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*Attorneys for Defendants Board of  
Education of the Hudson County Schools  
of Technology and Joseph M. Muniz and John Doe*

MICHAEL SHURIN,  
Plaintiff,  
v.

BOARD OF EDUCATION OF  
HUDSON COUNTY SCHOOLS OF  
TECHNOLOGY, JOSEPH M.  
MUNIZ in his official capacity as  
Board Secretary and Records  
Custodian of Hudson County Schools  
of Technology and  
JOHN DOE,  
Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - HUDSON COUNTY  
DOCKET NO.: HUD-L-1328-21

CIVIL ACTION

**CERTIFICATION OF JOSEPH M. MUNIZ**

I, Joseph M. Muniz, of full age, hereby certify as follows:

1. I am the Board Secretary of the Hudson County Schools of Technology (“HCST”, or “District”) and have personal knowledge over the facts set forth herein and submit the within Certification in response and opposition to the Plaintiff’s application in this Action.
2. The record sought in this action is an internal record maintained by the HCST, a governmental entity, relating to an internal employee personnel matter, a matter that was never the subject of a civil lawsuit.

3. The record sought is part and parcel of internal HCST personnel records concerning an employee-related disciplinary charges against an HCST employee (“Employee”), which charges were resolved internally as between the HCST and the Employee.

4. The record sought is an internal settlement agreement resolving the monetary component of the then pending disciplinary charges against the Employee, between the HCST and the Employee, created in furtherance of the settlement of internal disciplinary charges against the Employee.

5. The record sought in this action is part of, and is maintained as a part of, the Employee’s personnel records and file.

6. In February 2020, the HCST received information from a third party that, if true, would subject the Employee to discipline.

7. Due to the receipt of this information, a disciplinary investigation was commenced as to the actions of the Employee.

8. As the HCST is not subject to the Civil Service Law, no preliminary notice of disciplinary action (“PNDA”) was issued against the Employee.

9. Instead, an internal investigation pursuant to HCST policies and procedures ensued, which preliminarily concluded that there was evidence that could support a conclusion that the Employee engaged in conduct that violated District policies in a manner that would subject the Employee to discipline. As part of this process, the Employee was directed not to contact the Claimant.

10. Separately and independently of this internal investigation of the Employee’s activities, the District was presented with an informal claim by an attorney for Graciela Rubet

("Claimant") and against the District in a pre-suit litigation demand for wrongful suspension. No tort claim notice was filed by the Claimant.

11. No claim was made by the Claimant as against the Employee in the pre-suit demand and the Claimant did not threaten the Employee with a lawsuit.

12. Nevertheless, there was a commonality of fact as between at least a portion of the allegations underlying Claimant's pre-suit claim and the conduct for which the Employee was being investigated, as part of the HCST independent disciplinary process.

13. The District immediately forwarded notice of the pre-suit demand to Summit Risk Services/NJSIG for their review and further handling.

14. QBE Insurance, the excess carrier for the District, having fully vetted and investigated the matter determined that the practical cost involved in litigating the matter, would far outweigh any settlement and without admitting liability agreed with Claimant's attorney to settle Claimant's pre-suit claim for \$115,000.00.

15. QBE agreed to contribute \$65,000.00.

16. The remainder would be paid by the HCST.

17. This settlement was approved by District Resolution 6.11 on July 16, 2020.

18. As the matter with the Claimant was resolved internally, the matter was never the subject of any lawsuit filed in any court.

19. As part of the ongoing HCST disciplinary process, the HCST determined to recover the value of \$35,000.00 of that amount from the Employee, given the commonality of fact as between at least a portion of the allegations underlying Claimant's pre-suit claim and the conduct for which the Employee was independently being investigated by the HCST.

20. At the insistence of the HCST, the HCST and the Employee entered into an internal "Settlement Agreement" with the HCST that settled the monetary component of the internal discipline to be applied as against the Employee, wherein the employee agreed to adjust accumulated benefit time in the Employee's "time bank" valued at \$35,000.00. Subsequently, the disciplinary matter was completely settled, with the Employee incurring further discipline as between the Employee and the HCST.

21. Contrary to the Plaintiff's supposition, the settlement of the monetary component of the Employee's discipline was not "part of a global resolution of a pre-suit claim for damages."

22. The Claimant was not a party to the agreement between the HCST and the Employee, and the Employee was not a party to the agreement between the HCST and the Claimant.

23. Instead the HCST acted to recoup the \$35,000.00 value that the HCST applied towards the settlement payment made to the Claimant, from the Employee as part of the disciplinary process, a purpose for which the Employee was aware.

24. The HCST determined on its own, that the actions of the Employee required internal discipline, and that as part of that discipline the Employee would be required to forfeit time in the Employee's "time bank" the value of which the HCST applied to fund the HCST's settlement with the Claimant.

25. No funds were actually exchanged in satisfaction of this \$35,000.00 as between the Claimant and the Employee and the HCST. At no point were funds exchanged as between Claimant and the Employee.

26. At no point was any agreement (whether termed a “payment agreement and general release” or otherwise) reached as between Claimant and the Employee for any exchange of funds. No such agreement exists.

27. At no point did Claimant and the Employee enter into any agreement giving rise to privity of contract.

28. At all times the HCST has acted to protect the legitimate and independent interests of the Claimant, the Employee and of the HCST.

29. The HCST, in an effort to turn square corners and for the sake of transparency, in response to a previous OPRA request, released the settlement agreement as between the Claimant and the HCST – on the conclusion that no interests would be harmed from the disclosure of this settlement agreement of a claim against the HCST.

30. However, complying with the Plaintiff’s demand in this lawsuit would harm: (i) the privacy interests of the Employee; (ii) the HCST’s interests in fostering the quick and efficient settlement of disciplinary matters at the internal level without need of recourse to the courts, and (iii) the intent of the HCST (and even the Claimant) in reaching a pre-suit settlement which would obviate the need for the disclosure of potentially otherwise private information that would have been occasioned by the filing of a lawsuit by the Claimant.

31. The HCST has an interest preventing the disclosure of disciplinary records as access to these documents would impede the HCST’s ability to meaningfully engage with employees, and to provide just and reasonable resolutions to very private, sometimes humiliating and undignified matters.

32. All of the foregoing are interests that the courts of this state have repeatedly recognized as being legitimate.

33. At no point has the HCST voluntarily disclosed the facts underlying the pre-suit demand, or the facts concerning the allegations giving rise to the internal disciplinary investigation regarding the Employee (or any other employee) or the facts concerning the resolution thereof, except as presently required to prevent further disclosure of same, in response to the present lawsuit.

34. The HCST is simply not required to make exempt personnel and pension records accessible or disclose the details of internal investigations, discipline or internal settlements thereof simply because they may be somehow related to a pre-suit settlement by a claimant.

35. This is especially so, where, as here, the Plaintiff failed to advise the HCST of any particularized need for the records requested in Plaintiff's records request, a true copy of which is attached hereto as **Exhibit A**.

36. On this record the Plaintiff's interests in disclosure do not outweigh the legitimate privacy interests of the HCST and the Employee.

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.

  
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JOSEPH M. MUNIZ

Date: June 9, 2021

**EXHIBIT A**

Joseph M. Muniz

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**From:** Michael Shurin <oprajc@gmail.com> on behalf of Michael Shurin  
**Sent:** Wednesday, February 10, 2021 2:24 PM  
**To:** Joseph Muniz  
**Cc:** Walter M. Luers; Ivonne Enrique; John R. Dineen  
**Subject:** Re: Rubet Tort Notice & Emails

Apologies, would like to amend that request because I forgot to add 1 other item:

3. Per July 16, 2020, HCST board agenda resolution 6.11, copy of "payment agreement and general release to be formalized by the employee, Superintendent and HCST General Counsel" regarding \$35,000 payment to Rubet.

Please confirm receipt of this email. Any questions, please email me back or call me at 201-744-8951.

Thanks  
Michael

On Wed, Feb 10, 2021 at 2:13 PM Michael Shurin <oprajc@gmail.com> wrote:  
To Mr. Muniz:

May this email serve as an official OPRA request invoking Common Law Right of Access for the Hudson County Schools of Technology. The following records are being requested:

1. Copy of Graciela Rubet notice of tort claim.
2. All email communications between Vision Media/Caitlin Mota and HCST officials regarding Graciela Rubet story published by Hudson County View on May 7, 2019.

Please confirm receipt of this email. Any questions, please email me back or call me at 201-744-8951.

Thanks  
Michael

RECEIVED  
FEB 11 2021

Joseph M. Muniz  
Board Secretary