an indictment, the defendant needs to prove clearly and plainly following: (1) the indictment was technically inadequate in setting forth the allegations. See State v. Spano, 128 N.J. Super. 90, 92 (App. Div. 1973), aff'd 64 N.J. 560 (1974); OR that (2) the State failed to present evidence that both directly negates an element of the offense and is clearly exculpatory. Hogan, 144 N.J. at 237.

When analyzing the adequacy of setting forth the allegations, the Court must determine whether the defendant showed that the State failed to provide a factual basis for the indictment, either on its face or in grand jury proceedings. State v. Mason, 355 N.J. Super. 296, 299 (App. Div. 2002). The defendant must also demonstrate that the State's evidence to support the charge against him is "clearly lacking." State v. McCrary, 97 N.J. 132, 142 (1984). The State only needs to present "some evidence" that establish the *prima facie* elements of the crime charged. State v. Morrison, 188 N.J. 2 (2008). The evidence, coupled with reasonable inferences, needs to lead a

grand jury to conclude *both* that a crime has been committed *and* the defendant committed it. Id. The evidence on which the State relies does not need to be enough to sustain a conviction. State v. New Jersey Trade Waste Ass'n., 96 N.J. 8, 27 (1984). In addition to the Grand Jury making a determination that the State has established a prima facie case has been committed, it must be show that the accused was the actual person who committed it. Id. Even evidence that may be inadmissible at trial, such as hearsay, would be sufficient to sustain an indictment. Costello v. United States, 350 U.S. 359 (1956).

Additionally, when analyzing failure to present exculpatory evidence, the Court must look at whether the State failed to present evidence that *both* directly negates an element of the offense *and* is clearly exculpatory. Hogan, 144 N.J. at 237. For evidence to be considered “clearly exculpatory”, the evidence should be analyzed in the context of the nature and source of the evidence, and the strength of the State's case.” State v. Evans, 352 N.J. Super. 178, 187 (2001). A defendant’s self-serving statements or a potentially biased witness are not considered credible enough to be considered clearly exculpatory. Hogan, 144 N.J. at 238. The State is under no obligation to present the defendant’s defense to a grand jury.

Although the decision to dismiss an indictment is within the discretion of the trial court, the indictment should be disturbed only “on the clearest and plainest ground” and only “when the indictment is manifestly deficient or palpably defective.” Hogan, at 229. Additionally, the Court should give “due regard to the prosecutor’s own evaluation of whether the evidence in question is ‘clearly exculpatory.’” Id.

An indictment should be dismissed on prosecutorial misconduct grounds where the State’s misconduct “is extreme and clearly infringes upon the [grand] jury decision-making function,” such that it “substantially influenced the grand jury’s decision to indict,” or raises “grave doubt” that the determination ultimately reached was arrived at fairly and impartially.” State v. Hogan, 336 N.J. Super a 319, 339. The defendant must show more than doubt exists, there must be a grave doubt that the grand jury’s determination was reached fairly and impartially before a court may dismiss an indictment. State v. Sivo, 341 N.J. Super. 302, 317 (2000). This can be based on either prosecutorial misconduct or selective prosecution. Id. An indictment is manifestly deficient or palpably defective when the defendant establishes that the indictment was a result of abdication to the prosecutor, or the grand jury acted with bad faith or misconduct. State v. Ferrante, 111 N.J. Super. 299 (App. Div. 1970).

II. THE DEFENDANT’S CONDUCT DOES NOT FALL WITHIN THE PURVIEW N.J.S.A. 9:6-8.13 IMMUNITY.

The Court turns first to the threshold question raised by Defendant: whether statutory immunity under N.J.S.A. 9:6-8.13 bars this prosecution. N.J.S.A. 9:6-8.10 provides:

Any person having reasonable cause to believe that a child has been subjected to child abuse, including sexual abuse, or acts of child abuse shall report the same immediately to the Division of Child Protection and Permanency by telephone or otherwise. Such reports, where possible, shall contain the names and addresses of the child and his parent, guardian, or other person having custody and control of the child and, if known, the child’s age, the nature and possible extent of the

child's injuries, abuse or maltreatment, including any evidence of previous injuries, abuse or maltreatment, and any other information that the person believes may be helpful with respect to the child abuse and the identity of the perpetrator.

Additionally, N.J.S.A. 9:6-8.13, provides:

Anyone acting pursuant to this act in the making of a report under this act shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such person shall have the same immunity with respect to testimony given in any judicial proceeding resulting from such report. A person who reports or causes to report in good faith an allegation of child abuse or neglect pursuant to section 3 of P.L.1971, c. 437 (C. 9:6-8.10) and as a result thereof is discharged from employment or in any manner discriminated against with respect to compensation, hire, tenure or terms, conditions or privileges of employment, may file a cause of action for appropriate relief in the family part of the Chancery Division of the Superior Court in the county in which the discharge or alleged discrimination occurred or in the county of the person's primary residence. If the court finds that the person was discharged or discriminated against as a result of the person's reporting an allegation of child abuse or neglect, the court may grant reinstatement of employment with back pay or other legal or equitable relief.

The statute provides broad immunity, civil and criminal, to any person making a report of child abuse to DCPD whether "by telephone or otherwise." Defendant has emphasized that she, upon learning of J.S.'s allegations, initiated a series of conversations with an acquaintance who was DCPD supervisor, Bianca Dozier. The record reflects, however, that these conversations were initiated on Dozier's personal cell phone and did not involve explicit disclosure of the child's identity. Additionally, as Dozier herself confirmed in her statement to authorities, did not contain the details necessary to trigger a formal investigation. The statutory text does not enumerate the specific method or channel for transmitting a report, but the legislative and regulatory framework, as well as school district policy, uniformly require reports to be made to the SCR using the designated hotline. The credible evidence reflects that this requirement was repeatedly communicated to school personnel, including via Board policy and administrative code.

The Supreme Court has instructed that statutory immunity under Title 9 must be construed "broadly and liberally." See F.A. by P.A. v. W.J.F., 280 N.J. Super. 570, 572 (App. Div. 1995). Nonetheless, such immunity cannot reasonably extend to communications that lack sufficient detail or formal transmission to permit action by DCPD. For instance, the State points to facts presented to the Grand Jury that the Defendant called the DCPD employee not to give an official report, but as seeking personal advice on whether to report the abuse. Dozier told detectives that on January 23, 2024, the defendant called the DCPD employee on Dozier's personal cell phone. (T 23:16). The employee does not use her personal cell phone for business. (T 25:17-18). The Defendant asked if she could "run something by" her. (T 26:12-13, 36:14). According to the employee, the Defendant gave a brief "hypothetical" of a child in need of services. No names were provided. (T 24:9-10, 53:7-9). During this call the Defendant did not raise allegations of violent physical abuse in the home. (T 98:10-12). The employee could not

remember the details of the phone call that occurred over eight months earlier, but she said that the tone was that the child was having behavioral issues and there was a concern within the home. (T 27:17- 18).

Accordingly, the role of immunity is to shield reporters from liability for good faith and timely reports, not to provide protection where the minimal statutory requirements for reporting, namely, immediate communication to DCPD through official channels with the necessary identifying and factual data, are absent. The Defendant's argument that any conversation, however informal or incomplete, with a DCPD employee constitutes a statutory "report" must therefore be rejected. The Court further finds that the State did not violate Hogan because the State was not under an obligation to instruct the grand jury on immunity, given the absence of evidence that Defendant made an actionable report to the appropriate authorities.

III. THE DEFENDANT'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED.

A. Due Process and Fair Warning

The Fourteenth Amendment indirectly imposes the same procedural due process limitations on the states as the Fifth Amendment does on the Federal Government. Arnett v. Kennedy, 416 U.S. 471, 481 (1974); See U.S. Const. amend. V. The Due Process Clause of the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

The United States Supreme Court has held courts must "exercise[] restraint" in "assessing the reach" of criminal statutes. Marinello v. United States, 584 U.S. 1, 6 (2018) (quotation omitted). This is done both out of deference to the legislature, whose role is to explicitly set the contours of criminal statutes, and out of constitutional protections mandating "that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed." *Id.* at 7 (internal quotations omitted).

The New Jersey Supreme Court has taken the same approach. "[A] statute shall not be extended by tenuous interpretation beyond the fair meaning of its terms lest it be applied to persons or conduct beyond the contemplation of the Legislature." State v. Provenzano, 34 N.J. 318, 322 (1961). Strict construction of criminal statutes is necessary "to narrowly confine the scope of the conduct covered, or the penalty applicable to such conduct, so as to avoid fundamental unfairness which might result when those penalized could arguably be said to have misunderstood positive law, or, more realistically, so as to avoid the unfairness of arbitrary enforcement." State v. Maguire, 84 N.J. 508, 514 n.6 (1980).

Turning to Defendant's constitutional claims, the Court considers whether this prosecution offends due process and fair-warning doctrines by "elevating" a statutory disorderly persons offense to an indictable crime. It is correct that N.J.S.A. 9:6-8.14 expressly provides that the failure to report child abuse is generally a disorderly persons offense, except in cases of unreported sexual abuse. Yet, the gravamen of the charges against Defendant includes, but is not limited to, nonreporting. The indictment avers not merely inaction but a concerted, purposeful effort, including affirmatively preventing colleagues from reporting, warning the suspected

abusers, and acting for the benefit of herself and the Smalls, that, when considered cumulatively, comprises more than the mere omission addressed in Title 9.

The official misconduct statute, N.J.S.A. 2C:30-2, was enacted to sanction such breaches of public trust by government officials. The Legislature's decision to preserve a separate and enhanced penalty for public servants is rationally related to the goal of safeguarding the integrity of public administration. Defendant's conduct, as alleged, falls within this enhanced penalty of official misconduct due to the exercise of public authority for private and third-party benefit.

B. Equal Protection

Section one of the Fourteenth Amendment ensures that no State can deny any person within its jurisdiction the equal protection of the laws. The Fourteenth Amendment reads in relevant part:

nor shall any State deprive any person of life, liberty, or property . . . deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV § 1.

"[T]he Fourteenth Amendment does not deny to the States the power to treat different classes of persons in different ways." Reed v. Reed, 404 U.S. 71, 75 (1971). "The Equal Protection Clause of that amendment, does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute." Id. at 74-75. "A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'" Id. at 75 (quoting Guano Co. v. Virginia, 253 U.S. 412, 415 (1920)).

"Although the phrase 'equal protection' does not appear in the New Jersey Constitution, it has long been recognized that Article I, paragraph 1, of the State Constitution, 'like the fourteenth amendment, seeks to protect against injustice and against the unequal treatment of those who should be treated alike.'" State v. Lagares, 127 N.J. 20, 34 (1992) (quoting Barone v. Department of Human Servs., 107 N.J. 355, 367 (1987)). The New Jersey Constitution may provide greater protections than its federal counterpart. State v. Fair, 256 N.J. 213, 228 (2024) (citing State v. Schmid, 84 N.J. 535, 557 (1980)). Article I, paragraph 1 of the New Jersey Constitution provides, in relevant part:

All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

N.J. Const. Art. I para. 1.

While "the equal protection analysis under the New Jersey Constitution differs somewhat from federal standards, the New Jersey Supreme Court has recognized that the two approaches

are ‘substantially the same’ and ‘will often yield the same result.’” Sojourner A. ex. rel. Y.A. v. New Jersey Dept. of Human Services, 350 N.J. Super. 152, 167 (App. Div. 2002).

To a large extent, the considerations guiding our equal protection analysis under the New Jersey Constitution are implicit in the three tier approach applied by the Supreme Court under the Federal Constitution. Both tests consider the nature of the individual rights affected by the governmental action being challenged, the important of the governmental actions being challenged, the importance if the governmental interests being furthered, and the degree to which the challenged restriction is necessary to achieve those interests. At the same time, however, the New Jersey Constitution is not a mirror image of the United States Constitution, and there may be circumstances in which the State Constitution provides greater protections. Even under more traditional approaches, New Jersey has always required a real and substantial relationship between the classification and the governmental purpose which it purportedly serves.

Barone, 107 N.J. at 355. (internal citations omitted)

The New Jersey Supreme Court in Barone, in analyzing “whether the legislative classification is rationally related to a legitimate governmental purpose,” notes that:

The Legislature has wide discretion in determining the perimeters of a classification. Distinctions may be made with substantially less than mathematical exactitude, and an adequate factual basis for the legislative judgment is presumed to exist. We must also be mindful of the strong presumption in favor of constitutionality, and the traditional judicial reluctance to declare a statute void, a power to be delicately exercised unless the statute is clearly repugnant to the Constitution.

Barone, 107 N.J. at 370-71 (internal citations omitted).

The rational-relationship test applies when the Legislature creates classifications of offenders for purposes of fixing penalties. Lagares, 127 N.J. at 34. “In such situations, the Legislature may provide different punishments for offenders convicted of the same crimes so long as there is some rational connection between the classification of offenders and a proper legislative purpose.” Id. The New Jersey Supreme Court in State v. Smith, 58, N.J. 202, (1971) stated:

The Legislature has wide discretion in the creation or recognition of different classes of offenders for separate treatment. In pursuing a legitimate objective it may recognize degrees of harm or possible harm and strike at what it feels more urgently needs repression. If there is some reasonable basis for the recognition of separate classes, and if the disparate treatment of the classes has a rational relation to the objective sought to be achieved by the lawmakers, the Constitution is not offended. The transgression arises only when the classification rests on grounds wholly irrelevant to achievement of the State's objectives; the separate treatment must admit of but one conclusion beyond a rational doubt, *i.e.*, that the basis

therefore is arbitrary and unreasonable and without relevance to the legislative goal.

Barone, 107 N.J. at 334-35 (quoting Smith, *supra* at 206-07).

The New Jersey Legislature recognizes that a public servant “is subject to enhanced penalties for an offense related to his official duties because those in whom a public trust is reposed are held to a higher standard than ordinary citizens.” State v. Morrison, 227 N.J. 295, 309 (2016). For example:

ordinarily, a theft greater than \$200 but less than \$500 is punishable as a fourth-degree crime, N.J.S.A. 2C:20-2(b)(3), and a theft greater than \$500 but less than \$75,000 is punishable as a third-degree crime, N.J.S.A. 2C:20-2(b)(2)(a). But a public servant committing such offenses is subject to greatly enhanced penalties. A government employee who, in the course of his official duties, commits a fourth- or third-degree theft is guilty of a second-degree crime, N.J.S.A. 2C:30-2, and is subject to a ten-year sentence with a mandatory five-year parole disqualifier, N.J.S.A. 2C:43-6.5(a).

Id.

When the private sector and the government are engaged in performing the same function or providing the same service, then the private sector is not exercising authority of a uniquely governmental nature or one exclusive to government in any traditional sense. That conclusion keeps within reasonable and constitutional bounds the scope of the official-misconduct statute.

Morrison, 227 N.J. at 314-15.

“A uniquely governmental service or function, almost by definition, cannot be one where the private sector has traditionally occupied a substantial part of the field.” Id. at 313. “The [New Jersey] Legislature defined a ‘public servant’ as any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function, but the term does not include witnesses. N.J.S.A. § 2C:27-1(g).” Saavedra, 222 N.J. at 58. “Construing that expansive statutory language, New Jersey courts have applied N.J.S.A. § 2C:30-2 to defendants serving in a range of official roles, including administrative positions” Id. The Morrison Court cites to State v. Mason, 355 N.J. Super. 296, 300-02 (App. Div. 2002) which held that “because the government is not the exclusive provider of education, the officers of a private, non-profit corporation educating students at public expense were not public servants subject to the official misconduct statute.” Id. 227 N.J. at 302.

In the present matter, Defendant contends that she has been deprived of equal protection because there is no rational basis justifying a five-year mandatory minimum prison term for public-school employees who allegedly fail to report abuse, but limiting private-school employees who engage in identical conduct to a disorderly persons offense.

The State maintains that the classification at issue rests on the unique public trust reposed in public officials, particularly those charged with the welfare and supervision of children in a public education setting. Under the statutory scheme, “public servant” is broadly defined to include government employees performing a “governmental function.” N.J.S.A. 2C:27-1(g); see also State v. Saavedra, 222 N.J. 39, 58 (2015). The official misconduct statute is not directed at the conduct of all persons, but specifically addresses abuses or nonfeasance by those in governmental positions of responsibility. Morrison, 227 N.J. at 314-15.

It is clear that the government’s interest in the integrity of public administration provides a legitimate basis for such differential treatment. The Supreme Court has repeatedly recognized that when government employees, by virtue of their entrusted status, engage in malfeasance or a knowing dereliction of public duty for private benefit, distinct and augmented penalties may be warranted to vindicate the public trust. See Lagares, 127 N.J. at 34 (“[T]he Legislature may provide different punishments for offenders convicted of the same crimes so long as there is some rational connection between the classification of offenders and a proper legislative purpose.”).

Courts have, however, circumscribed the reach of official misconduct statutes to governmental functions not ordinarily performed by the private sector, recognizing that those providing a “uniquely governmental service or function” are appropriately held to a higher standard. Morrison, 227 N.J. at 313. While education is provided by both public and private institutions, public school administrators, such as Defendant, are government actors vested with the authority, resources, and responsibilities of the State. Private educators, even when performing analogous functions, do not act under color of governmental authority or public trust.

The Court is mindful of Defendant’s contention that the disparity between public and private school educators, given their similar day-to-day duties, appears stark. Nonetheless, the Legislature’s decision to hold public servants accountable for a higher standard of conduct is rooted in the public interest in ensuring the faithful exercise of official responsibilities and the maintenance of public confidence in governmental institutions. The Court finds, consistent with prevailing New Jersey and federal law, that this is a rational basis adequately tied to a legitimate state interest and thus satisfies both state and federal equal protection requirements.

Moreover, similar classifications and penalty enhancements for public officials have withstood equal protection scrutiny. See Morrison, 227 N.J. at 309-10; Mason, 355 N.J. Super. 296 (distinguishing between public and private service in application of the misconduct statute). There is no evidence that the classification is “wholly unrelated” or that it so lacks rationality as to offend constitutional principles. Reed, 404 U.S. at 74-75.

Furthermore, New Jersey’s Constitution mandates a “thorough and efficient” system of free public schools for all children between the ages of five and eighteen. This provision, first introduced in 1875 and reaffirmed in the 1947 Constitution, requires the state to provide for the maintenance and support of such a system. N.J. Const. Art. VIII, § IV, para. 1. The State Legislature is tasked with defining what constitutes a “thorough and efficient” education and ensuring adequate funding for its delivery. The Court perceives from the constitutional

underpinning of the system of public education in New Jersey that the role of publicly-funded administrators and educators is rationally connected to a higher standard of accountability than one imposed on administrators and educators in a privately-funded system.

Finally, although the Court recognizes that private and public actors may perform parallel educational functions, the official misconduct statute is targeted expressly at abuses perpetrated under the imprimatur of government and public trust. This Court finds no constitutional defect arising from the differential exposure to criminal liability between government and private school employees in this context.

C. Fundamental Fairness and Selective Prosecution

“[A] statute shall not be extended by tenuous interpretation beyond the fair meaning of its terms lest it be applied to persons or conduct beyond the contemplation of the Legislature.” State v. Provenzano, 34 N.J. 318, 322 (1961). Strict construction of criminal statutes is necessary “to narrowly confine the scope of the conduct covered, or the penalty applicable to such conduct, so as to avoid fundamental unfairness which might result when those penalized could arguably be said to have misunderstood positive law, or, more realistically, so as to avoid the unfairness of arbitrary enforcement.” State v. Maguire, 84 N.J. 508, 514 n.6 (1980).

“Specific conduct may violate more than one statute.” State v. D.V., 348 N.J. Super, 107, 114 (App. Div. 2002) (citing State v. Blount, 60 N.J. 23, 21 (1972)). “Where two criminal statutes prohibit the same basic act, the prosecutor may in the exercise of sound discretion proceed under either or both statutes as long as only [a] single conviction survives. Id. (internal citations omitted). “The discretionary authority of the prosecutor in enforcement of criminal laws is well-settled.” Id. at 114. It is the fundamental responsibility of the prosecutor to decide whom to prosecute and what charges are to be considered.” Id. (citing State v. Kraft, 265 N.J. Super. 106, 111 (App.Div.1993)). “The factual complex, the conduct of defendant and the extent of sentencing exposure are relevant considerations for the prosecutor to consider.” Id. (citing Lagares, 127 N.J. 20, 27 (1992)). “More than two decades ago the United States Supreme Court held that when ‘an act violates more than one criminal statute, the Government may prosecute against either so long as it does not discriminate against any class of defendants.’” Id. (quoting United States v. Batchelder, 442 U.S. 114, 123-24 (1979)).

[T]here is not appreciable difference between the discretion a prosecutor exercises when deciding whether to charge under one of two statutes with different elements and the discretion he exercises when choosing one of two statutes with identical elements. In the former situation, once he determines that the proof will support conviction under either statute, his decision is distinguishable from the one he faces in the latter context. The prosecutor may be influenced by the penalties available upon conviction, but this fact, standing alone does not give rise to a violation of the Equal Protection of Due Process Clause.

Id. (citing Batchelder, *supra*, 442 U.S. at 125)

Concerning the State of New Jersey’s laws criminalizing endangering the welfare of a child, a prosecutor’s decision to “select between a crime of the second degree under the Criminal

Justice Code and a fourth degree offense under Title 9 does not mean that the exercise of discretion in favor of the charge with the greater penalty is ‘unfettered’ or ‘unbridled.’” Id. “Generally, where specific conduct may violate more than one statute, the more serious grade or offense will govern. Id. (citing State v. Eure, 304 N.J. Super. 469, 475 (App. Div.), certif. denied, 152 N.J. 193 (1997)). “Furthermore, the primary concern of Title 9 is protection of children, while the focus of the Criminal Justice Code is in fact the criminal culpability of those accused.” Id. (internal citations omitted). “Those prosecuted for violation of N.J.S.A. 9:6-3 are arguably guilty of less egregious or repetitive criminal conduct than those confronted with the second degree penalties of N.J.S.A. 2C:24-4a.” “The selection of the charge rests in the sound discretion of the prosecutor.” D.V., 348 N.J. Super. at 116.

However, “prosecutorial discretion is not without its limits. Where it is clearly and convincingly shown that an exercise of prosecutorial discretion is arbitrary, capricious or otherwise constitutes a patent or gross abuse of discretion, the judiciary will intervene” Id.

The present case arises in the context of overlapping statutory provisions addressing child abuse and endangering welfare, Title 9 of the New Jersey Statutes, which focuses primarily on the protection of children through civil and criminal remedies, and the Criminal Justice Code, which emphasizes the culpability and punishment of offenders. The Defendant advances no credible evidence or argument that the State’s decision to charge her under the more serious second-degree endangering statute was motivated by a purpose wholly unrelated to the objects of the criminal law. The record reveals that Defendant was not charged merely for failing to report suspected abuse, but for a pattern of conduct encompassing not only nonfeasance but affirmative acts intended to circumvent statutory protections for the child. Specifically, the evidence demonstrates that Defendant, despite her longstanding tenure as a school official and demonstrated familiarity with reporting obligations, took active steps by directly contacting the alleged abusers and discouraging other mandated reporters from notifying authorities, to avoid fulfilling her statutory duty.

This conduct, as detailed in the record, is sufficiently egregious and repetitive as to distinguish it from less culpable, isolated failures to report. The Defendant’s abuse of authority for her own benefit and the benefit of her associates, her willful disregard of previously exercised reporting obligations, and her active participation in impeding the statutory process, all demonstrate a level of criminal culpability that falls squarely within the purview of the more severe criminal statute. See Eure, 304 N.J. Super. at 475 (finding where specific conduct may violate more than one statute, the more serious grade or offense will govern).

Furthermore, as articulated in D.V., the penalties pursuant to N.J.S.A. 2C:24-4(a) are reserved for conduct that is more “egregious or repetitive” than the less severe offenses under Title 9. Id. at 348 N.J. Super. at 115-16. The decision to proceed under the second-degree statute is supported by the facts in the record and is therefore reinforced by legitimate prosecutorial discretion. As such, Defendant has failed to show an arbitrary, capricious, or gross abuse of discretion.

IV. EACH COUNT OF THE INDICTMENT IS LEGALLY SUFFICIENT AND DOES NOT WARRANT DISMISSAL.

A. Official Misconduct

1. Nonperformance of Duties

N.J.S.A. 2C:30-3(b) reads:

A person commits a crime if, in contemplation of official action by himself or by a governmental unit with which he is or has been associated, or in reliance on information to which he has or has had access in an official capacity and which has not been made public, he: Speculates or wagers on the basis of such information or official action

Official misconduct involves committing an act of malfeasance by a public servant, because of an opportunity afforded by the position they hold. State v. Hupka, 407 N.J. Super 489 (App. Div. 2009). The misconduct must relate to the wrongdoer's public office. "There must be a relationship between the misconduct and public office of the wrongdoer, and the wrongdoer must rely upon his or her status as a public official to gain a benefit or deprive another." State v. Kueny, 411 N.J. Super 392, 409 (App. Div. 2010).

Here, the Defendant contends that the failure to report child abuse under N.J.S.A. 9:6-8.10 is a duty imposed upon all New Jersey residents, and thus, is not "related to or inherent in public office" within the meaning of the official misconduct statute. The Defense further argues that any failure to report by Defendant, the principal of a public high school, arises solely from her obligations as a citizen rather than from her official status.

However, the jurisprudence governing official misconduct is clear. The offense involves malfeasance by a public servant arising from opportunities, duties, or information unique to the position of public office. See State v. Hupka, 407 N.J. Super. 489 (App. Div. 2009); State v. Kueny, 411 N.J. Super. 392, 409 (App. Div. 2010). The indictment in this matter is not rooted in Defendant's failure to report merely as a private citizen, but rather on the failure to fulfil, in her role as principal, non-delegable reporting and supervisory obligations imposed by law, regulation, and school district policy, duties of which are "clearly inherent in the nature of her office." These obligations include not only the duty to report, but also the duty to facilitate reporting by subordinates and to refrain from actions that would compromise the child protection process, all of which are magnified by virtue of Defendant's authority and access to confidential information.

The record demonstrates that Defendant's failure to act, her affirmative conduct in warning suspected abusers, and impeding other mandatory reporters, occurred in the course of her official duties and flowed directly from her status as principal. In this context, the charges are

plainly grounded in duties unique to her public office, not in duties applicable to all residents. Thus, the requirements articulated in Kueny and Hupka, are amply satisfied.

Furthermore, Defendant argues that the grand jury instructions were misleading and introduced statutory language inapplicable to her, specifically by referencing duties imposed on “school districts” rather than on individual employees. However, the grand jury was given a broad overview of governing law, followed by comprehensive instruction on the specific administrative codes, school board regulations, and policies directly applicable to Defendant’s conduct as principal. The context and sequence of the instructions adequately apprised jurors of the legal framework relevant to the case. There is no evidence that the grand jury’s understanding of Defendant’s obligations as a public official was improperly broadened or confused. Accordingly, this ground does not warrant dismissal.

2. *Unauthorized Use of Official Person Function*

N.J.S.A. 2C:30-3(b) reads:

A person commits a crime if, in contemplation of official action by himself or by a governmental unit with which he is or has been associated, or in reliance on information to which he has or has had access in an official capacity and which has not been made public, he:

Acquires a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official.

Defendant further submits that the Uniform Memorandum of Agreement (“MOA”) cited by the State was not formally adopted by the Atlantic City Board of Education, thus eliminating any “unauthorized act” liability for a violation thereof. However, the evidence in the record, including the January 29, 2019, Atlantic City Board of Education meeting in which Defendant voted “yes” to approve the MOA speaks to her awareness and acknowledgment of the provisions, coupled with her participation in its development and annual review, are sufficient to charge her with the knowledge of and duty to comply with its requirements.

Defendant also claims she faced irreconcilable duties, as she was required to report abuse to both the Superintendent (who in this case was the alleged abuser) and other designated officials. The Court finds this argument unavailing. The plain language of the relevant policy permits notification to “other designated school official[s],” obviating the need to report directly to an implicated party. Defendant was not without recourse; she could have followed the alternative reporting channels expressly provided in policy, thereby avoiding any purported conflict.

With respect to the allegation that Mrs. Small was already aware of the child’s disclosure before any communication from Defendant, the Defense has offered no credible evidence to support this claim. As the Supreme Court held in State v. Hogan, 144 N.J. 216 (1996), self-

serving denials not supported by credible evidence are not “clearly exculpatory” and need not be presented to the grand jury.

B. Endangering the Welfare of a Child

N.J.S.A. 2C:24-4a(2) reads:

(2) Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who causes the child harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3, and section 1 of P.L.1974, c.119 (C.9:6-8.21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this paragraph to a child is guilty of a crime of the third degree.

Defendant contends she cannot be subject to a charge of second-degree endangering the welfare of a child because only parents or guardians have the requisite “legal duty” under N.J.S.A. 2C:24-4a(2). While the statute specifically references parents and guardians, it also encompasses “any person who has assumed responsibility for the care of a child,” which can include individuals in supervisory school roles. During the grand jury presentation, the elements of the offense, including the factual basis for assuming general and ongoing responsibility for the child’s welfare, were properly set forth. The indictment does not allege liability based solely on Defendant’s title, but rather on her specific relationship with, and supervisory responsibility for, the child in question. The Defendant’s more limited reading of the statute finds no support in the clear legislative language or in the grand jury record.

Defendant had a legal duty to care for and assumed responsibility for the care of J.S. During the grand jury presentation, the jurors were charged on the elements of endangering the welfare of children. The fourth element that the State must prove is that the defendant had a legal duty for the care of the child, or assumed responsibility for the care of the child:

A person having a legal duty for the care of a child, or who has assumed responsibility for the care of a child includes a natural parent, adoptive parent, resource family parent, step parent, or any other person who has assumed responsibility for the care, custody, and control of a child, or upon whom there is a legal duty for such care. A person who has assumed the responsibility for the care of the child includes any person who assumes a general and ongoing responsibility for the child, and who establishing a continuing or regular supervisory or caretaker relationship with the child. A person who has assumed responsibility for the care of a child may include a teacher, employee, volunteer, whether compensated or uncompensated, of an institution who is responsible for the child’s welfare, or a person who legally or voluntarily assumes the care, custody, maintenance, or support of the child. It can also include any staff person, as well as teaching staff members of other employees who have a legal duty for the care and supervision of the child.

[T 22:15 – 23:13]

Moreover, the Defendant's claim that "causes the child harm" is unconstitutionally vague is belied by the facts alleged, namely, failing to discharge her duty to report ongoing abuse. Defendant is charged with permitting additional and foreseeable harm to occur to J.S. The record before the grand jury included specific facts supporting this theory of causation, sufficient under the statutory definition of child endangerment.

C. Hindering Apprehension

N.J.S.A. 2C:29-3a(3) reads:

a. A person commits an offense if, with purpose to hinder the detention, apprehension, investigation, prosecution, conviction or punishment of another for an offense or violation of Title 39 of the Revised Statutes or a violation of chapter 33A of Title 17 of the Revised Statutes he:

(3) Suppresses, by way of concealment or destruction, any evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence, which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;

The Defendant argues that the "fair meaning" of the statute cannot be said to include the conduct alleged against the Defendant because failing to disclose child abuse is simply a non-disclosure of information that falls outside of the scope of the statutory language.

The grand jurors were advised, under N.J.S.A. 2C:29-3(a), that:

the pertinent part of that statute reads a person commits an offense with purpose to hinder the apprehension, investigation, prosecution, conviction, or punishment of [another] for an offense she did suppress by way of concealment any evidence of a crime regardless of its admissibility in evidence, which might aid in the discovery or apprehension [of] such person, or in the lodging of a charge against him or her. For you to find the defendant guilty, the State must prove each of the essential elements of the offense. The elements are that the defendant knew that Marty Small, Sr., and/or La'Quetta Small could – might be charged with the offense of second degree endangering the welfare of a child. Two, that the defendant did suppress by way or concealment any evidence of the crime, regardless of its admissibility in evidence which might aid in the discovery or apprehension of such person, or in the lodging of a charge against him or her. And three, that the defendant acted with purpose to hinder the apprehension, investigation, prosecution, conviction, or punishment or Marty Small, Sr. and/or La'Quetta Small.

[T 23:16-24:13]

Defendant challenges the hindering count on the ground that "suppression of evidence by way of concealment" under N.J.S.A. 2C:29-3(a)(3) cannot be predicated on mere non-reporting. However, the record reflects more than mere omission, it includes allegations that Defendant deliberately failed to report with the purpose of preventing authorities from learning of the alleged abuse, and further acted to dissuade others from making the required notification. The

instructions provided to the grand jury included all elements of the offense, and the theory that Defendant suppressed evidence, thereby hindering law enforcement, is supported by the factual record.

D. Pattern of Official Misconduct

N.J.S.A. 2C:30-7 reads:

- a. A person commits the crime of pattern of official misconduct if he commits two or more acts that violate the provisions of N.J.S.A. 2C:30-2 or section 2 of P.L. 2003, c. 31 (C. 2C:30-6). It shall not be a defense that the violations were not part of a common plan or scheme, or did not have similar methods of commission.
- b. Pattern of official misconduct is a crime of the second degree if one of the acts committed by the defendant is a first or second degree crime; otherwise, it is a crime of the third degree, provided, however, that the presumption of nonimprisonment set forth in subsection e. of N.J.S.A. 2C:44-1 for persons who have not previously been convicted of an offense shall not apply. Notwithstanding the provisions of N.J.S.A. 2C:1-8 or any other law, a conviction of pattern of official misconduct shall not merge with a conviction of official misconduct, official deprivation of civil rights, or any other criminal offense, nor shall such other conviction merge with a conviction under this section, and the court shall impose separate sentences upon each violation of N.J.S.A. 2C:30-2 and sections 2 and 3 of P.L. 2003, c. 31 (C. 2C:30-6 and C. 2C:30-7).

Moreover, Defendant seeks dismissal of the pattern of official misconduct count under N.J.S.A. 2C:30-7, arguing that two or more predicate violations are not properly alleged. Upon review, the indictment recites multiple separate acts of official misconduct, including distinct failures to report abuse and law enforcement notification obligations, as well as unauthorized disclosure which satisfy the statutory elements. The Defendant committed multiple acts of official misconduct when she failed to report the disclosure of abuse, when she failed to report the same disclosure to law enforcement, and when she notified the alleged abusers of the disclosure. She faces three additional charges for failing to report the January 22, 2024, disclosure, failing to report to law enforcement, and for disclosing the report to the suspected abusers, Marty Small Sr., and La'Quetta Small. The pattern exists by virtue of these charges and is therefore properly supported by the record.

E. Conversation Between Sgt. Ripley and DCPD Hotline

Defendant asserts that an audio recording of a March 29, 2024, conversation between Sergeant Ryan Ripley and a DCPD hotline agent should have been presented to the grand jury as it is "clearly exculpatory" within the meaning of Hogan, supra. On the recording, the DCPD agent is heard stating: "Cause, I mean, I always hear, you know, that they're going to be prosecuted for failure to report but I've never actually heard of anybody ever getting charged, you know, with failure to report."

The Supreme Court in Hogan requires the prosecution to present to the grand jury evidence that is credible, material, and "so clearly exculpatory as to induce a rational grand juror to

conclude that the State has not made out a *prima facie* case against the accused. Hogan, 144 N.J. at 236.

Here, the DCPD agent's statement does not constitute "clearly exculpatory" evidence within the meaning of Hogan. The agent's statement merely reflects a personal observation, rather than making any factual assertion that negates an element of the charged offense or affirmatively establishes Defendant's innocence. The comment does not provide factual information about the Defendant's conduct, knowledge, or intent, nor does it directly contradict evidence supporting the indictment.

While the novelty or uncommon nature of the prosecution may be noteworthy, it does not bear directly on whether the State presented *prima facie* evidence that the accused committed the charged offense. The grand jury's function is to determine whether the State presented some evidence to establish a crime has been committed. The rarity of enforcement does not negate the viability of the charge itself. Accordingly, the Court finds that the DCPD agent's statement was not so clearly exculpatory that it needed to be presented to the grand jury under Hogan.

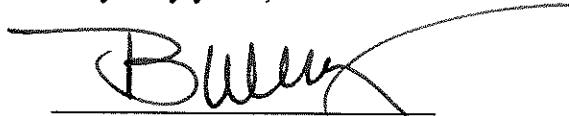
CONCLUSION

For all of the foregoing reasons, the Court finds that the indictment in this matter is legally sufficient and supported by the factual record presented to the grand jury. The State has adequately alleged that Defendant's conduct, as principal of a public high school, constituted the non-performance and abuse of duties clearly inherent in her office, and the charges properly reflect violations of statutory and regulatory obligations applicable to her position. The grand jury was properly instructed, and the evidence presented establishes a *prima facie* basis for each count included in the indictment.

Furthermore, the Court finds no constitutional infirmity or procedural irregularity requiring dismissal. Alleged conflicts in duty, factual disputes regarding notification, and claims of vague statutory language do not warrant pretrial dismissal where, as here, disputed issues are appropriately reserved for determination at trial. The prosecutorial charging decisions fall squarely within the ambit of legitimate discretion and are rationally related to the legislative purpose of public integrity and child welfare protection.

Accordingly, Defendant's motion to dismiss the indictment is hereby **DENIED**. The Court has entered an Order in accordance with the foregoing reasons expressed in this decision.

Very truly yours,


Bernard E. DeLury, Jr., P.J. Cr.

BED/ep
Encl.