

**Fact Finding Report to Mayor Michael A. Nutter
Concerning Charter Operator Selection Process**

At

Martin Luther King High School



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Chief Integrity Officer

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Introduction

On April 24, 2011, you asked me to conduct fact-finding into the circumstances surrounding the abrupt withdrawal of Mosaica Turnaround Partners (Mosaica) from the operation of Martin Luther King High School (MLK) the day after the Philadelphia School Reform Commission (SRC) had unanimously voted to award the multi-year MLK contract to Mosaica as well as, more generally, the circumstances that led to the school district's decision not to retain any charter operator for MLK and the MLK selection process. Your request followed news reports that SRC Chair Robert Archie (Archie), having recused himself from the March 16, 2011 SRC vote to award the MLK contract to Mosaica because of his association with Foundations, Inc. (Foundations), which had also proposed to operate MLK, nevertheless participated in a meeting immediately following that vote at which State Representative Dwight Evans (Evans) may have pressured a Mosaica executive to withdraw from MLK. The articles suggested that Archie's public recusal conflicted with his presence at this nonpublic meeting that resulted in the elimination of Foundations's competitor.

With the invaluable assistance of Joseph Previtera (Previtera), an investigator with the Inspector General's Office, I interviewed more than 30 people both employed by and outside of the School District of Philadelphia (SDP), and reviewed documents and e-mails concerning this matter. A few people who I believe have relevant information about this matter, including Evans, his aide Kim Turner (Turner), and Urban Affairs Coalition (UAC) President and CEO Sharmain Matlock-Turner (Matlock-Turner), refused to meet with me.¹ Each of the people with whom we spoke described events from his or her own perspective, resulting in occasional differences in their descriptions of events. But we have seen and heard enough, given both the aggregation of details and the central facts about which there is no dispute, to conclude the following:

Mosaica was awarded the opportunity to operate MLK in a process that was fair and transparent. Foundations, an organization in whose fortunes Evans has taken a public, forceful, and longstanding interest, was the unsuccessful competitor in that process. Evans, working outside the SDP's public process for matching MLK with an outside operator, mounted an intense lobbying effort to change the outcome of the match process to secure for Foundations the SDP's contract to manage MLK. Although he publicly recused himself from voting on that contracting decision, Archie facilitated Evans's effort, both before and after the SRC vote on March 16, 2011. In at least three

¹ In response to my request for an interview with him, Evans sent a written narrative that extolled his and Foundations's involvement at MLK and their proposal for operating MLK, and criticized the SDP's SAC process. He refused my request to meet for a follow-up interview.

In response to my request for an interview with her, Matlock-Turner sent a letter citing a single sentence from your April 25, 2011 letter to Archie announcing my fact-finding assignment. She said you were "specifically [sic] concerned about the unanswered questions surrounding the withdrawal of Mosaica Turnaround Partners, Inc. from the charter selection process after the majority of the School Advisory Commission voted to recommend Mosaica as the charter operator for the school." Matlock-Turner said she had no knowledge of why Mosaica withdrew so the interview would "serve no purpose." Her letter did not mention the portions of your April 25 letter that more broadly described your concerns or my assignment.

closed door meetings and in other communications, Archie interceded behind the scenes to facilitate the placement of Foundations as the operator of MLK. Mosaica withdrew from the operation of MLK out of concern that Evans – perceived to be a politically powerful legislator potentially harmful to Mosaica and whom Archie did not challenge and perhaps supported -- could and would frustrate the company’s ability to successfully operate MLK, thereby jeopardizing the company’s broader prospects.

Background of Renaissance process

The SDP is operated by a superintendent and overseen by the SRC, a five-person board established by state law. Three SRC members are chosen by the governor and two are chosen by the mayor. The governor chooses which SRC member will chair the SRC. No matter who appointed him or her, an SRC member can be removed only by the governor, for cause.

Ackerman became the SDP superintendent in 2008. Together with the SRC, she launched a signature educational strategy called “Imagine 2014,” which includes taking steps to improve the district’s lowest performing schools. A group of these schools were slated to participate in the “Renaissance match” process, in which these schools would be matched with outside providers who would be engaged to “turn around” these schools.² The district offered outside providers interested in operating a Renaissance match school the opportunity to respond to a Request for Qualifications. People employed by the SDP and education professionals outside the SDP (including two persons from the Mayor’s Office of Education), using a formal scoring rubric, evaluated 20 proposers. Ten of the proposers received a qualifying score and were invited to submit a response to a more extensive Request for Proposal (RFP). Of the eight proposers who responded to the RFP, seven were determined qualified to be considered for operation of Renaissance match schools.

A hallmark of “Imagine 2014” and of the Renaissance match model is engagement by parents or others (such as grandparents or guardians) who have legal responsibility for the students. The underlying assumptions are that parents/guardians of Philadelphia students have the most at stake in their children’s education, and that any school’s success depends on their involvement in their children’s schools.

To encourage both parent and community involvement in schools designated to become Renaissance match schools, SDP staff and contractors conducted extensive outreach to the parents, staff and surrounding community for each school. The outreach included invitations to parents, staff, and community members to apply for membership on each school’s SAC. The district established rules for composition of each SAC, which specified that each SAC must contain between 7 and 21 voting members, at least 51% of whom had to be parents or guardians of children attending the school for which the SAC was organized. Each SAC could have two representatives of PFT-represented school staff, no more than two members from each of any other community or alumni

² Another group of schools was designated as “Promise Academies,” which the SDP would continue to operate with additional resources and significant staff replacement.

organization could serve on each SAC, and for high school SACs, at least two student representatives. Only those SAC members who had attended at least three SAC meetings were eligible to vote to recommend a proposed operator.

The SDP also reached out to elected officials whose districts contained or were close to schools designated to become Promise Academies or Renaissance charters. The SDP sent several e-mails to those officials identifying the designated schools, announcing the district's plans for those schools, and inviting the officials to contact the SDP for more information. These e-mails also notified the officials of the dates of community forums at which community members could communicate their priorities and ideas for changes to the schools to each school's SAC, for the SACs to use in questioning and ultimately recommending potential school operators for each school. The SDP sent other e-mails notifying the officials of additional community forums at which prospective operators would present their proposed turnaround plans, and of public guidelines for those forums.

The SDP contracted with Frontline Solutions, Inc. (Frontline) to facilitate the formation of the SACs at the Renaissance match schools, their consideration of prospective school operators, and their selection of the operators they desired to run their schools. The SDP provided Frontline with rules governing the composition of SACs, a schedule for SAC activity and business, and guidelines for the consideration and selection of an outside operator. The selection process included travel by two members of each SAC to visit a school that each prospective operator currently operates. Frontline facilitators kept attendance and minutes of the SAC meetings, and reported back to the SDP's Office of Strategic Partnerships.

Under the Renaissance process, the votes of all six SACs in the Renaissance process, as well as the justifications for the votes, were to be reported to Ackerman through the Office of Strategic Partnerships. Ackerman would review them and, if satisfied that the SACs' decisions made sense, endorse the recommendations and refer them to the SRC for official action implementing those recommendations. The SRC meeting at which the SRC would vote to adopt or reject the SAC recommendations was scheduled for Wednesday, March 16, 2011.

Martin Luther King High School

MLK, located at 6100 Stenton Avenue in northwest Philadelphia, is a comprehensive high school in the SDP. Its performance has been consistently very poor over the last several years, as measured by a tool called the School Performance Index. Since approximately 2002, Foundations, a private nonprofit education organization headquartered in Moorestown, New Jersey, has had a contract with the SDP as MLK's "education management organization." The contract calls for Foundations to provide direct academic supports for literacy and mathematics, curriculum and faculty support and development, special education support, and technology support; to operate a job resource center for students; to assist with parent and community relations; and to enhance the school's safety and "climate."

In January 2011, the SDP designated MLK as one of six Renaissance schools to be matched with an outside operator for the 2011-2012 school year. The SDP, through its parent ombudsman at MLK and outreach contractors, solicited parents and community members to serve on the MLK SAC as described above. The SDP also sent the e-mails described above to the elected representatives whose districts included MLK, and to Evans, whose district was close to MLK.

The SAC process at MLK operated as designed. The assigned Frontline representative, overseen by staff at the SDP's Office of Strategic Partnerships, facilitated the formation of the SAC, its discussions about what features it wished to see in a turnaround provider, and its consideration of prospective operators. The Frontline facilitator followed the SDP's guidelines for SAC composition, SAC discussion, and SAC deliberation. He kept track of attendance and maintained minutes of SAC meetings, which he turned over to his supervisor at Frontline and to the SDP.

The MLK SAC initially reviewed materials from four prospective operators: Johns Hopkins, Universal, Mosaica, and Foundations. Universal and Johns Hopkins withdrew from consideration as operators of MLK when they learned from the SDP that they could focus efforts on other schools in which they were particularly interested.

To determine which of the proposers it favored, the SAC, assisted by the Frontline facilitator and supervised by members of the SDP's Office of Strategic Partnerships, met several times over the course of six weeks. They discussed and reached consensus on what characteristics they would like MLK to have and reviewed the detailed proposals submitted by Johns Hopkins, Mosaica, and Foundations. Two of the SAC members visited schools operated by each of those providers and reported back to the group. The SAC members attended a presentation to interested members of the nearby community at MLK on March 8, 2011 at which representatives from Mosaica and Foundations, the two proposers left after John Hopkins withdrew from consideration, presented their proposals and answered questions from the audience.

The MLK SAC met weekly between an initial all-SAC meeting on February 3, 2011 and the evening of March 10, 2011, when the SAC voted 8-1 that Mosaica was its choice to operate MLK as a Renaissance school. Only SAC members eligible to vote did so. Because SDP procedure required each SAC to recommend a second choice as well as a first choice, Foundations was the MLK SAC's second choice by default. However, the SAC made clear in its communications to the SDP that its only real preference was Mosaica as an outside operator.

SRC members and procedure

Archie was appointed to the SRC by Mayor Michael Nutter (Nutter) and later designated the SRC Chair by Governor Rendell. Archie is and for many years has been a partner with the law firm Duane Morris LLP (Duane Morris). He told Previterra and me that Foundations is a former client of Duane Morris. He also told us that Dwight Evans is a long-time client of the firm's, that the firm currently represents Evans in one or more

matters (he declined to specify the nature, substance, or number of matters, citing client confidentiality), and that Evans is a personal friend.

The other members of the SRC are Joseph Dworetzky (Dworetzky), Denise McGregor Armbrister (Armbrister), and Johnny Irizarry (Irizarry).

SRC members are governed both by the Commonwealth's Public Official and Employee Ethics Act (State Ethics Act) and by the SDP Employee Handbook's Code of Ethics. The SDP's Code of Ethics states:

All persons employed by the School District of Philadelphia including members of the School Reform Commission...have special legal and ethical obligations ensuing from two distinct disciplines: government service and education.

The governmental dimension of these responsibilities imposes duties inherent in public service including the promotion and protection of public trust and confidence, avoidance of conflicts of interest and appearances of impropriety, as well as careful and informed management of the public fisc. These duties must at all times guide the conduct of all employees who serve the School District.

.....

School District employees shall employ independent objective judgment in performing their duties, deciding all matters on their merits alone, free of partiality or prejudice and unimpeded by conflicts of interest or other improper influences. No School District employee shall engage in conduct that constitutes a Conflict of Interest, which shall be defined as use by an officer or employee of the authority of his/her office or the use of any confidential information received through his/her employment for the private pecuniary benefit of the employee...or a business with which the employee...is associated.

Financial Interest. A School District employee shall neither engage nor have any interest, financial or otherwise, direct or indirect, in any business transaction or professional entity, either as a director, officer, partner, trustee, employee, or manager in that entity which conflicts with or impairs the proper discharge of official duties or which could bring disfavor or disrespect upon the employee of the School District.

Contracting Decisions. A School District employee shall not recommend, vote, or otherwise participate in the decision to make any contract valued at \$1,000 or more between the School District...and any business or entity in which the employee has a personal or financial conflict of interest.

School District employees shall be deemed to have a financial conflict of interest in a decision if it is reasonable foreseeable that the decision will have a material financial effect on:

...Any business entity in which the employee...has a direct or indirect investment worth \$1,000 or more or in which the employee...holds any position of management or is a director, officer, partner, trustee, or employee.

.....

A School District employee who has a financial conflict of interest because of his/her relationship with a business must remove him/herself from any decision concerning that entity including any decision to contract or not to contract with the entity and the administration of the contract.

The State Ethics Act states:

Section 1102. Definitions

“Conflict” or “conflict of interest.” Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself...or a business with which he is associated.

Section 1103. Restricted activities

(a) Conflict of interest. – No public official or public employee shall engage in conduct that constitutes a conflict of interest.

While it’s not within my purview to interpret or apply either of these provisions, they do make clear the importance of an SRC member acting in a way that avoids both actual impropriety or conflict of interest as well as the appearance of any such impropriety or conflict.

The SRC members appear to have received some, but no standard, ethics training. The State Ethics Commission confirmed that it had not been asked to provide ethics training to any SRC members. All of the SRC members understood, however, that they could not take official action on matters in which they had a personal or financial interest.

Evans’s involvement with the award of a contract for the operation of MLK

The description of Evans’s involvement, set forth below, is based on interviews conducted with and e-mails obtained from persons other than Evans, his assistant Turner, and UAC head Matlock-Turner.

Evans's association with Foundations

Any consideration of Evans's involvement with the selection of an operator for MLK requires consideration of his association with Foundations. According to Foundations President and Chief Executive Officer Rhonda Lauer (Lauer), Evans has been a strong supporter of Foundations since she approached him to see if Foundations could work at the West Oak Lane Charter School, a K-8 charter school which Evans reportedly helped to found. With Evans's assistance, Foundations has secured contracts not only at West Oak Lane Charter School and at MLK, but also at the Philadelphia Center for Arts and Technology (PCAT), an academic, work, and life skills center for teens and young adults located a block from MLK, which Evans was instrumental in founding. (In fact, PCAT has no website of its own – its site consists of a page on the Foundations website.)

Evans's association with Foundations, The West Oak Lane Charter School, and PCAT is well-known among SDP officials and SRC members. Almost to a person, everyone we interviewed mentioned it, although none could specifically characterize the association. While Foundations executives have been political contributors to Evans, it's not the focus of this inquiry to discover the nature or basis of this association. What's important for this inquiry is the fact -- undisputed and touted by Evans himself publicly and privately – that he is a longstanding and vigorous advocate for Foundations.

Evans's advocacy for Foundations to secure contract to operate MLK

Although Evans was regularly notified of and offered the opportunity to participate in the SDP's SAC process for matching MLK and the five other Renaissance schools, neither he nor anyone on his staff did so.³ Instead, Evans mounted a sustained, back-channel effort to secure for Foundations the contract to operate MLK. Interviews with those who agreed to speak with me and review of documents show that:

Ackerman reported that in early March, Melonease Shaw (Shaw), a SDP consultant and lobbyist, and Evans ally, set up a meeting at Relish restaurant between Ackerman and Evans. Turner, Evans's close aide, also attended the meeting. Ackerman reported that Evans expressed interest in purchasing the MLK building for which he would secure an outside operator for the school. She reported that she did not tell him no right off, but said she would check into it. (Ackerman's account is uncontradicted because both Evans and Turner would not meet with me. Shaw, who did meet with me, said that she, Ackerman, and Evans frequently met at Relish for both business and social occasions, during which they occasionally discussed MLK, but could not recount any specific content of their conversations.)

³Evans has complained that he and other elected officials were shut out of the Renaissance process and that the MLK SAC contained no representative of an elected official from the area. That's not true. At a minimum, Evans and other elected officials received the communications from the SDP described above. Moreover, a staff member from City Councilmember Donna Reed Miller's office served on the SAC.

After the SAC voted 8-1 in favor of Mosaica on March 10, 2011, Evans contacted Archie, challenging the legitimacy of the process leading to the vote. On March 11, 2011, his assistant Turner e-mailed Archie a diagram of the neighborhood surrounding MLK showing the locations of schools, learning centers, and community centers, including MLK and PCAT. The diagram was labeled “Northwest Education Corridor.” Turner said that Evans had shared the diagram with Ackerman.

Specifically, Evans complained to Archie that the SAC’s vote in favor of Mosaica was contrary to the community vote held at MLK on March 8, 2011, at which he said a straw poll of the attendees voted 118-105 in favor of Foundations. Archie said he would look into the situation and pressed SDP officials, particularly in the Office of Strategic Programs, for information about the SAC process. SDP officials reported back to Archie that the straw poll was intended to provide only a rough idea of community sentiment. The poll was taken at the meeting at which Mosaica and Foundations had made presentations to the audience, and the voters, unlike the members of the SAC, had no more information than that presented at the meeting. They had not reviewed proposals or visited schools operated by the organizations. The SDP did not verify the identification of the voters or know if either proposer had engaged in get-out-the-vote efforts to influence the outcome. In short, the community vote was only one factor among many that the SAC could use in making its decision, but not a determining one.

Evans then attempted to convince Ackerman to reject the vote of the SAC in communications in the days before the March 16, 2011, SRC meeting at which the SRC was scheduled to vote. In at least one telephone call from Evans, she refused to do so. Her refusal was witnessed not only by members of her staff, but by at least one visiting fellow of the Broad Superintendent Academy who was shadowing Ackerman during the week of March 14, 2011, and who was present in Ackerman’s office as she argued with Evans in a telephone conversation the day before the SRC vote.⁴

Having failed to persuade Ackerman to reject the SAC recommendation for Mosaica in favor of Foundations, Evans took his case directly to the SRC. Through Archie, he secured an extraordinary opportunity to press his case for the award of the MLK contract to Foundations in a private meeting before the SRC board’s executive session on March 16, 2011, held the morning before the SRC’s public meeting that day. Accompanied by his aide Turner and Matlock-Turner, the executive director of the UAC and board chair of the West Oak Lane Charter School, he urged that his and Foundations’ longstanding involvement in the

⁴ Ackerman told us that around this time she and a member of her staff received calls from Melonease Shaw suggesting that Evans could hurt her career if she did not steer the MLK contract to Foundations. The staff member corroborated Ackerman’s account. Shaw, however, denied having so advised Ackerman or her staff member. Both Ackerman and Shaw reported to us that although they had previously had a positive working relationship (until early 2011, Shaw’s firm Maven, Inc. had a PSD contract to consult on government relations and business development for Ackerman and other senior PSD officials), that was no longer the case.

neighborhood made Foundations the logical choice to operate MLK. He presented the SRC with a diagram showing that MLK was part of a plan he had to create a “Northwest Education Corridor” that included PCAT and the West Oak Lane Charter School. No such presentation had been ever made to either the MLK SAC or to any community forum convened in the MLK Renaissance matching process. The SRC thanked him for the presentation, but suggested that the SDP’s SAC process should be respected.

After pressing his case before the SRC in executive session the morning of March 16, 2011, Evans did so again before the SRC’s public session later that day. In his public comments, he touted his and Foundations’s work at MLK and repeated his description of a “Northwest Education Corridor” that included Foundations operating MLK. SRC member Dworetzky thanked him for the presentation, but said, again, that the SAC process, which had shown preliminary success in the previous school year, should be respected. After Archie publicly recused himself from the vote concerning MLK, the remaining three SRC members voted to adopt the SAC’s and Ackerman’s recommendations to match MLK with Mosaica.

Having failed to get the SRC to reject Mosaica as the operator of MLK, Evans then worked to dissuade the Mosaica representative, John Porter (Porter), from accepting the MLK match. In a meeting arranged by Archie and held immediately after the March 16, 2011, public SRC meeting⁵, Evans made clear his hostility to Mosaica and his intention to withhold community support from Mosaica’s efforts to successfully operate MLK. Immediately after that meeting, Nunery described it to Ackerman, in the presence of several others who reported the comment, as like something out of the movie “The Godfather.” Evans himself described to a reporter his actions at this meeting as being like “a dog on a bone.”

The next afternoon, March 17, 2011, Porter sent an e-mail to Ackerman withdrawing Mosaica from the operation of MLK. After receiving from Archie a forwarded copy of that e-mail, Evans’s assistant e-mailed to Archie a compilation of news articles critical of Mosaica in general and Porter in particular.

Evans and Lauer then submitted a joint letter to Ackerman bearing the letterhead of both Evans’s office and Foundations, thanking her “for the opportunity to continue our work on behalf of Martin Luther King High School...which is being entrusted to us as a charter,” despite the fact that the SRC had not voted to match Foundations with MLK.

Over the next three weeks, as the MLK SAC members made clear their anger at having the SAC process undermined, Evans sought to both mollify the SAC and – again behind the scenes -- pressure Ackerman into supporting Foundations’s attempt to replace Mosaica as the operator for MLK. He got Archie to arrange a private meeting with Ackerman at Archie’s law firm on Saturday, April 9, 2011,

⁵ As described more fully below, Archie had earlier on March 16th suggested to Deputy Superintendent Dr. Leroy Nunery (Nunery) that Mosaica might be encouraged to withdraw from the operation of MLK.

during which Evans sought to have her agree to recommend Foundations to the SRC rather than defer a match decision for MLK for a year. She refused to do so.

When the effort to pressure Ackerman to recommend Foundations as the MLK operator failed again, it appears that Evans and Matlock-Turner attempted to promote to the SDP a one-year probationary contract for Foundations to operate MLK. On April 11, 2011, Matlock-Turner sent to Archie for his review and advice a draft Foundations proposal for later submission to Ackerman and Archie. The draft proposal had been prepared by Lauer and forwarded to Evans, Turner, Matlock-Turner, and Pennsylvania State Representative John Myers for their review.

This list of Evans's efforts to secure the MLK contract for Mosaica – and his communications with Archie -- may not be complete. What is clear, however, is Evans's strong interest in Foundations, his insistence that Foundations be matched with MLK, and his repeated communications of this insistence to SDP officials in general, and to Archie and Ackerman in particular.

Archie's efforts in support of Evans's promotion of Foundations

The event that instigated this review was the April 17, 2011 news article revealing Archie's presence at the meeting attended by Evans, Porter, and Nunery immediately following the March 16, 2011 SRC meeting, at which Archie had publicly recused himself from the SRC vote to award Mosaica the contract to operate MLK. But interviews of three of the four participants to that meeting, and a review of events both before and after that meeting, lead to the conclusion that this March 16, 2011 meeting was part of Archie's overarching attempt over the course of several weeks to support Evans's efforts to secure the MLK contract for Foundations.

Private meetings arranged for Evans to advocate for Foundations

I have found that the post-SRC meeting that made the news was one of three private meetings, described below, that Archie arranged for Evans to promote Foundations as the MLK operator:

March 16, 2011 executive session of the SRC

Evans's presentation to the executive session of the SRC is briefly described above and more fully described here:

Evans asked Archie to arrange for Evans to speak at the next executive session of the SRC, scheduled for the morning before the public SRC "action" meeting at which the SRC would consider and vote on the Renaissance match recommendations. The SRC executive sessions are private and subject to the Pennsylvania Open Meetings Law, more commonly known as the "Sunshine Act." The Sunshine Act requires that meetings of state departments and agencies occur in public, subject to limited exceptions for issues of

employment, labor relations, purchase or lease of real property, consultations with attorneys or other professionals concerning litigation, and legally privileged matters, including those related to investigations of violations of law. The Sunshine Act also allows agencies to participate in nonpublic conferences, which the Sunshine Act defines as training programs or seminars, or any session arranged for the sole purpose of providing information to agency members on matters directly related to their official responsibilities. Archie instructed SRC staff to put Evans on the executive session agenda for Wednesday morning, March 16, 2011.

Evans, accompanied by his aide Turner and Matlock-Turner, appeared before the SRC in executive session on the morning of March 16, 2011. According to most of the people who were present (other than Evans, Turner, or Matlock-Turner), Evans was the principal speaker. He forcefully described how awarding the Renaissance charter to Mosaica would interfere with a large-scale plan he had for education in the area, which included MLK. Evans said he and Foundations had worked as “partners” for many years in the West Oak Lane Charter School. It is undisputed that he had not brought this plan to the attention of the MLK SAC at any time during its consideration of a turnaround partner, and in fact, had not sought to participate in the SAC process. Evans made clear that he adamantly opposed having the charter awarded to Mosaica and advocated that Foundations lead the transformation of MLK. After he left, Ackerman confirmed that she stood behind the decision made by the MLK SAC in favor of Mosaica.

SDP officials told us that although political representatives (including the mayor) had on occasion addressed the SRC in executive session, the topics of those addresses are general educational goals and strategies, not the proposed award of particular contracts. I cannot say whether providing Evans the opportunity to address the SRC in executive session about its impending decision to match MLK to a particular operator was permitted by the Sunshine Act. However, it was an accommodation by Archie to Evans’s interest in securing the MLK contract for Foundations.

March 16, 2011 post-SRC meeting with Evans, Porter, and Nunery

After its executive session, the SRC was scheduled to go into public session in the hearing room on the second floor of 440 North Broad Street. According to both Archie and Nunery, after the executive session and before going downstairs to the public SRC meeting, Archie pulled Nunery aside and asked him to contact the Mosaica representative to meet after the SRC meeting and to see if the Mosaica representative would think about not operating MLK. Nunery agreed to do so, saying that he had mentioned that idea at a senior staff meeting but it had gone nowhere. Both Archie and Porter told us that Nunery asked Porter, the President of Mosaica Turnaround Partners, to meet with Archie after the SRC meeting. Archie told us that Nunery reported back to him that he had called the Mosaica representative, who had told Nunery that Mosaica did not need MLK. Nunery also reported that he spoke to Porter, who agreed to meet. Nunery said, however, that Porter did not want to give up operating MLK if the SRC awarded it to Mosaica.

Porter recalled having received no such phone call from Nunery. Regardless of whether Nunery and Porter spoke before or during the SRC meeting, however, what both

Archie and Nunery make clear is that Archie had an interest in having Mosaica withdraw from the opportunity to operate MLK, and asked Nunery to summon Porter to a meeting with him after the SRC's public meeting. Moreover, Archie acknowledged in interviews that he told neither his fellow SRC members nor Ackerman about his interest in having Mosaica withdraw, his conversation with Nunery between the SRC executive session and public meeting, or his intent to meet with Porter after the SRC meeting. Nunery, too, did not mention these developments to Ackerman or any other SRC member.

At the public SRC meeting, several members of the public spoke directly to the SRC board. Of those who spoke about the charter assignment for MLK, some advocated for Foundations and some advocated for Mosaica. Evans gave an abridged, but forceful version to the SRC members and the public of the presentation he had given to the SRC in private. He described how awarding the charter for MLK to Mosaica would undermine the overarching plans he had for the educational institutions in the area. As he had in executive session, Dworetzky thanked Evans for his interest. After he finished speaking, Evans remained at the SRC meeting for its entire length.

Before the SRC voted whether to adopt Ackerman's recommendations for operators of the six Renaissance match schools, including MLK, Archie recused himself from the vote, citing his firm's prior representation of Foundations and his representation of Evans.⁶ The other three SRC members voted unanimously to adopt Ackerman's recommendations, and matched Mosaica with MLK and the Birney Elementary School (Birney). Porter contacted his office with the good news. Mosaica CEO Gene Eidelman sent a congratulatory e-mail to Porter, Mosaica executives and staff at 8:36 pm.

After the SRC meeting ended, Archie told Evans that he may have "good news" about MLK. Archie signaled to Nunery to bring Porter to a conference room around the corner from the SRC public meeting room. Nunery approached Porter, who was then telling a media interviewer that he was ecstatic about the opportunity to work with MLK. Nunery told Porter that Archie wished to speak with him. Porter accompanied Nunery back to the conference room, where Evans and Archie were waiting.

Porter, Archie, and Nunery did not recount identical versions of the meeting, although they agree about the substance of Evans's remarks to Porter.

According to Archie, he told Porter that he wanted to find a way for Evans and Porter to work together. Evans told Porter about his overarching educational plan that included MLK. Evans said he did not know Mosaica or Porter, but he knew Foundations. Evans said he might compete with Porter if Porter did not do what he was supposed to do. Porter asked Evans how they could work together, which Archie hoped they would do, but Evans made clear that he did not wish to do so. Archie later told us that he hoped during the meeting that Porter would say Mosaica did not need MLK, but that did not happen.

⁶The minutes of the March 16 SRC meeting reflect that Archie recused himself because of his prior representation of Foundations. The SRC members and Archie report that he recused himself in the SRC executive session, citing his representation of Foundations and Evans.

According to Porter, Archie said to him at the outset that he wanted to find a gracious way for Mosaica to walk away from MLK. Archie explained that Evans had an overarching educational plan for the neighborhood that included MLK, about which Porter may not have known. Archie said that Evans and Foundations had been in the area for years, and described how Foundations had improved MLK. Archie said that Mosaica was welcome in Philadelphia, just not at MLK. Evans then spoke for the next several minutes. Evans said he did not know or trust Mosaica, that he would not work with Mosaica, and that he would start a competing high school if he had to. He said that he did not like for-profit education companies, and that he would hate to see the same thing happen to Mosaica as happened to Edison (a school operator that had not succeeded in Philadelphia). He threatened that the media might make public Porter's difficulties in another school district. Evans emphatically rebuffed Porter's repeated suggestion that Mosaica could work with Evans at MLK. Porter was shocked to hear what he perceived to be threats to undermine Mosaica's chances of successfully operating MLK.

According to Nunery, Archie told Porter at the outset that this is Philadelphia, and suggested that things are different here. Archie said that Porter may not have known of Evans's larger plan for MLK. Evans then spoke, sarcastically wishing Porter well, but saying that he would not work with Mosaica because Evans did not like for-profit companies and he did not know Porter. He suggested that others in the community would not work with Mosaica, either, and that it would be difficult for Mosaica to succeed at MLK. When Porter suggested repeatedly that Mosaica and Evans could work together, Evans emphatically and repeatedly rebuffed him. Archie never contradicted Evans or suggested that Mosaica and Evans could work together at MLK.

The meeting appears to have lasted for 20-30 minutes. Porter – who said he was “in shock” and whom Nunery described to us as “shaking” -- left the building and got into a taxi. Nunery went upstairs to Ackerman's office, where Ackerman was debriefing a second Broad Superintendent Academy fellow who was shadowing her for the week. Witnesses who were present at that time, including the Broad Academy fellow, recalled Nunery entering visibly shaken and saying he had just attended a meeting that was like a scene from “The Godfather.”

Porter notified Ackerman and Archie the next day, in an e-mail sent shortly after 1:00 pm, that Mosaica would withdraw from MLK in deference to what he extolled as Evans's “extensive community plan” under which he said MLK “is destined for academic greatness.”⁷ Later that day, Evans and Lauer sent Ackerman the joint letter described above.

⁷ Porter told Previterra and me that he did not mean what he said in extolling Evans and Evans's plan (in fact, he had learned of the purported plan only on March 16, and all he had heard was Evans's general comments about it at the SRC meeting and in the conference room meeting with Evans, Archie, and Nunery). Porter told us, credibly, that he intended that the positive comments about Evans and his plan would provide some public justification for Mosaica's withdrawal, while not revealing Evans's hostility or jeopardizing Evans's goodwill towards Mosaica in Philadelphia.

April 9, 2011 meeting at Duane Morris with Evans and Ackerman

In the three weeks after Mosaica's withdrawal, the SDP explored whether the SAC and Foundations could come to an agreement to work together at MLK. The SAC met with representatives of Foundations on March 22, 2011 (Evans was present at that meeting) and again on April 5, 2011. The SAC also contacted Porter to see if Mosaica would seek to come back to MLK. On April 7, 2011, SAC president Conchevia Washington (Washington) asked Ackerman in a letter if the SDP would reinstate Mosaica as the operator of MLK for the following school year. Ackerman met with SAC members on April 8, 2011, at which time the SAC told Ackerman that the SAC did not want Foundations to operate MLK.

On April 8, 2011, Archie contacted Ackerman and summoned her to a meeting with Evans at Archie's law firm, Duane Morris, for Saturday, April 9, 2011. Ackerman, believing that this was another opportunity for Evans to pressure her into recommending that the SRC select Foundations as the MLK operator, did not wish to go. (Archie said in an interview that Evans asked him to set up this meeting with Ackerman to see if she would decline to defer the decision about MLK for a year.) Ackerman contacted another SRC member late in the afternoon about her reluctance to go. The SRC member advised her that she should go, but suggested that she take someone with her, and that she let the SRC members know that so that they would know about the meeting. Ackerman then e-mailed SRC members reporting that the MLK SAC did not want Foundations and that she had been asked to meet with Evans over the weekend, which she would do.⁸

On Saturday, April 9, 2011, Evans, Archie, and Ackerman met in a conference room at Duane Morris. According to Ackerman, Evans berated her because MLK "was supposed to go to Foundations." Ackerman told him Foundations had barely made the cut for eligible providers, and had lost in a fair turnaround process. She recommended that the SRC defer for a year voting about what to do with MLK. Evans said he would discuss it with "his people." According to Archie, he set up the meeting so that Evans and Ackerman could discuss what would happen to the kids; Ackerman, however, reported that Evans berated her for not having arranged for Foundations to be chosen as the operator of MLK. Archie reported that at the conclusion of the meeting, Evans said he would consider agreeing to have the SRC defer the decision about MLK for a year.

The three meetings described above, when considered with e-mails to and from Archie about MLK, as well as interviews with others and acknowledgements from Archie himself in two interviews with him, demonstrate that Archie – while publicly recusing

⁸ Ackerman told us that around this time a close friend warned her that an unidentified person had told him that if she interfered with having the MLK contract go to Foundations, then information about her tax problems with the IRS would be leaked to the media. Ackerman's friend corroborated this account. On April 12, Fox News reported that Ackerman owed over \$20,000 to the IRS, and other media outlets reported the story shortly afterwards. However, because neither Ackerman nor her friend would reveal the source of this warning, I cannot say that these news stories are linked to Ackerman's actions regarding MLK.

himself from involvement in the decision to match MLK with an outside operator -- worked behind the scenes to promote Foundations as MLK's operator.

E-mails, information, and documents

Many of the items described below, if considered individually, might not necessarily demonstrate an effort by Archie to promote Foundations, Evans, or both. Taken together and considered in light of the meetings described above, however, they show a picture of just that.

Throughout the events surrounding the award of MLK to Mosaica, Mosaica's withdrawal, and the MLK SAC's objections to what its members saw as unfairness in the process, Archie provided Evans with information, documents and e-mails,⁹ nearly contemporaneously as he received them, from Mosaica, the SDP, and members of the MLK SAC and the public unhappy with how the SDP was handling the Renaissance process for MLK. Some of these communications clearly disparaged the SAC members. For example:

-- On March 17, 2011, upon Mosaica's withdrawal from the MLK contract, Archie e-mailed Dworetzky negative articles Evans's office had provided to Archie about Mosaica's representative Porter, asking that SRC member "keep this quiet." On April 8, 2011, Archie e-mailed the same articles to Irizarry, after Archie learned that the MLK SAC was pressing to have the SRC reinstate the award to Mosaica. It appears that Archie's distribution of these articles was more of an attempt to bolster the case for awarding the MLK contract to Foundations rather than a reflection of real concern about Porter's history, since -- as he acknowledged, and consistent with the recollection of other SRC members -- Archie did not suggest that the articles provided a reason to retract or even question the award of Birney to Mosaica.

-- At 2:05 pm on March 17, 2011, Archie e-mailed Turner Mosaica's letter of withdrawal before the SRC had issued a press release about the Mosaica letter, asking her to "show it to Dwight."

--At 5:44 pm on March 17, 2011, Archie forwarded to Turner an e-mail he had received from an MLK SAC member 20 minutes earlier objecting to what the SAC member saw as an attempt to stack the Renaissance match process for Foundations and asking Archie to meet. Archie's cover message to Turner stated "FYI, the storm begins."

-- At 2:05 pm on March 18, 2011, after Ackerman agreed to meet with MLK SAC members, Archie sent an e-mail to Turner saying "this firestorm is not over yet and a meeting of the members of the School Advisory Council are meeting with Dr. Ackerman and me on Tuesday at

⁹ At my request, Duane Morris provided relevant nonprivileged e-mails from Archie's account.

1:30 pm at the School District Building 440 N. Broad Street to complain or vent over the default selection of Foundations.”

-- On March 21, 2011, Turner asked Archie about the next day’s meeting with the SAC, specifically for the names and numbers of the SAC participants. She asked “is there an agenda or is this just a gripe session?” Two minutes later, Archie forwarded Turner’s e-mail to the SRC chief of staff, who later responded to both Archie and Turner with the anticipated number of SAC participants, time, and place of the meeting.¹⁰

-- On March 25, 2011, Archie instructed his secretary to forward Turner an e-mail he had received from an MLK SAC member earlier that day saying that pressure needed to be placed on Archie and the SRC, and that “people need to know about the friendship and connection to Dwight Evans.”

Archie also disparaged Ackerman and an MLK SAC member in other e-mails to a longtime friend of his who, at the time, worked for the SDP. (The friend cancelled an appointment to speak with Previterra and me, and did not return my two phone calls attempting to reschedule the interview.) Specifically, on March 25, 2011, Archie forwarded to the friend an e-mail he had received from a SAC member urging the need to keep pressure on Archie and the SRC, saying “she [the SAC member] works at MLK.” His friend responded “Would you continue to pursue this matter if Dwight did not have an interest?” There is no e-mail reply, and Archie said in an interview he did not know if or how he responded to this question. On April 14, 2011, Archie forwarded to the friend by e-mail the Inquirer story reporting Ackerman’s IRS issues with the notation “FYI only.” He complained to his friend that Ackerman did not understand that friendship is “reciprocal.”

Moreover, the e-mails indicate a pro-Foundations, anti-Mosaica bias in the information Archie shared with his fellow SRC members. There is no indication in the e-mails I received from Duane Morris that Archie forwarded to his fellow SRC members any message he received either favoring Mosaica or objecting to the circumstances surrounding Mosaica’s withdrawal from MLK or Evans’s involvement in the process. He appears to have treated communications in favor of Foundations quite differently. On April 20, 2011, after his participation in the March 16, 2011 post-SRC meeting came to light, Archie forwarded to his fellow SRC members a package of letters from community leaders (including Congressman Robert Brady, State Representatives John Myers and Cherelle Parker, City Council members Frank DiCicco and Marian Tasco, Matlock-

¹⁰ On March 18, 2011, in a telephone call with a member of Ackerman’s staff (who provided us with notes she had taken during the call), Archie complained about having to meet with the MLK SAC members, who he said were complaining because they did not get their way. Archie questioned why the MLK SAC members had never expressed their concerns about Foundations to the SRC in the eight years that Foundations had been at MLK and disparaged the SAC’s ability to determine what’s best for MLK students. Archie objected only to the SAC process at MLK and at no other schools.

Turner, several MLK parents and other community members, and several unsigned letters [they appear to be form letters] purportedly from MLK students) that urged awarding Foundations the contract to manage MLK.

Archie's explanation of events

In asking me to conduct this fact-finding, you mentioned comments Archie made to you suggesting that he had acted properly in his dealings with Porter and Evans concerning MLK. Archie repeated the substance of these comments to Previterra and me in our interviews with him. None of these contentions, however, holds up in the face of the events I described, and do not affect my conclusions.

Archie's convening the March 16, 2011 meeting after the SRC vote was an attempt to get Mosaica and Evans to work together for the good of the MLK community.

This contention – suggesting that Archie just wanted everyone to get along without attempting to steer the MLK contract to Foundations -- is not supported by what I learned about the meeting and the circumstances both before and after it.

First, there's no dispute that Archie was interested in seeing if Mosaica would pull out of the MLK opportunity; both Nunery and Archie said that before the March 16, 2011 meeting, Archie wanted to see whether Mosaica would think about not operating MLK. Archie himself reported to Previterra and me that, after Nunery told him that he believed that might be so, he told Evans before the end of the SRC meeting that he might have "good news" for him.

Second, this contention directly conflicts with Porter's and, to a lesser extent, Nunery's recollections of Archie's comments at the meeting. Porter reported that Archie began the meeting by saying that he would like to find a gracious way for Mosaica to withdraw from MLK. While Nunery did not report that Archie's initial comments so explicitly stated that he would like Mosaica to withdraw from MLK, Nunery did report that Archie started the meeting by suggesting that Philadelphia does not operate by the usual rules and informing Porter that Evans already had a plan for MLK. Both Porter and Nunery reported that Archie's initial comments were followed by Evans's berating Porter that Evans did not trust or "know" Mosaica, and Evans's hostile rejection of Porter's repeated suggestions that Mosaica would work together with Evans in the community and at MLK.

Archie says, unconvincingly, that Evans genuinely wished Porter "good luck" in operating MLK. Not only does this account run contrary to Porter's and Nunery's descriptions in their interviews with Previterra and me, but it is contrary to Nunery's description of the meeting immediately after its conclusion to Ackerman and others, including the Broad fellow, as "something like out of the movie 'The Godfather.'" Archie's description, in fact, contradicts Evans's own description to Notebook reporter Bill Hangle of his behavior in that meeting as "like a dog on a bone." In any event,

Archie did nothing to stop Evans's unfriendly communications, much less suggest in the meeting that Evans should work together with Mosaica at MLK.

Finally, as evidenced by the communications and meetings described above, Archie acted over the course of several weeks to position Foundations to secure the MLK contract.

It was not Evans who persuaded Mosaica to withdraw from MLK, but Ackerman.

Archie told Previterra and me that it was Ackerman, not he or Evans, who secured Mosaica's withdrawal from MLK in a dinner meeting after Porter left 440 North Broad Street the night of March 16. What we've learned suggests otherwise.

Both Ackerman and Porter told us that after Porter left 440 in a taxi and Ackerman learned from Nunery about the Evans meeting, she contacted Porter. Nunery, Ackerman, and Porter all described Ackerman as distressed to learn that Evans had tried to pressure Porter and Mosaica away from MLK. Ackerman had known Porter from when she was an instructor and he was a fellow in the Broad Academy program several years before. She and Porter then met at the Marriott Hotel restaurant to discuss what had transpired at the meeting with Evans. The two discussed the difficulties Mosaica might face operating MLK in the face of Evans's hostility. Both said, however, that the decision about what to do was Mosaica's. Both e-mails from Mosaica, as well as interviews of Mosaica executives, show that shortly after 9:00 p.m., Porter attempted to contact Gene Eidelman, Mosaica's CEO, to discuss the situation. When Gene Eidelman could not be reached (he was on a plane), Porter discussed the situation with Gene's wife Dawn Eidelman, Mosaica's Chief Education Officer. Porter described MLK to Dawn Eidelman as a place where an important local politician would work against Mosaica's success there. Porter and Dawn Eidelman were concerned that Mosaica would be ill-served by risking failure at MLK, and discussed having Mosaica focus its efforts on doing a terrific job at Birney. Dawn Eidelman reported to me that she trusted Porter to make the decision. Porter and Ackerman reported that at the end of the evening, Porter was leaning towards having Mosaica withdraw from MLK, but would let Ackerman know in the morning.

Archie told us that Ackerman – concerned that she had committed “political suicide” by defying Evans's desire that she reject the MLK SAC's recommendation for Mosaica -- told him that evening that she had met with Porter, that Mosaica had decided to withdraw from MLK, that she was helping Porter draft a withdrawal letter, and that Archie should tell Evans what happened and give her credit for that outcome. Ackerman's version of events is different. She agrees that she called Archie to report that it looked as if Mosaica may withdraw, but denies that she drafted Mosaica's withdrawal or asked Archie to contact Evans about it. For his part, Porter says that he drafted the withdrawal e-mail the following day.

I find Ackerman's description of these events more credible than Archie's, since they are consistent with Porter's and, consistent with her insistence, as reported by many

others with whom we spoke, that the SAC process and the wishes of the SAC members be respected. Whichever version of events is correct, however, the fact remains that what led Mosaica to withdraw from MLK was the meeting Archie convened after the March 16, 2011 SRC meeting, and Evans's clear communication at that meeting – unimpeded and undiscouraged by Archie, and unreported to his fellow SRC members or Ackerman -- that he intended to make it difficult for Mosaica to successfully operate MLK.

The SAC was stacked with people who did not represent the community, whose preference was more accurately expressed in the 118-105 straw poll of March 8, 2011, in favor of Foundations.

This comment is a repeat of the complaint Foundations executives made to us that the SAC process did not operate fairly. They claim that prospective members who would have favored Foundations were excluded from the SAC. They also claimed that the SAC improperly excluded the MLK parent ombudsman from attending SAC meetings and failed to have a representative of a local elected official on the SAC. They also said that the Frontline facilitator should not have participated in the process because he had some time before applied for, but had not obtained, a job with Foundations. Our investigation found that these complaints were unfounded: the straw poll, as described above, was only a rough guide to community sentiment and not intended to be determinative; a member of Councilperson Donna Reed Miller's staff was on the SAC; the membership of the SAC was constituted according to the rules; the MLK parent ombudsman was not entitled to attend SAC meetings (and, as described below, appeared to be a proponent of Foundations in the process); and our review of the facilitator's notes, and interviews of several SAC members, the Frontline facilitator, his supervisor, and the SDP officials who supervised the process indicated that the SAC engaged in a thoughtful, thorough review of the pros and cons of both the Mosaica and Foundations proposals. Only those SAC members eligible to vote did so.

Moreover, several SAC members reported to us efforts by some to unfairly influence the SAC process in favor of Foundations. One SAC member, for example, reported that the MLK parent ombudsman who recruited him to serve on the SAC said at the time that she and the MLK staff preferred Foundations. The ombudsman then invited him to what she described as an orientation meeting for the SAC, which occurred not at MLK, but at PCAT, the out-of-schooltime program across the street from MLK operated by Foundations. This meeting was hosted by a Foundations staff member, who touted Foundations's programs at PCAT and at MLK. (The SAC member's description of events is uncontradicted; the ombudsman, who had initially agreed to meet with me, called back the day before our scheduled interview and said she would not meet.)

In short, Archie is echoing Foundations' complaints, which appear to be a rearguard attempt to secure Foundations' position at MLK by discrediting a process in which it was unsuccessful. While I cannot say and have no opinion about whether Mosaica or Foundations is the better choice or presented the better proposal, it appears that the process operated as intended.

MLK would be ill-served by Mosaica because of Porter's reportedly unfavorable employment history.

As described above, on March 17, 2011, Evans's aide Turner e-mailed to Archie, after Mosaica had sent its withdrawal e-mail, a collection of reprinted articles about Porter describing an investigation into his prior operation of the Oklahoma City school district for alleged conflict of interest.¹¹ Archie reported that this is the first time he had learned of potential concerns about Porter. If that's the case, this information did not factor into, and had nothing to do with, his effort to get Mosaica to withdraw on the evening of March 16, 2011.

Moreover, regardless of when he learned of Porter's employment history, Archie's claim that his concern about Porter's employment history was a reason for Mosaica not to operate MLK appears to be a pretext. Archie acknowledged that he neither investigated further nor reconsidered, or asked the SRC or SDP officials to reconsider, the SRC's decision to award MLK the contract for Birney.

Conclusion

Archie's motivation for helping Evans promote Foundations is unclear. But it is clear that in large part Archie was responding to political pressure from Evans. Several people whom we interviewed reported that Archie said that Ackerman's insistence on standing by the SAC process was politically naïve. SAC members reported that Archie told them in the March 22, 2011 meeting with Ackerman that politics is an "integral part" of the education process and "you can't ignore that." And numerous people with whom we spoke told us that Evans was a politically influential player whose wishes concerning SDP matters could not be easily disregarded. Archie himself, in corresponding with Jamilah Fraser, the SRC's communications chief at the time, about how to respond to media reports in April that he had attended the post-SRC meeting of March 16, 2011, said in an e-mail of April 22:

I, along with my fellow Commissioners were appointed by politicians and for the public to believe that politics is not a part of the education system when the only sources of the District's revenues are local, state and federal funds further evidences the results of "poor academic achievement" on the part of certain adults.

It's not surprising, then – even as it is disappointing and concerning – that Archie facilitated Evans's promotion of Foundations at MLK to the detriment of the SDP's process and the SAC's wishes. It's also not surprising, in light of Evans's perceived influence, that Mosaica abruptly withdrew from MLK and that Porter's March 17 e-mail

¹¹ The MLK SAC had received a similar report. A SAC member contacted the investigating authority and learned that the allegations, while resulting in Porter's resignation, were not sufficiently supported to result in any action against Porter and not a reason to change its conclusion that Mosaica should operate MLK. The SRC members appear to have agreed. Once apprised of the allegations concerning Porter, they did not reconsider the award of Birney to Mosaica.

to Ackerman withdrawing Mosaica from the operation of MLK insincerely described the reason for the withdrawal as Mosaica's deference to Evans's "community plan" that would lead to MLK's "academic greatness." For the same reason, it's equally unsurprising that SDP officials did not publicly acknowledge that it was Evans's hostile communications to Porter – uncontradicted if not endorsed by Archie -- at the post-SRC meeting on March 16, 2011, that led Mosaica to withdraw from MLK.

Having any SRC member accede to political pressure behind closed doors would be disappointing and concerning enough. But unlike the other SRC members, Archie publicly disqualified himself from involvement in a contracting decision concerning MLK because of his personal and business relationships with Evans and business relationship with Foundations. That public recusal was meaningless because at the same time Archie was privately promoting those interests. Archie's and Evans's actions in this matter have compromised the SDP's ability to secure parent involvement in their children's schools, to make decisions according to a fair process, and to garner public confidence in those decisions.

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