

HEMPSTEAD UNION FREE SCHOOL DISTRICT
DUE PROCESS PROCEEDING PURSUANT TO CONTRACT

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HEMPSTEAD UNION FREE SCHOOL DISTRICT and
BOARD OF EDUCATION OF THE HEMPSTEAD UNION
FREE SCHOOL DISTRICT,

Charging Parties;

-against-

SHIMON A. WARONKER, Ed.D.,

Respondent
-----X

**NOTICE OF
CHARGES
AND
SPECIFICATIONS**

TO: SHIMON A. WARONKER, Ed.D.
1241 Eastern Parkway
Brooklyn, NY 11213
(PERSONAL DELIVERY)

PLEASE TAKE NOTICE, that in accordance with NYS Education Law §1711, and the terms of your Employment Agreement dated May 11, 2017 (hereinafter "Contract"), the Board of Education (hereinafter, the "Board" or "BOE"), of the Hempstead Union Free School District (hereinafter, the "District" or "HUFSD"), is preferring the attached Charges and Specifications against you; and

PLEASE TAKE FURTHER NOTICE, that the BOE is providing you with notice of the Charges and Specifications after duly considering the contents thereof in Executive Session, together with the evidence in support thereof, on August 7, 2018; and

PLEASE TAKE FURTHER NOTICE, that the BOE is providing you with personal delivery of this Notice of Charges and Specifications, together with the underlying Charges and Specifications, in accordance with ¶10 of the Contract, prior to the commencement of the hearing to be held before a hearing officer selected in accordance with the Contract, to determine whether the Charges shall have been proven, and if so, what shall be the remedy; and

PLEASE TAKE FURTHER NOTICE, that the hearing before a hearing officer shall be scheduled as directed by the hearing officer; and

PLEASE TAKE FURTHER NOTICE it is the intent of the parties to provide an effective due process proceeding and to permit either party to appeal from any and all aspects of said proceeding and from the decision of the hearing officer pursuant to Section 310 of the Education Law or Article 78 of the Civil Practice Law and Rules; and

PLEASE TAKE FURTHER NOTICE that the cost of the hearing, including the transcript fees and expenses, will be borne by the District; and

PLEASE TAKE FURTHER NOTICE that you have the right to select a public or private hearing in your sole discretion; the right to be represented by counsel at all stages of said proceeding; the right to have all testimony taken under oath and the right to present witnesses on your own behalf; the right to question real and tangible evidence in any form, including documents, papers and other such evidence; and such other rights as set forth in ¶10 of the Contract; and

PLEASE TAKE FURTHER NOTICE, that the Board shall have the burden of proof and the burden of proceeding with regard to the Charges, and shall be required to prove the Charge by a preponderance of the evidence; and

PLEASE TAKE FURTHER NOTICE, that if none of the Charges against you are sustained as a result of the hearing and appeal, the Board shall reimburse you for the attorneys' fees and disbursements and other expenses incurred by you in defense of the Charges; and

PLEASE TAKE FURTHER NOTICE, that additional notice provisions, as set forth at the end of the underlying Charges and Specifications, are expressly incorporated by reference and made a part hereof, as if fully set forth at length herein; and

PLEASE TAKE FURTHER NOTICE that the service of these Charges and Specifications shall not be deemed a waiver of any rights which the Board has at law or equity or otherwise.

Preferred this 7th day of August 2018,



By: LANCE E. JOHNSON

Title: Trustee of the Board of Education

HEMPSTEAD UNION FREE SCHOOL DISTRICT
DUE PROCESS PROCEEDING PURSUANT TO CONTRACT

HEMPSTEAD UNION FREE SCHOOL
DISTRICT and BOARD OF EDUCATION OF
THE HEMPSTEAD UNION FREE SCHOOL
DISTRICT,

Charging Parties,

**CHARGES AND
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SHIMON A. WARONKER, Ed.D.,

Respondent.

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TO: SHIMON A. WARONKER, Ed.D.
1241 Eastern Parkway
Brooklyn, NY 11213
(PERSONAL SERVICE)

In accordance with the provisions of the Employment Agreement dated May 11, 2017 between the Board of Education (hereinafter, the "BOE" or the "Board") of the Hempstead Union Free School District (hereinafter, the "HUFSD" or the "District") and Shimon A. Waronker, Ed.D. (hereinafter, the "Respondent" or "you") for the position of Superintendent of Schools, for a four year term from July 1, 2017 through June 30, 2021 (**Exhibit 1**, a copy of the Contract), as amended by the First Amendment to the Contract, dated May 24, 2017 (**Exhibit 2**, a copy of the First Amendment to the Contract) (collectively, , as approved by the Board on May 31, 2017 so that you could commence your employment with the District on June 2, 2017 (**Exhibit 3**, a copy of the May 31, 2017 BOE Meeting Minutes), you are hereby notified that the District is preferring against you the Charges with Specifications set forth herein.

PLEASE TAKE NOTICE, that on January 9, 2018, the Board placed you on an Administrative Leave of Absence with Pay, by the passage of a resolution that also provided for an investigation of your actions and/or failures to act, which were suspected to be actionable against you, either as (1) breaches of your Contract, (2) instances of neglect of duty, or (3) events amounting to gross misconduct, as quoted below:

"RESOLVED, that the District's Superintendent of Schools, Shimon Waronker, is placed on Administrative Leave of Absence with Pay, for 60 days, pending the conduct of investigations in the confidential attachment annexed hereto; and it is further:

CONFIDENTIAL ATTACHMENT

(1) the BOCES investigation of his involvement in and the circumstances surrounding the publishing of the RFP, the responses to the RFP, the negotiations of the contract, the drafting of the contract and the

engagement of the New American Initiative ("NAI"), and any and all services rendered by NAI [corrected from NIA in the original], the processing of payments made to NAI, and the receipt of payments by NAI; and

(2) the District's Special Counsel's investigation of his involvement in and the circumstances surrounding the publishing of the RFP, the responses to the RFP, the negotiations of the contract, the drafting of the contract and the engagement of the New American Initiative NAI, and any and all services rendered by NAI, the processing of payments made to NAI, and the receipt of payments by NAI; and

(3) the District's Special Counsel's [to be assigned] investigation of the District's failure to timely submit a completed application for the Community School Grant;

(4) the District's investigation of the Superintendent of Schools' failure to timely implement a facilities maintenance and repair program for the boilers and pipes at the District's various buildings, which were assessed to be in need of repairs and maintenance by administrative staff, as well as by the Distinguished Educator, and as recorded in the Facilities Assessment conducted by the Superintendent of Schools and completed before September 28, 2017; and

(5) the District's investigation of the Superintendent of Schools' failure to timely implement a Violence Suppression and Security Plan at the High School and the Middle School; and

(6) the District's investigation of the Superintendent of Schools' failure to timely and responsibly investigate, and report to the Board of Education as repeatedly demanded by members of the Board the facts and circumstances concerning the termination of the High School Principal.

(7) the District's investigation of the Superintendent of Schools' disenrollment of approximately 300 students in the High School in the Fall of 2017, which is under review by the NYSED.

PLEASE TAKE FURTHER NOTICE, that on February 1, 2018, while you continued to be on an Administrative Leave of Absence with Pay, the Board passed a resolution that added an eighth area of investigation concerning your actions, which were suspected to be (1) a material breach of your Contract, (2) an instance of neglect of duty, or (3) an instance of gross misconduct, which resolution is quoted below:

**RESOLUTION TO INVESTIGATE MATTERS
RELATED TO EMPLOYEE #4622**

RESOLVED, that the District's Labor Counsel is directed to investigate the facts and circumstances surrounding the disclosure of a preliminary report issued by Plante Moran, dated January 11, 2018, as an additional area of inquiry regarding Employee #4622.

PLEASE TAKE FURTHER NOTICE, that your Contract provides, among other terms and conditions related to disciplinary action as a basis for terminating the Contract, that "The Superintendent shall not be suspended, disciplined, or terminated, without just cause, and only for alleged acts of material breach of this Agreement, neglect of duty, gross misconduct ... according to the evidentiary standard hereinafter set forth and only following a fair hearing before and impartial hearing officer." In accordance with such terms, the Board approves the Charges with Specifications preferred herein against you, which are grouped in sections as follows:

- Section I: Charges wherein the District contends that the alleged acts constitute "a material breach of this Agreement"
- Section II: Charges wherein the District contends that the alleged acts constitute "neglect of duty"; and
- Section III: Charges wherein the District contends that the alleged acts constitute "gross misconduct."

PLEASE TAKE FURTHER NOTICE, that to facilitate review of the Charges and Specifications set forth herein, we provide the following summary table, which does not limit in any way, the substantive content of each such Charge set forth herein:

Section I	Charges wherein the District contends that the alleged acts constitute "a material breach of this Agreement"
Charge 1	Violation of Law – Conflict of Interest – NAI Undisclosed Interest in NAI
Charge 2	Violation of Law - Conflict of Interest – NAI Bid Rigging in Award Contract to NAI
Charge 3	Violation of Law – Conflict of Interest – NAI Improper of Award of Contract and Improper Payments to NAI
Charge 4	Violation of Law – Conflict of Interest – NAI Stealing Time (9-25-17 and 9-16-17) for work for NAI
Charge 5	Violation of Law – Conflict of Interest – NAI Stealing Time (7-25-17) for work for NAI
Charge 6	Violation of Law – Conflict of Interest – NAI Stealing Time (7-9-17 through 7-14-17 for work for NAI)
Charge 7	Violation of Law – Conflict of Interest – NAI Self-Dealing Regarding NAI
Charge 8	Violation of Law - Conflict of Interest – NAI Awarding work to NAI
Charge 9	Violation of Law – Conflict of Interest – NAI Cronyism - Hiring under False pretenses; Sham Hiring process; 1) Hiring Master teachers

Section I	Charges wherein the District contends that the alleged acts constitute "a material breach of this Agreement"
	2) Hiring Varleton "Mac" McDonald
Charge 10	Violation of Law – Conflict of Interest – NAI
Charge 11	Violation of Law – Civil Service Law §100 & Certified Payroll Fraud
Charge 12	Violation of Law – Improper Accounting for Grant Funds – payments to NAI in Violation of PSSG Funds
Charge 13	Violation of Law – Improper Accounting for Grant Funds – payments to Master teachers in Violation of Title I Funds
Charge 14	Violation of Law – Disenrollment
Charge 15	Violation of Law – Delaying or Denying Re-Enrollment
Charge 16	Violation of Law – Not Following the High School's School Improvement Plan while in Receivership
Charge 17	Violation of Law – Not Managing Performance of High School Principal in While in Receivership
Charge 18	Violation of Law – Breach of Confidentiality of Personnel Records
Charge 19	Violation of Law – Breach of Confidentiality – Plante Moran
Charge 20	Violation of Law – Unlawful Disclosure of Student Identities (FERPA)

Section II	Charges wherein the District contends that the alleged acts constitute "neglect of duty"
Charge 21	Neglect of Duty – Failure to Timely Develop an Action Plan
Charge 22	Neglect of Duty – Failure to Properly Manage the High School
Charge 23	Neglect of Duty – Failure to Properly Manage Staff of Eve of Opening for School
Charge 24	Neglect of Duty – Failure to Properly Manage the CSG
Charge 25	Neglect of Duty – Failure to Properly Manage Facilities Maintenance & Repairs
Charge 26	Neglect of Duty – Failure to Properly Validate NAI Billing
Charge 27	Neglect of Duty – Failure to Properly Manage ABGS 6 th Period Teaching Liability Arbitration
Charge 28	Neglect of Duty – Failure to Negotiate Receivership Deal for Master Teachers
Charge 29	Neglect of Duty Failure to Properly Manage High School Violence

Section III	Charges wherein the District contends that the alleged acts constitute "gross misconduct."
Charge 30	Gross Misconduct – Disenrollment of 294 Students without Compliance with Law
Charge 31	Gross Misconduct – Violating Due Process rights of Disenrolled Students
Charge 32	Gross Misconduct – Bid Rigging
Charge 33	Gross Misconduct – Hiring NAI and Wasteful Spending
Charge 34	Gross Misconduct – Referring to Students as "Road Kill" and "Dead Weight"
Charge 35	Gross Misconduct – Denying Disenrolled Students the Right to Re-Enroll
Charge 36	Gross Misconduct – Purposeful breach of Confidentiality (Plante Moran)

Section III	Charges wherein the District contends that the alleged acts constitute "gross misconduct."
Charge 37	Gross Misconduct – Hiring Weak Business Official to Permit Abuse of Discretion
Charge 38	Gross Misconduct – Approving Underserving OT for Management Employee
Charge 39	Gross Misconduct – Abuse of Discretion (Negative Publicity)
Charge 40	Gross Misconduct – Conflict of Interest – Undue Pressure on Employees for Payments to be made to the NAI
Charge 41	Gross Misconduct – Conflict of Interest – Undue Pressure on Claims Auditors for Payments to be made to the NAI

PLEASE TAKE FURTHER NOTICE, that your Contract provides that if a member or members of the Board seek to terminate your Contract, they shall be required to (1) prepare a detailed Statement of each Charge, (2) review each Charge in Executive Session and to determine the sufficiency of evidence respecting each Charge, and (3) vote on each Charge and specifications as to whether probable cause exists (the "Vote"). The Contract further provides that in the event any Charge is found to contain sufficient probable cause, then the Superintendent shall be served personally with a particularized written statement of each of the Charges within two (2) days of the Board's Vote, and the procedures set forth in Article 10 of your Contract shall be followed for the hearing and determination as to each such Charge.

PLEASE TAKE FURTHER NOTICE, on August 7, 2018, the Board held a meeting to review each of the Charges set forth herein, and to determine the sufficiency of the evidence respecting each Charge, in Executive Session, and thereafter voted on each of the Charges and the Specifications in support thereof, as to whether probable cause exists (the "Vote"); and

PLEASE TAKE FURTHER NOTICE, that in accordance with the terms of your Contract, the District does hereby prefer the following Charges and Specifications against you; and

PLEASE TAKE FURTHER NOTICE, that the District is serving these Charges Specifications against you in accordance with your Contract, and shall proceed with a hearing thereon in accordance with the procedure set forth in your Contract.

Section I:

**Charges wherein the District contends that
the alleged acts constitute
“a material breach of this Agreement”**

CHARGE #1:

YOU MATERIALLY BREACHED THE CONTRACT BY FAILING TO PERFORM THOSE DUTIES AS SET FORTH IN THE EDUCATION LAW OF THE STATE OF NEW YORK, OTHER STATUTES OF THE STATE OF NEW YORK OR THE RULES AND REGULATIONS OF THE COMMISSIONER OF EDUCATION OR BOARD OF REGENTS

(CONFLICT OF INTEREST REGARDING NAI –

- (1) YOUR COVERT ROLE CONTINUING TO WORK FOR NAI,**
(2) YOUR DECEPTIVE APPOINTMENT OF LORRAINE SCORSONE TO ACT AS INTERIM CEO, UNTIL YOU RESUMED AS CEO OF NAI; and
(3) YOUR IMPROPER NON-DISCLOSURE OF YOUR CONTINUATION OF YOUR WORK AS A DE FACTO OFFICER OF, OR INTERESTED PERSON IN, NAI, TNAA¹ AND TNAACS², FROM JUNE 2, 2018 UNTIL NAI CLOSED)

Specification:

On May 11, 2017, you entered into your Contract with the District and represented that you had past professional and financial relationships with organizations that you might recommend that the District enter into transactions with, to help the District attract and retain talent to improve the instruction for students, and you included The New American Initiative (hereinafter, the “NAI”) in the list of four (4) entities that you specifically named as possible firms to recommend to the District. *See, Exhibit 1*, a copy of the Contract, at ¶15.

As the District’s Superintendent of Schools, you assured the District that your conduct with respect to the NAI, and the other entities listed in the Contract, would be in a manner that would “eliminate any possible conflict of interest.” *See, Exhibit 1*, a copy of the Contract, at ¶15.

On May 11, 2017, you also represented in your Contract with the District that you would not pursue engagements with third parties outside the District for additional compensation to the Superintendent, without prior written notice to the Board, and regardless of notice, would refrain from any such engagement unless it was clear that such engagement would not, and “does not present an actual or potential conflict of interest with the District or interfere with the Superintendent’s performance of his duties to the District.” *See, Exhibit 1*, a copy of the Contract, at ¶16.

On May 24, 2017, you entered into an Amendment to your Contract with the District, to start work early as the District’s Superintendent, commencing on June 2, 2017, instead of July 1, 2017 to start. *See, Exhibit 2*, a copy of the First Amendment to the Contract.

¹ TNAA stands for “The New American Academy”

² TNAACS stands for “The New American Academy Charter School”

On May 31, 2017, the BOE approved your early start date, for the purported reason to enable you to begin your term as Superintendent as soon as possible so you would have the time, prior to the commencement of the 2017-18 school year, to familiarize yourself with the District and its personnel, facilities, policies and practices and be better prepared for the commencement of the academic year in order to ensure a seamless and efficient transition of District leadership. *See also, Exhibit 3*, a copy of the May 31, 2017 BOE Meeting Minutes, at p.2.

On June 2, 2017, you started working as the District's Superintendent of Schools, thereby making you "the Chief Executive Officer of the school district and the educational system" of the HUFSD.

The law requires you, as an Officer of the District, to conduct yourself in a manner that is free from prohibited conflicts of interest.

The term "conflict of interest" describes a situation in which a School Board member, District Officer or an employee of the District, is in a position to benefit financially, directly or indirectly, from a decision that he or she may make on behalf of the District, through the exercise of official authority or by disposing of public funds. *See, School Law Hornbook, 34th Edition, 2:89; see also, General Municipal Law §801.*

The term "contract" is defined to include any claim, account, or demand against, or agreement, express or implied, as well as the designation of a depository of public funds or a newspaper for use by the School District. *See, School Law Hornbook, 34th Edition, 2:89; see also, General Municipal Law §800(2).*

The term "interest" is defined as a direct or indirect pecuniary benefit that accrues to the Officer or the employee as a result of the contract with the School District. *See, School Law Hornbook, 34th Edition, 2:89; see also, General Municipal Law §800(3).*

The General Municipal Law expressly makes the provisions regarding conflicts of interests applicable to School Districts. *See, School Law Hornbook, 34th Edition, 2:89; see also, General Municipal Law §800, et seq.*

General Municipal Law Section 801, entitled, "Conflicts of Interest Prohibited," provides, in relevant part, as follows:

Except as provided in section eight hundred two of this chapter, (1) no municipal officer or employee shall have an interest in any contract with the municipality of which he is an officer or employee, when such officer or employee, individually or as a member of a board, has the power or duty to (a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder, (b) audit bills or claims under the contract, or (c) appoint an officer or employee who has any of the powers or duties set forth above and (2) no chief fiscal officer, treasurer, or his deputy or employee, shall have an interest in a bank or trust company designated as a depository, paying agent, registration agent or

for investment of funds of the municipality of which he is an officer or employee.

General Municipal Law Section 802, entitled, "Exceptions," at subsection (1)(b), provides, in relevant part, as follows:

The provisions of section eight hundred one of this chapter shall not apply to:

1.b. A contract with a person, firm, corporation or association in which a municipal officer or employee has an interest which is prohibited solely by reason of employment as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such contract and the duties of such employment do not directly involve the procurement, preparation or performance of any part of such contract;

General Municipal Law Section 803, entitled, "Disclosure of Interest," provides, in relevant part, as follows:

1. Any municipal officer or employee who has, will have, or later acquires an interest in or whose spouse has, will have, or later acquires an interest in any actual or proposed contract, purchase agreement, lease agreement or other agreement, including oral agreements, with the municipality of which he or she is an officer or employee, shall publicly disclose the nature and extent of such interest in writing to his or her immediate supervisor and to the governing body thereof as soon as he or she has knowledge of such actual or prospective interest. Such written disclosure shall be made part of and set forth in the official record of the proceedings of such body.

General Municipal Law Section 804, entitled, "Contracts Void," provides, in relevant part, as follows:

Any contract willfully entered into by or with a municipality in which there is an interest prohibited by this article shall be null, void and wholly unenforceable.

General Municipal Law Section 805, entitled, "Violations," provides, in relevant part, as follows:

Any municipal officer or employee who willfully and knowingly violates the foregoing provisions of this article shall be guilty of a misdemeanor.

General Municipal Law Section 805-A, entitled, "Certain Actions Prohibited," provides, in relevant part, as follows:

1. No municipal officer or employee shall:

a. directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part;

b. disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interests;

c. receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee; or

General Municipal Law Section 806, entitled, "Code of Ethics," provides, in relevant part, as follows:

1. (a) The governing body of each county, city, town, village, school district and fire district shall and the governing body of any other municipality may by local law, ordinance or resolution adopt a code of ethics setting forth for the guidance of its officers and employees the standards of conduct reasonably expected of them. Notwithstanding any other provision of this article to the contrary, a fire district code of ethics shall also apply to the volunteer members of the fire district fire department. Codes of ethics shall provide standards for officers and employees with respect to disclosure of interest in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, future employment and such other standards relating to the conduct of officers and employees as may be deemed advisable. Such codes may regulate or prescribe conduct which is not expressly prohibited by this article but may not authorize conduct otherwise prohibited. Such codes may provide for the prohibition of conduct or disclosure of information and the classification of employees or officers.

You violated the above quoted laws, after you started working as the District's Superintendent of Schools on June 2, 2017, by causing the District to enter into a contractual relationship with the NAI, which created a conflict of interest for you, since you actually neither

stopped working nor stopped guiding the operations of the NAI, which fact you deceptively concealed from the District.

You actively misled the District, by including language in your Contract to state, "The Superintendent has had professional or financial relationships with organizations that he may recommend that the District enter into transactions in order to help the District ...," including the NAI. See, **Exhibit 1**, at ¶15. By use of such language, you misled the District and expressly misrepresented the facts, pretending that you no longer had a professional or financial relationship with the NAI, implying falsely that your interests in the NAI had been severed, and deceptively presenting your relationship and interests in the NAI in the past tense. You were not honest and avoided disclosing to the District that your relationship with the NAI was ongoing, that you intended to continue to operate as a *de facto* officer of the NAI (even if you could argue you had resigned as CEO *de jure*). Nor did you request permission and approval from the District, its counsel, the NYSED, to be able to lawfully act as a *de facto* officer of the NAI, which was a vendor that you sought to enrich with lucrative contracts with the District. Nor did you disclose that you were acting as a *de facto* officer of the NAI, continued to have an interest in its success and growth, and were retaining a beneficial interest in its development for its and your own future gain and enrichment.

Deceptively, and manipulatively, and in violation of law, you concealed the truth from the District and engaged in a course of conduct that was an egregious violation of the laws prohibiting a Superintendent of Schools from both acting as an officer of the District and, at the same time, as an undisclosed and continuing *de facto* officer of a vendor to whom the Superintendent of Schools routed hundreds of thousands of dollars of work from the District.

Add to the mix that the vendor, the NAI, offered an educational program that proved unable to generate results to maintain support from its other clients, and proved to be financially not viable, made the referral questionable at best, unlawful at worst. Nonetheless, you caused the District to award "reflective praxis" work to the NAI, in part, because you knew it was the only way that NAI as an organization could stay afloat and remain solvent, as will be shown in subsequent Charges herein. Accordingly, the course of conduct that you engaged in with NAI was an egregious violation of the laws prohibiting conflicts of interest.

By this Charge #1, and these Specifications, the District shall show that from June 2017 through February 2018, you (1) continued to be a principal operator and *de facto* officer of the NAI, (2) took concrete action to conceal your continuing operational activity for the NAI, (3) actively guided the NAI staff that you pretended to leave behind at that organization, (4) actively participated in operating its programs, (5) continuing to monitor and actively manage its operations, (6) remained involved in its finances and its revenues, guiding your staff at the NAI how to bill the District for services it rendered, and how to secure business from other clients of the NAI, (7) helped guide it when write letters to the District, how to formulate responses to the District, and how to bill the District, and remained involved in the NAI until you were placed on ALOA with pay on January 9, 2018, and then the NAI closed shortly thereafter.

Subsequent Charges will demonstrate that you engaged in equally egregious conflicts of interest involving the NAI, including:

- (1) Bid rigging to ensure the NAI gets the contract with the District; and
- (2) Securing payment to the NAI on its billing that you caused the District to pay without the District's staff first validating or reviewing NAI's billing to confirm the District received the services billed for, or to determine if the billing comported with the value of the services claimed to have been provided,
- (3) Pressuring and coercing the staff at the District, including your direct subordinates in the District's Business Office (hereinafter, the "BO") to pay the NAI as fast as humanly possible and in advance of all other vendors, and out of cycle with the ordinary and routine process of payment to vendors, and
- (4) Pressuring and coercing the staff at the District's external claims auditors to prioritize the NAI billing for payment not only on accelerated payment basis unlike the treatment of any other vendors, but on occasion, to be paid on the same day as the NAI's billing was presented, even if for services of negligible value, whereas other vendors, such as BOCES, who provided critical services for students that the District could not go without providing to students, were forced to endure not being paid for months on end.

In breach of your contractual obligations, and despite the understanding expressed by the District in its resolution passed on May 31, 2017, to hire you starting June 2, 2017, so you could "familiarize [yourself] with the District and its personnel, facilities, policies and practices and be better prepared for the commencement of the academic year in order to ensure a seamless and efficient transition of District leadership" (*see, Exhibit 3*) you instead focused on your conflict of interest agenda to promote the best interests of the NAI, over the interests of the District, because you never stopped working for the NAI.

A. Your work for the NAI continued after June 2, 2017, without Interruption.

On June 2, 2017, literally within hours of you commencing work for the District, you pursued a conflict of interest, seeking to secure a contract between the District, which you now headed as the Superintendent of Schools, with the NAI, the entity you founded and served as its CEO from its founding through and after you were hired by the District, and which entity you continued to serve and work for, even though you claimed you had discontinued being its leader. *See, Exhibit 4*, a copy of the weekly conference call scheduled between you, as Superintendent of Hempstead Schools, and the NAI, starting on June 2, 2017 at 8:30am.

Instead of focusing on the operations of the District starting June 2, 2017, as required by your Contract, you prioritized your loyalty to the NAI, and continued to be intricately and intimately involved in the operations of the NAI, including remaining involved in the day to day operations of NAI, and its sister organization, TNAA, providing guidance to its staff by email.

On June 12, 2017 and June 13, 2017, you prioritized the NAI and TNAA over the needs of the District, attending a "Master Teacher Institute" being hosted by NAI, where you acted as one of NAI's or TNAA's presenters. *See, Exhibit 5*, a copy of June 12, 2017 email and June 13, 2017 Agenda for the meeting at TNAA, produced in discovery in the federal litigation that you commenced, at p. MW-NAI-0021, p. MW-NAI-0043 - p. MW-NAI-0051. Tellingly, your involvement in the Master Teachers Institute on June 13, 2017, was concealed from the District,

by you using your “swaronk@thenewamericanacademy.org” email address to conduct such business while you were supposed to be working for the District.

B. Your work for NAI to secure a contract from the District for NAI.

From June 12, 2017 through June 23, 2017, you engaged in bid rigging, to serve the best interests of the NAI, not the best interests of the District. *See, Charge #2, infra.*

From June 12, 2017, when you first started conversing with John Sheahan, Esq., of Guercio and Guercio LLP, the District’s General Counsel, concerning your desire to award a contract to the NAI without pursuing an RFP, through June 15, 2017, when he rejected your stated preference to have the District give a contract to the NAI by direct award, you failed to disclose that you continued to work for and provide operational guidance to NAI. Nonetheless, given the history of your dealings with the NAI, and the appearance of impropriety raised by your past connections with NAI, John Sheahan Esq., advised you and the Board that an RFP would be the prudent course to take regarding any possible engagement of the NAI as a vendor to the District. *See, Exhibit 6*, a copy of the June 15, 2017 memo from John Sheahan to you and the Board, rejecting your efforts to award NAI a contract without an RFP.

Your failure, however, to disclose to John Sheahan Esq., at that time, that you continued to work for the NAI (*see, Exhibit 4*, the weekly calls), including serving as one of its presenters at an event at NAI as recently as June 13, 2017 (*see, Exhibit 5*, the June 13 Master Teacher Institute email and agenda), constituted a deceptive course of conduct.

On June 22, 2017, which is the day before the June 23, 2017 RFP “Open Date,” your secretary at the NAI, Dini Gourarie, wrote to John Sheahan, Esq., forwarding to him a proposed contract for the NAI, as if it had already won the RFP and had been awarded the service contract opportunity. The timing of the email prompted Mr. Sheahan to write in response, at 4:02pm on June 22, 2017, as follows: “Has there been a determination to award the RFP to the New American Academy?” . *See, Exhibit 7*, a copy of the June 22, 2017 email exchange between Dini, you and John Sheahan, Esq., concerning whether the NAI “draft contract is ‘kosher’ as presented,” as you subsequently asked of him.

In response, Dini Gourarie did not write back. Had she been the one to write back, it would have been inappropriate, because although she was pretending to be a “project manager” for the NAI working on site at “the client,” the truth is that she was acting as your confidential personal secretary inside the District’s Administrative Offices (hereinafter, the “AO”), improperly and in violation of Civil Service Law §100 and §101, but acting as your personal assistant just the same. Her work in your office as your confidential secretary enabled you to pursue your conflict for the NAI while working for the District, but also displaced the work and role to be played by Ana Lovasz, the confidential secretary to the Superintendent of Schools provided by the District. The civil service violations attendant to your employment of Dini Gourarie, to work on both the NAI matters (pursuing your conflict of interest) and your District matters (and thereby displacing a substantial portion of Ana Lovasz’s duties), supports the

Charge against you that you violated the Civil Service Law, which is the subject of separate Charges and Specifications herein. *See, Charge #11, infra.*

As inappropriate as it was for Dini Gourarie to make her inquiry for NAI on June 22, 2017, it was all the more inappropriate for you to follow up for NAI later that day, since you were supposed to be representing the District with neutrality as to who would win the bid in response to the RFP. Your failure to remain uninvolved at that moment in time exposes your conflict of interest.

Compounding the nature of the conflict by even inquiring, you make a naked admission of your conflict by writing back, saying, "No. Need your legal advice so this draft contract is kosher. Can we talk tomorrow?" *See, Exhibit 7*, a copy of the June 22, 2017 email exchange between you and John Sheahan, Esq., including your words, asking for the NAI, whether its "draft contract is 'kosher' as presented."

After further exchanges of email, you ask to talk to Mr. Sheahan at 8am on June 23, 2017, to review a draft contract for the NAI, which is six (6) hours before the RFP opening at 2:00pm on June 23, 2017. *See, Exhibit 7.*

Even worse, you reviewed the NAI's response to the RFP before the NAI submitted its RFP response to the District, even though you were then the District's Superintendent of Schools. *See, Exhibit 79*, a copy of an email from Dini Gourarie to Shimon Waronker (on his "thenewamericanacademy" email account), dated June 22, 2017, with attachments, produced in discovery in the federal litigation that you commenced, at p. MW-NAI 0004196 through 0004210, marked CONFIDENTIAL. Worse, still, she and you were writing clandestinely, to your "swaronk@thenewamericanacademy.org" email address, evidencing an intent to conceal this improper behavior.

On or about June 22, 2017, your emails via Dini Gourarie pursuing a contract for the NAI, even though you were the District's Superintendent of Schools, prompted John Sheahan, Esq., to reject discussing the NAI contract with Dini Gourarie or you. He will testify that your conduct had exposed to him that you were too involved for a normal vendor procurement exercise. However, he will testify that he had no idea that you were still working for the NAI and that you were utterly conflicted in those discussions because you were an undisclosed *de facto* Officer of the NAI at that time. John Sheahan Esq., merely considered it to have an "appearance of impropriety" for him to be negotiating with either you or Dini Gourarie, the terms of any contract between the District and the NAI, especially on June 22, 2017 (the day before the open date, as if you know something you should not know and are absolutely certain that you shall win because there will be no other bidders), and especially given your purported "history" as a recently resigned CEO and founder of the NAI. So, he asked to engage with a different person than you concerning the NAI. In response, you rolled out Lorraine Scorsone for him to interact with for the NAI, holding her out to be a successor CEO to you at the NAI.

On June 23, 2017, you caused Dini Gourarie to submit by hand delivery the NAI RFP response.

On June 23, 2107, the NAI was the only entity to submit a bid in response to the District's RFP, which you caused the NAI to help draft so that the bid could be won by the NAI. That fact, plus others, supports the Charge against you that you engaged in bid rigging, to serve the best interests of the NAI, not the best interests of the District. *See, Charge #2, infra.*

After the June 23, 2017 RFP opening at 2:00 p.m., the District Clerk never informed Lorraine Scorsone that the NAI had won the bid and that the next step was for the contract to be negotiated. Nor did the Purchasing Agent. Nor did the Board, prior to June 27, 2017. Notably, although the Board held a meeting that same Friday night (June 23, 2017, from 6:00pm until 10:55pm), that meeting concerned only the then pending Lamont Johnson removal proceeding, and the Board did not address at that meeting the failure of the RFP process³, which failed to procure any other bids besides the one from the NAI.

Certainly, nothing should have been decided upon, or acted upon, prior to decisions being made in accordance with applicable District Policy for Purchasing, under which the Purchasing Agent has the authority to guide the Board as to procurement of services.

Yet, you usurped the power and discretion of both the Purchasing Agent and the Board of Education, in terms of making purchasing decisions that serve the best interests of the District, by pushing the process to award a contract to the NAI, and by preventing the Purchasing Agent from doing his job to protect the integrity of the purchasing process, as mandated by:

- Board Policy #6700 (Purchasing),
- Board Policy #6700-R (Purchasing Regulation),
- Board Policy #6710 (Purchasing Authority),
- Board Policy #6720 (Bidding Requirements) and
- Board Policy #6720-R (Bidding Requirement [Competitive] Regulation).

On June 23, 2017, you informed John Sheahan, Esq., that the NAI was the prevailing bidder on the RFP, without informing him that NAI was the only bidder, and asked him to send to Lorraine Scorsone, your purported successor as CEO to you at the NAI, a draft consulting agreement. There is no delay for the Board to consider a report from the Purchasing Agent that the RFP was a failure because only one bid was received. There is no opportunity given to the

³ The irony of that conclusion is not lost on the District, since (1) the premise of the conclusion is that an RFP process is supposed to net the District many qualified bidders capable of providing the services sought by the District, so that it has ample choices, and can be certain that it is getting the lowest bid and most responsible candidate from as many bidders as possible within the field of providers of such services; (2) from the NAI point of you, and from yours, the opposite conclusion may be drawn, and the RFP process could be viewed as a success, because it left the District with no other choice but the NAI to be selected, and (3) the dichotomy of the two views is the best expression of the conflict of interest that you, personally had wearing both hats at the same time, since you had an irreconcilable set of agendas with 2 masters to serve at the same time. Individually, you had a hopeless conflict, since personally you were aligned with the NAI and had that hat to wear (to cause the NAI to "land the account," by whatever means necessary), and yet you were supposed to be the guardian of the District's best interests to secure options and best price, from competition, via an RFP process. Unwilling to avoid the conflict of interest, you prioritized the best interests of the NAI (to win the bid) over the best interests of the District (to have choice and to make sure it received the best choices and the most insight and transparency as to the scope and cost and relevance of such services compared to the District's actual needs).

Board, and no time taken to reflect on the options available to the Board, to consider whether the District should put the service contract out to bid again, to see if there are other vendors with more experience, or better pricing, or alternate approaches, so that the District can have the benefit of true competitive bidding. Accordingly, on your request, made with Board President Maribel Touré's support, John Sheahan sends to Lorraine Scorsone a form consulting agreement at 3:56 p.m., which is within two hours of the open date and time at 2:00 p.m. See, **Exhibit 8**, a copy of June 23, 2017, 3:56 p.m., email from John Sheahan, Esq., to Lorraine Scorsone, with the draft consulting agreement, produced in discovery in the federal litigation that you commenced, at p. MW-NAI-1739 – p. MW-NAI-1748.

On June 23, 2017, at 4:36 p.m., Lorraine Scorsone forwarded John Sheahan's email and the draft consulting agreement he sent to her for NAI, to you and Dini Gourarie, to express her excitement about this development. Her email to you is a momentous writing, for three (3) reasons:

First, she knew the topic of her comments and emotions should not be shared with you on your District email address, where it could be seen by others, and compromise your secret continuing involvement and vestedness in the NAI, so she writes to you at your TNAA email address, "swaronk@thenewamericanacademy.org," saying, "Thank you sooo much. I can't believe the timing of this." This was a purposeful act. She didn't need to write a forward email to you, since you were cc'd on John Sheahan Esq.'s email at your District email address, and she could have just replied to you directly, but then again, that would have put her email on the District's servers. She didn't do that. Instead of simply replying to the Sheahan email, but replying to you only, she opted to communicate with you surreptitiously, writing to you privately at "swaronk@thenewamericanacademy.org," using your TNAA email address, which confirms you had a continuing interest in the NAI.

Second, she cannot wait, and writes to you because she is so excited that you "pulled off a miracle," or delivered a "blessing" for the NAI, since you enabled the NAI to win a fast tracked contract award from your new employer, the District. Why was it so momentous? She writes to you, "Thank you sooo much. I can't believe the timing of this" because she knew, as you did, that the NAI was on the verge of going out of business due to insufficient funding to sustain its operations.⁴ She writes to share her excitement because you prevented the shutdown of your pet

⁴ The NAI was on the verge of going out of business due to the cash flow problems that NAI was experiencing, had been running at a \$4,854.23 monthly deficit for months, and had been operating in the red for four months since March 2017. See:

Exhibit 29, a copy of 2016-17 Cash Flow analysis for the NAI/TNAA in excel spreadsheet format, showing the NAI was in operating at a deficit of \$4,854.23 per month, was in red starting in March 2017, and going deeper and deeper into the red each month into June 2017, which document was produced in discovery in the federal litigation that you commenced, p. MW-NAI-0025158; and

Exhibit 23, a copy of 2016-17 Projected Budget for the NAI/TNAA in excel spreadsheet format, showing the NAI was forecasted to operate in the red in the 2016-17 school year, showing a forecasted deficit by June 30, 2017 of \$22,163.20, which sum would have been \$89,358.20 if the NAI not had a surplus carry forward of \$67,195.00 from the year prior, which document was produced in discovery in the federal litigation that you commenced, at p. MW-NAI-0025157; and

Exhibit 40, a copy of the "White Paper" written by Loraine Scorsone on February 1, 2018, after she resigned as CEO of the NAI on January 16, 2018 after she determined that the NAI was on a negative financial trajectory and was not a viable educational model for the reasons set forth in her analytical assessment, produced in

project, the manifestation of your dissertation, and educational service provider firm that you founded, namely, the NAI, since the \$450,000.00 annual compensation was 46% greater than the \$245,000.00 in total revenues earned by the NAI in the 2016-17 school year.⁵

Third, she could not wait to share her excitement, even though she is writing to you just before Shabbat and you are not at work, but rather, you had left the District hours earlier in the day, by 3:00 p.m., as had been your penchant on Fridays, to be sure to be home for Shabbat regardless of possible/likely heavy traffic needing to drive back to your home in Brooklyn. She could not wait until after Shabbat to communicate the great relief she felt and her desire to celebrate with you her excitement about the “great timing” of the contract that you caused the HUFSD to award to the NAI. Interestingly, despite it being shortly before the start of Shabbat, you wrote back to her, at 5:44 p.m., stating, “I know. However, that is how blessings work. They are a lot of hard work!” In response at 6:19 p.m., she exclaims, “Haha, right!” See, **Exhibit 9**, a copy of June 23, 2017 emails from 4:36 p.m., 5:44 p.m., and 6:19 p.m., with the draft consulting agreement forwarded to you at your “swaronk@thenewamericanacademy.org” email address, produced in discovery in the federal litigation that you commenced, at p. MW-NAI-1749 – p. MW-NAI-1761.

On Sunday evening, June 25, 2017, at 9:29 p.m., Lorraine Scorsone sends back a draft consulting contract to John Sheahan Esq., by email, for his review and approval. See, **Exhibit 10**, a copy of June 25, 2017, 9:29 p.m. email, from Lorraine Scorsone to John Sheahan, Esq., together with the draft consulting agreement she forwarded back to him, produced in discovery in the federal litigation that you commenced, at p. MW-NAI-1072 – p. MW-NAI-1092.

The Sunday, June 25, 2017, 9:29 p.m. email, from Lorraine Scorsone to John Sheahan, Esq., and the draft contract she sent back to him, is evidence that you were jumping the gun, and pushing to get a contract signed by the District in haste, and that you were working with Lorraine Scorsone against the District to benefit NAI. The contract that she sent back was preemptively dated as June 27, 2017, instead of being sent back with a blank space, as is customarily the case when still negotiating terms and exchanging drafts (such as, June ___, 2017), which indicates that you were working with her to have the contract executed on or before the regular Board meeting that was scheduled for June 27, 2017, when you had the NAI engagement on the docket.⁶

discovery in the federal litigation that you commenced, at p. MW-NAI-01101 - p. MW-NAI-01116, and p. MW-NAI-01117 - p. MW-NAI-01132.

⁵ See, **Exhibit 23**, a copy of 2016-17 Projected Budget for the NAI/TNAA in excel spreadsheet format, showing the NAI was forecasted to have only \$245,000.00 in total revenues, and to operate in the red in the 2016-17 school year, showing a forecasted deficit by June 30, 2017 of \$22,163.20, which sum would have been \$89,663.20 had the NAI not had a surplus carry forward of \$67,500 from the year prior, which document was produced in discovery in the federal litigation that you commenced, at p. MW-NAI-0025157. Thus, the NAI’s revenues in 2016-17 was only 54% of the revenue it was going to be able to forecast it would have in 2017-18, based on the \$450,000.00 contract with District alone ($\$245,000.00/\$450,000.00 = 54\%$).

⁶ You caused the District’s Board of Education to pass a resolution to award a \$450,000 engagement in favor of the NAI, regardless of the fact that a contract was not even fully negotiated and approved yet by John Sheahan, Esq., General Counsel for the District. See, **Exhibit 12**, a copy of June 27, 2017 Board meeting minutes, at p.2.

Thus, you were working with and through Lorraine Scorsone to fast track a contract in favor the NAI, and against the District, and to bypass the authority of the Purchasing Agent and the Board of Education to evaluate bids before a contract is awarded and work is assigned to a prospective vendor of the District, all for the benefit your pet project, the NAI, in which you remained vested and interested.

Your conduct on June 25, 2017, using Lorraine Scorsone to act as your agent to push for a contract for your non-profit entity, the NAI, from your new employer, the District, before a determination on the bidding process was made by the Purchasing Agent and the Board, was consistent with your improper conduct on June 22, 2017, which prompted John Sheahan Esq., to utter his prescient words the day before the RFP open date, when he asked you, "Has there been a determination to award the RFP to the New American Academy?" See, **Exhibit 7**.

On June 27, 2017, John Sheahan, Esq., counsel for the District reviewed the proposed contract for the NAI as a consultant, and he asked Lorraine Scorsone to answer questions about the scope of work and deliverables. She was spectacularly unable to answer such questions and did not turn for guidance to others within the NAI, but rather, by email at 1:39pm on June 27, turned to you (and your personal secretary, Dini Gourarie for guidance) writing to you clandestinely, to your "swaronk@thenewamericanacademy.org" email address, asking you, "How do I answer this?" See, **Exhibit 11**, a copy of June 27, 2017 emails, produced in discovery in the federal litigation that you commenced, at p. MW-NAI-1093 – p. MW-NAI-1097.

Five hours later, on June 27, 2017, at 6:15 pm, Lorraine Scorsone suddenly knows how to answer the questions and sent an email to John Sheahan, Esq., counsel for the District. Clearly, after you spoon fed the answers to your figurehead replacement CEO at the NAI, namely, Lorraine Scorsone, who was able to supply him with answers to justify the cost proposals in the NAI's proposed contract sent to him by email the night before. See, **Exhibit 11**. Notably, her answer was sent only 45 minutes before the start of the Board meeting at 7:00p.m., that same night, when the NAI was on the docket to be awarded the service opportunity for \$450,000.00 per annum, or nearly \$1,800,000.00 over the four year term of your employment contract. See, **Exhibit 12**, a copy of the June 27, 2017 Board meeting minutes, with the NAI resolution set forth on p.2 thereof.

On June 27, 2017, even though the contract negotiations were far from completed, and even though the RFP process failed to produce any competitive bids to the one you caused the NAI to resubmit, by hand delivery by your assistant, Dini Gourarie, with your name scrubbed off the letterhead at the last minute, so that the NAI was the sole responsive bidder, you caused the District's Board of Education to pass a resolution to award a \$450,000 contract to the NAI. See, **Exhibit 12**, a copy of June 27, 2017 Board meeting minutes, at p.2.

On July 5, 2017, at 8:28pm, your secretary, Dini Gourarie, assured the NAI's *de jure* CEO, Lorraine Scorsone, that she could negotiate the contract for the NAI, with John Sheahan, with your help. Ms. Scorsone did not understand the contract negotiation process, nor understood how to provide for billable hours in the Consulting Contract she was supposed to be negotiating for the NAI, so Ms. Gourarie assured her that you would ignore your conflict of interest, and go ahead and help her negotiate against the District's General Counsel, and provide