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OFFICE OF GENERAL
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Via Electronic and Overnight Mail

December 5, 2011

Mr. Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal
Administration
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 6500

***Cornerstone Schools Association and The New Common School Foundation,
Respondents***

Dear Mr. Jordan:

I write on behalf of Cornerstone Schools Association ("Cornerstone") and The New Common School Foundation ("NCSF") in response to an amended complaint filed October 6, 2011 by Bill Beddoes (the "Amended Complaint"), and pursuant to an extension granted through December 5, 2011.¹ Cornerstone and NCSF submit that the Amended Complaint does not merit further investigation or review and should be dismissed with prejudice.

A. Background

In late 1990, a small group of business, civic and religious leaders conceived of Cornerstone, an educational alternative for children in the City of Detroit who were not being adequately served by the existing public system. In August 1991, Cornerstone opened its doors to 160 students. Cornerstone now serves more than 1,400 children in the Detroit area through both independent and charter schools. Cornerstone's achievements have been recognized throughout the state of Michigan and nationally as a model for how to create an effective educational alternative within a struggling urban area, successfully achieving high graduation rates and college-bound children.

¹ The Amended Complaint also alleges violations of the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.* ("FECA") against Clark Durant, a candidate for U.S. Senate and his candidate committee, The American Way—Durant 2012 ("Durant Committee"), who are both represented by separate counsel.

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NCSF was founded in 1996. Its primary purpose is to explore educational methodologies that enhance performance throughout the public educational system. NCSF is dedicated to the concept that children deserve better than what is currently available and is committed to creating more successful learning environments for these children, particularly within urban communities.

In August 2011, Clark Durant filed as a candidate for the U.S. Senate at the November 2012 election.

B. FECA Allegations

The allegations set forth in the Amended Complaint stem from four separate activities, only one of which concerns NCSF. First, the Amended Complaint contends that because NCSF sought legal advice to determine whether the continued employment of Clark Durant following his candidacy would in any way violate the FECA, it somehow violated the FECA itself. Second, the Amended Complaint alleges that Cornerstone CEO's notification to its Partners by a singular email correspondence that Mr. Durant would be present at the next regularly scheduled meeting to announce his candidacy for U.S. Senate constituted an endorsement or other improper corporate contribution to the Durant Committee. Third, the Amended Complaint alleges that Mr. Durant's use of the Cornerstone auditorium to publicly announce his candidacy was a violation of the FECA as an in-kind corporate contribution. Finally, the Amended Complaint alleges that the Durant Committee's use of Cornerstone videos publicly available on YouTube also constituted an improper corporate contribution. We will address each of these allegations in turn.

1. NCSF's Hiring of attorneys

The first allegation concerns NCSF and, indeed, is the only complaint as to NCSF. The Amended Complaint amazingly contends that NCSF's hiring of attorneys for the purpose of ensuring its own compliance with the FECA somehow constitutes a violation of the FECA. This allegation is ludicrous. The sole "basis" for this theory is premised on a newspaper article with the title "New Common School Foundation Asks its Attorneys to Ensure No Conflict With Durant's Presidency and Run for U.S. Senate." The Amended Complaint then quotes the Crain's article, wherein Mr. Durant supposedly stated that "he and the foundation's board have asked its attorneys to check with the Federal Elections Commission and the U.S. Senate Ethics Committee to make sure there's no issue with him remaining president of the foundation as he campaigns for the U.S. Senate." The Amended Complaint then argues that NCSF's payment for these legal services constituted a prohibited in-kind contribution to Mr. Durant and the Durant Committee.

As a threshold matter, the factual predicate for this portion of the Amended Complaint is inaccurate and incomplete. Mr. Durant hired his own counsel, a firm in Washington, D.C., Webster, Chamberlain & Bean, LLP, with respect to ensuring compliance with the FECA related to his candidacy. NCSF has no relationship whatsoever with this firm and did not pay for these

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legal services. It is NCSF's understanding that Mr. Durant and/or the Durant Committee paid for all legal services concerning their respective compliance with the FECA. NCSF affirmatively states that it has never paid for any legal services provided to Mr. Durant or the Durant Committee by Webster, Chamberlain & Bean, LLP, or any other law firm.

NCSF did, however, have its own counsel, Lipson, Neilson, Cole, Seltzer & Garin, P.C. conduct minimal research (less than three hours) to determine whether it could continue to compensate Mr. Durant following his candidacy for U.S. Senate for performing services as President of NCSF. NCSF sought legal advice for this purpose for its own benefit because it wanted to ensure compliance with the FECA and tax laws at all time. NCSF was clearly acting responsibly and with prudence given its President's decision to run for federal office. Given this is the only allegation concerning NCSF and there is no basis whatsoever for even a potential FECA violation, NCSF contends that the Amended Complaint should be summarily dismissed with prejudice as to NCSF.

2. Email by Ms. Sanders.

The Amended Complaint next alleges that a single email sent by Cornerstone's CEO, Ernestine Sanders, to its "Partners and Friends" constituted an unlawful corporate endorsement. The Cornerstone Partner Program is an integral part of Cornerstone's success. A Partner is an individual who donates at least \$2500 a year to help underwrite a child's education for a year. Each Partner is teamed with a student who they meet with during Partner Mornings, which are conducted four times per year. "Friends" are those that contribute to Cornerstone, but not at the Partner level. Ms. Sanders sent out this email to Cornerstone's Partners and Friends as part of a pre-set email "blast" in conjunction with its already scheduled quarterly Partner Morning. She prepared this email alone; there was no coordination whatsoever with Mr. Durant or the Durant Committee concerning its content. Read in its entirety, Ms. Sanders clearly viewed Mr. Durant's appearance in this context as an educational opportunity for the children. As she explained in her email:

We also look for ways to bring in different speakers who can enlighten us on a process, role or responsibility. In the past, we have been privileged to have President George W. Bush visit, Congresswoman Carolyn Cheeks Kilpatrick, Detroit City Council President, Charles Pugh, and of course, Mayor and Mrs. Bing who are regular attendees at Partner Morning and big supporters of Cornerstone. A number of years ago, we even had one of our Cornerstone students make a speech on Capitol Hill. Each of these experiences is a teachable moment that we use to enhance the learning of our students.

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On September 23rd, at 8:30 in the morning, we will have another one of these special opportunities. Our founder, Clark Durant, will be announcing during our partner morning that he will be running for the United States Senate. This is a wonderful opportunity for our children to learn about the United States Senate, what it takes to run for office and to see our Constitution at work. Further, it will be a great opportunity for our children and alumni, teachers and staff—many of whom know Mr. Durant—to see a man who has made a tremendous difference for so many of us embark on another journey. Our theme for September Partner Morning is Patriot Week and the importance of our Constitution, so this announcement will fit perfectly with that theme.

Cornerstone did not send out any other communication concerning Mr. Durant's appearance, nor did it incur any real costs to notify its Partners and Friends of Mr. Durant's presence at the Partner Morning.² Cornerstone issued no press release, invited no media and notified no one other than its Partners and Friends, who were already invited to attend the Partner Morning, of Mr. Durant's appearance. Cornerstone did not, and has not, expressly advocated or otherwise endorsed Mr. Durant for U.S. Senate. Rather, it viewed the announcement of his candidacy as another educational opportunity for the children to see first-hand the electoral process at work, no different from the many other prominent leaders that have visited Cornerstone's campus. Because this email does not constitute a contribution to Mr. Durant or the Durant Committee under the FECA, these Respondents submit that this portion of the Amended Complaint should be dismissed without further review.

3. Use of Cornerstone's Auditorium

As indicated above, Cornerstone has permitted numerous other elected and prominent officials to visit its campus to speak to the children. Indeed, Cornerstone has even hosted Detroit City Council and Detroit Police Department meetings. Cornerstone has always viewed these appearances as educational opportunities for the children. It did not view this event any differently. Indeed, Cornerstone would have used the facility regardless for the Partner Morning quarterly meeting already scheduled and did not incur any additional costs associated with Mr. Durant's presence. Cornerstone did not make any expenditures in support of Mr. Durant or the Durant Committee. Pursuant to FEC regulations, a candidate may appear at an educational institution provided the campaign pays the usual and normal charge for the use of the school's facilities. 11 C.F.R. 114.4(c)(7). After a review of other similar locations in the area and the rental charges for equivalent facilities, it was determined that a fair rental charge would be \$800, which has been paid by the Durant Committee to Cornerstone. Cornerstone has had no

²Ms. Sanders estimates that her time spent composing the email would total, at most, \$85.

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involvement whatsoever in Mr. Durant's or anyone else's campaigns for elective office and understands that it cannot do so. No other candidate has asked to use the auditorium, but had they made such a request, they would have been permitted to do so if they agreed to pay the fair rental charge of \$800. Given that fair rental value has been paid for the use of the facility and the fact that Cornerstone did not expend any funds to support Mr. Durant's appearance, these Respondents submit that this section of the Amended Complaint should likewise be dismissed at this juncture.

4. YouTube Videos

With respect to the YouTube videos prepared by Cornerstone, those videos are publicly available and not subject to copyright laws. Anyone may use the videos for any purpose free of charge. The decision to post the YouTube videos on the Durant Committee's website was made by the Durant Committee without consultation with Cornerstone -- indeed, any candidate or non-candidate is welcome to view and repost the videos. The Amended Complaint's allegations in this regard lack any merit whatsoever.

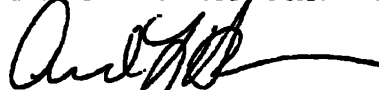
C. Conclusion

The allegations set forth in the Amended Complaint are primarily conclusory and inaccurate. With respect to NCSF, the allegations do not even state a sufficient basis for the alleged FECA violation and further review is completely unwarranted. Likewise, the allegations against Cornerstone are meritless and warrant no further review. To the extent any inadvertent or minor violations occurred by any of the other Respondents, they are most certainly de minimus given the extremely low value amount and circumstances. Cornerstone has also requested its attorneys to establish a protocol for candidate appearances to ensure full compliance going forward. Accordingly, Cornerstone and NCSF therefore respectfully request that the Amended Complaint be dismissed with prejudice and without further review, consistent with the exercise of your prosecutorial discretion in other similar complaints. *See e.g.* MUR 6176 and MUR 6333.

Thank you for your consideration of this Response and please do not hesitate to contact us should you require any additional information.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND ODUM LLP



Andrea L. Hansen

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