Donalds to try to draw her in as an ally, and continue his efforts to try to denigrate Mr. and Mrs. Donalds in her eyes. None of this demonstrated a legitimate educational interest in helping either the child or his parents. And none of this demonstrated that he needed the child's record to fulfill his job responsibilities. He knew he would never be able to get written permission from the Donalds to share this with Dr. Rogers. Mr. Hull's actions did not come close to qualifying as a legitimate education interest under FERPA.

(d) Mr. Hull's May 11, 2018, communications concerning the Student of Virtue Award: Mr. Hull sent communications from his office email and his personal gmail address to the faculty committee members who recommended a senior for the Student of Virtue Award. Mr. Hull interjected himself because he was angry that they chose this student over his son whom he claimed was a better candidate for the award.

He thus proceeded, in violation of MCA policy and FERPA, to disseminate confidential student educational information involving two students' GPAs and disciplinary demerits to prove a point. He never contacted the awarded student's parents to request written authorization to release the student's information. He knew he would not get such permission because it would mean removing their son's award in favor of Mr. Hull's son because he decided to place his personal wants overs his professional responsibilities.

Mr. Hull posted the information as part of his effort to try to demean his own faculty committee for the decision that it made. But by posting students' GPAs and demerits, the effect and the purpose was to play their records off against each other which would have a shaming effect on both students. Imagine how the chosen student would feel when a Principal publicly states he is inferior to his son. And imagine how Mr. Hull's son would feel when his father puts him in such a position in relation to his peers shortly before graduation.

Mr. Hull's actions had nothing to do with carrying out his duties and responsibilities. Mr. Hull's posting student education records to show his contempt for his faculty, and their decision, is anything but an action demonstrating a legitimate education interest protectable under FERPA. Mr. Hull acted in a demeaning, condescending, and arbitrary manner. His actions were neither professional nor responsible.

(e) Mr. Hull's August 30, 2018, email to the District School Board: Mr. Hull took it upon himself to email the District School Board in connection with the way one Board Member allegedly responded to an MCA parent who had contacted Board Members about an educational problem she was having at MCA. In the email, he identified the child, the parent by name and the educational issues involved. He sent it without first notifying the parent or requesting written permission to do so and disclosed the information he decided to disclose. In the email, Mr. Hull lectured the Board on how he expected the Board to handle MCA and conduct themselves in the future. This scolding of the Sponsor's Board Members had nothing to do with any legitimate education interest that was necessary for Mr. Hull to carry out his professional responsibilities. It was all about Mr. Hull trying to demean District Board Members and scold them for alleged comments by one member to one of his parents, who once again, he was conflicting with. This email is not about carrying out his work. Mr. Hull abused his professional responsibility when he expected the District Board Members to kow tow to his authoritarian and condescending

demands. This is about far from a FERPA protectable interest as it gets. For the preparers to claim that Mr. Hull acted appropriately cannot be taken seriously and reflects once again that the claim to objectivity is a hollow one.

Before moving on to the violations pertaining to Ms. Donalds' requests for the educational records of her child, let's first have a look at the case of the School Board of Miami-Dade County v. Martinez-Oller, 167 So.3d 451 (3rd DCA, 2015), which the preparers cited in support of their position (CR, at 45). In the CR, they note that pursuant to this case, "the school is the determiner of the legitimate educational interest. Mr. Hull, as an agent of MCA, determined there was a legitimate interest in the email to the District.[10] The firm finds that the action taken is not a FERPA violation."

But a review of the factual context of the case would show that the preparers' claim that the school is the determiner of the legitimate educational interest is drawn from the conclusion reached by the trial court. The appellate court overruled this conclusion. Let's look at the facts presented in the case and the appellate court's review and ruling. Martinez-Oller involved a student subject to several disciplinary suspensions. One of those, involved the student spontaneous throwing a textbook at a classmate which fractured his eye socket. The Plaintiffs asserted that he school principal and, therefore, the school board was negligent for not disseminating to the student's disciplinary record to the teacher. The trial judge agreed with the Plaintiffs and, noted the court, "fleetingly recognized a legitimate educational interest determination is an agency, not court, determination." (See, School Board of Miami-Dade v. Martinez-Oller, 167 So.3d 451, at 453). The appellate court reversed the verdict holding there was no legitimate education interest to disseminate the student's educational records and that the review was a matter of law. The act by the student was a random act that could not have been anticipated, even if the teacher had reviewed the student's past disciplinary infractions. The Court then challenged the logic of the trial judge as follows:

> Applying the logic of the trial court, the school principal would have had to disseminate Ericka's disciplinary reports to all of her classroom teachers—perhaps even to all of the teachers and employees in the school who might attain some degree of supervisory authority over Ericka during a school day or a school month—on the chance that she might again misbehave at some future time and on some future day within the premises of the high school. This rationale is antithetical to the raison d'etre for the federal and state student privacy laws, which exist to protect a student's right to privacy from the parties.

The Court held that the school's legal duty "was to properly supervise student activity, not to disseminate disciplinary reports." (Id., 167 So.3d 451, at 455).

The preparers misconstrued and misapplied the case to the April 30, 2018, email. Mr. Hull had no legitimate educational interest nor was the information to be disseminated necessary

[10]The case is cited in the context of the discussion of the August 30, 2018, email.

for him to carry out his professional responsibility to the MCA Board; just as he had no such interest in disseminating confidential student information to third parties in the factual contexts addressed in the other four emails reviewed. The Martinez-Oller case actually supports the findings and conclusions set forth in the District General Counsel's Report not those in the Coleman Report.

As we conclude this section on FERPA, let's review the remaining two matters involving requests by Mrs. Donalds to review her child's educational records on February 8 and February 26, 2018, respectively. The preparers insist she had to pay a fee before viewing or reviewing the requested records. (See, CR at 46). They once again ignored key provisions of federal regulations related to the matter as well as the letter ruling from USDOE set forth in the undersigned's report.

As noted, Ms. Donalds' request to view the video being used by the school to impose discipline upon her son. She was informed she would have to pay $294.62 before the video would be processed. Yet, the video was available, could have been put on a disc, or just stored for her to review at MCA with an administrator present. Ms. Donalds had the right to inspect and review the video pursuant to 34 CFR §99.10 and 34 CFR §99.12. The preparers ignored these provisions. In the Letter to Wachter, December 7, 2017, issued by the USDOE's Office of Management ("the Office") the office determined that providing access to the video pertaining to a student receiving discipline meant providing a requesting parent with "the opportunity to inspect and review the video" without paying the agency to be able to do so.

And Ms. Donalds had a right to inspect and review the documents she requested from Ms. Van Vlyman. To Ms. Van Vlyman's credit, she went to Mr. Hull to provide Ms. Donalds with guidance in addressing Ms. Donalds' questions. 34 CFR §99.11(c) provides that an educational agency, such as MCA, "shall respond to reasonable requests for explanations and interpretations of the records." Mr. Hull never responded nor ever worked out a way for her to see them before deciding whether she wanted copies. The preparers did not address 34 CFR §99.11(c) in their response. It is submitted that Mr. Hull and MCA violated Ms. Donalds' rights under FERPA in both instances.

After claiming Mr. Hull had not done anything inappropriate nor violated FERPA, they then add, rather contradictorily, that no actions is needed because "Mr. Hull has resigned. MCA administrators and staff have engaged in addition FERPA training," which would not have occurred absent the GC's Report which led to the Board approved Cure Document, and the Mediation Settlement Agreement. No matter how much the preparers might want to put their spin on the matter, there were serious FERPA issues created by Mr. Hull's arbitrary and demeaning actions and behaviors and everyone knew it.

## IX. Final Areas Considered in the Coleman Report

In concluding their report, the preparers addressed a few final areas raised in the GC's Report. These will be reviewed in the order presented.

A. Former Faculty Member Issue

The preparers argue that the communications in which Mr. Hull attacked the Greinkes long after they left MCA because (a) they gave his son some books before they left (since they considered him to be a talented and bright young man whom they liked); and (b) the limited communication that occurred thereafter were really personal in nature and thus "not an MCA issue." Therefore, "the Firm does not recommend any course of correction regarding this incident." (CR, at 47). The preparers contend that during Mr. Hull's interview with them, he asserted that one of the books the Greinkes provided was allegedly a book entitled "the Virtue of Selfishness", which was "the exact opposite of the classical education" and the religions beliefs of the Hulls." (Id.). In essence, Mr. Hull accused the Greinkes of turning his son away from the family's religious beliefs because of the book and he was never the same again.

The preparers ignore once again the core issues involved, the facts, and the destructive nature of Mr. Hull's communications. Mr. Hull's abusiveness and verbal bullying of former MCA staff members, who gave a great deal to the school, is indeed an MCA issue. Let's look more deeply into this matter.

The Greinkes were highly regarded at MCA. Mr. Hull deeply appreciated their work. In fact, on June 28, 2017, after they had departed from MCA, Mr. Hull wrote and sent Mr. Greinke the following email:

> Hey Mr. Greinke:
> I wanted to reach out and thank you for coming through on that U.S. History test (among other things). You and your wife were a blessing to the school, and I wish you both the best going forward. If there is ever anything I can do for either or you, just holler.

(June 28, 2017, email communication from D. Hull to C. Greinke, sent at 11:10 a.m.). A review of the communication further shows that Mr. Hull's son, under Mr. Greinke's tutelage, fared very well.

As noted in the GC's Report, before the Greinkes left, they gave Mr. Hull's son several books to read including works by classical writers such Lucretius and Marcus Aurelius, novels by Ayn Rand, such as Atlas Shrugged, and so on. It is unclear whether they gave him the Virtue of Selfishness which was also written by Ayn Rand. But, Mr. Hull was certainly aware that there were other MCA students who were reading Rand's novels Atlas Shrugged and the Fountainhead and discussing them with one another.

In this context, the question arises, why did Mr. Hull wait seven months to contact the Greinkes and then do so with an abusive phone call to Mrs. Greinke followed by his perseverating and hostile communications in July 2018 (over a year after the Greinkes departed from MCA)?

Mr. Hull's vindictive actions were designed to emotionally undermine and destabilize the Greinkes because (a) his son read books that he did not like; and (b) he did not want his son

having contact with the Greinkes (people he now decided he didn't like); which included a normal request from a student to a teacher for assistance with recommendation for a college scholarship. His arbitrary and capricious behaviors should be an MCA matter of concern. Mr. Hull had a penchant for confusing the boundaries between principal and parent, between professionalism and a deep need to put his personal interests first while professing otherwise. We saw that with the Zuluagas and we saw that with the Donalds when he lectured them on their parenting; as well as the student he elicited Dr. Rogers' help to get some dirt on the parent for him from a District school. The preparers ignored the MCA policy violation implications set forth on page 49 of the GC's Report as follows:

> In item 7 of Board Duties and Responsibilities, it states "Board Members must take particular care to separate the interests of the school from those of their own children." (Both Policy Vols., at p.5). This would certainly apply to a Principal and his/her own children.

And this is separate and apart from his violations of MCA's civility policy SE 48.0.

But, in dismissing the matter, the preparers overlooked an important question in light of Mr. Hull's representations set forth in the CR. The question is if Mr. Hull's son's values and virtues were so compromised by the Greinkes and the books the Greinkes had given him, how could Mr. Hull then claim that his son deserved to win the Student of Virtue award?

Mr. Hull's representations were thus deceptive and suspect. His erratic behaviors can be seen by the fact that in February 2018, he attacked the Greinkes for harming his son's values and virtues. He then attacked his own faculty members for not naming his son that year's Student of Virtue. The preparers' conclusions are as wrong as they are misguided. The Geinkes did not harm Mr. Hull's son. Mr. Hull's accusations represented the manufacturing of a false image that he could attribute to the Greinkes in order to deflect attention away from the conflict he was having with his son, which would have, in turn, disclosed the hollow nature of his lectures on other people's parenting.

B. CCMG – The Issue of Potential Conflict of Interest

(1) Transparency and the Failure to Disclose Potential Conflicting Interests Involving MCA's Board Chair and MCA Administrative Employees

In the CR, the preparers ignore the substantive potential conflict of interest issues set forth in the GC's Report.

According to the CR, Ms. Lichter "believed that there would not be a conflict of interest so long as CCMG did not enter into a contract with MCA". (CR, at 48). The next line of defense was that according to the preparers' interviews with Ms. Lichter and Ms. Smith, the company did not make any money. In addition, Ms. Lichter alleged that she "elected to leave the company after Mr. Baird made allegations in the Complaint regarding her participation." And Ms. Smith informed them that "she only does work for this company at home otherwise not working for MCA"; except, as noted in the GC's Report (at 54), she went out of town to give presentations

with Mr. Hull to four school districts as representatives of the consulting firm during times they should have been at MCA working.

With this in mind, the preparers again ignored the key issues. While Ms. Lichter was Board Chair, she was also the CEO of CCMG and her partners were Mr. Hull and Ms. Smith. While wearing both hats, she voted, at the May 18, 2018, MCA Board Meeting to approve the bonus and evaluation of Mr. Hull, her business partner in the venture. And as CEO and Board Chair she had the responsibility of overseeing Mr. Hull's, and ultimately Ms. Smith's, work for both entities. At the May 29, 2018, Board Meeting, Ms. Lichter could have disclosed the relationships and recused herself from the vote as a potential conflict of interest or advising that she did not want to create the appearance of impropriety. But she decided not to disclose it to the Board, the same way she did not disclose her communication with Mr. Baird at the October 4, 2016, Board Meeting or disclose to the Board and the public that she had entered in a long term Agreement with Hillsdale College on her own.

Further, Ms. Lichter claimed she elected to leave the company after Mr. Baird's Complaint allegations. His Complaint and follow up information to the FDOE's Office of the Inspector General were filed on June 2018. But the records show that Mr. Lichter replaced her (husband replacing wife; as if there would be no benefit to her when the contract had an 8.5% per year management fee!)[11] in October which was around the time the Naples Daily News article addressing the Baird Complaint appeared. Three questions emerge: (a) why did it take so long? (b) if she believed there was no conflict of interest, why would Mr. Baird's allegations be a problem? and (c) if she concluded there might be a conflict of interest, why didn't she immediately disclose her connection at the Board Meeting? All of these issues were swept aside and remained unaddressed in the CR.

(2) Hillsdale College

In the CCMG section of their report, the preparers do not mention Hillsdale College ("Hillsdale") which was also not mentioned in the CCMG Consultation Agreement, which adds an important layer to the conflict of interest issue involving the company and its officers. Part of the problem is that the CCMG pretended Hillsdale did not exist in its representations to American Classical Charter Academy ("ACCA"). While CCMG represented that it would help several ACCA charter schools in Osceola, Lake, Polk, and Hillsborough Counties replicate the MCA model, it did not disclose that the MCA model was based upon the general curriculum model provided by Hillsdale. The curriculum model, materials, resources, and so on, provided by Hillsdale, are acknowledged in MCA Policy 2.0. The importance of Hillsdale for MCA is also set forth in the Application where it is acknowledged as MCA's institutional partner and its work and importance is a contractual part of the Charter Contract with the District.

Moreover, the proprietary nature of Hillsdale's materials and its support and training are part of the Contract Ms. Lichter signed on her own (so she knew of its value to MCA). In this context, the Consultation Agreement provided that CCMG, through Ms. Lichter, Mr. Hull, and

[11] See paragraph 16, Consultation Fee, in the Consultation Agreement, for example, with the American Classical Charter Academy.

Ms. Smith will provide professional development in implementing the given school's curriculum and so on. Such expertise would be derivative of what they learned and gained from and through Hillsdale. Mr. Hull noted to the undersigned in the April 29, 2019, interview that Ms. Smith, for example, received her phonics training directly from Hillsdale. Ms. Lichter received Hillsdale training from Dr. Carpenter in June 2016. And MCA was part of the Barney Charter School Initiative Schools. This strongly suggests that CCMG had an implied contract with MCA despite Ms. Lichter's beliefs to the contrary. All of this was ignored by the preparers of the CR to reach the outcome they wanted.

After the issuance of the GC's Report and the letters from Hillsdale in June 2019, it became part of MCA's narrative that MCA had really not been receiving help, support, or guidance from Hillsdale for almost two years from that point and that MCA should part company with the college. One sees this, for example, in Mr. Bolduc's hostile and unfocused commentaries after June 3, 2019. But as will be shown, this narrative is a false one.

As a threshold matter, two years or even a year and a half from June 3, 2019, would put one prior to, or just after Ms. Lichter took it upon herself to sign the Agreement on behalf of the school. If services and support weren't being provided, then why would she do that? And if so, it was all the more reason to air the matter publicly. And if Hillsdale was not helping MCA teachers, how does one explain that in June 2018, some thirty three (33) faculty members attended Hillsdale training and completed District's verification for MIP points for which they received appropriate credit. Most of them were filled out in mid-October and signed off by Mr. Hull in late November 2018. What is equally interesting is that Mr. Whitehead, who joined the chorus of Hillsdale naysayers, attended the conference at Hillsdale June 22 – 23, 2018, receiving certification from Hillsdale of having "received 12.5 contact hours at the Hillsdale College Barney Charter School Initiative Teacher Training" on those dates. Mr. Whitehead submitted to the District his verification for MIP points, which was signed, but not dated, by Mr. Hull. In this context, despite the controversy that emerged, Hillsdale provided training to several teachers in June 2019 as well; thereby honoring its commitment to MCA.

What is also overlooked in all this is the fact that Mr. Hull decided to limit contact with Hillsdale during the 2018-2019 school year; including requiring faculty to get approval from him before they could have any initiated contact with Hillsdale training staff. The access that was once open, was now extremely narrow, if not closing rapidly. This can be seen in the exchange he had with Mr. Adams, Hillsdale College's then new Instructional Coach, for the Barney Charter School Initiative ("BCSI"). A couple of weeks after the instructional seminars were over, Mr. Adams emailed Mr. Hull on July 11, 2018, informing him that his role was "to provide assistance and resources for your history and Latin teachers as needed this summer and through out the year". He then reached out to Mr. Hull further as follows:

> If you have any immediate thoughts, questions, or needs regarding history or Latin instruction at Mason Classical Academy, please let me know a day and time in the near future when we could talk or send me an email. Additionally, if you could direct me to your lead teachers in each department or to all your history and Latin teachers, however you wish to arrange it, I would be grateful, that I might introduce myself to them as well.

> Thank you in advance for your future help and suggestions. Please feel free to share any and all suggestions for improving instruction and, most importantly, for how I can best serve your teachers, that they may all teach at their very best.

(July 11, 2018, email communication from J. Adams to D. Hull sent at 10:02 a.m.). Mr. Adams' email reflected the reality of the on-going communication between BCSI instructional coaches and MCA faculty.

Mr. Hull replied the next day. After thanking Mr. Adams for his email and wishing him well in his position, he tersely wrote:

> At this time, we have no support needs. We are busy preparing for the upcoming year, and everything is in place and set up for another successful school year. All communications to our faculty and staff from BCSI can be directed to me. I appreciate your availability and willingness to assist. If I run across anything that we need in terms of support for history or Latin, I will be sure to give you a call.

Mr. Hull's message is clear, "we do not need your services and do not contact MCA faculty and staff without going through me." The great gatekeeper was closing the door on the relationship. How could one expect Hillsdale to provide instructional learning when presented with an email such as this from the head of the school? And Mr. Hull's email came at a time when he, Ms. Lichter, and Ms. Smith were positioning their consulting firm for the new school year, having determined it would proceed without reference to either its or MCA's connection with Hillsdale College. Thus, MCA's distorted narrative does not match the facts and the reality of what had transpired. The preparers decided it was best to stay away from this as well.

As a final observation, MCA's new narrative has been that Hillsdale had not delivered instructional services and support for a long time and, therefore, MCA needed to cut bait and part company with it. Yet, behind the scenes, Mr. Hull had already shut down the relationship. In light of all this, the question arises how could Joe Baird even possibly be responsible for tortuously interfering with MCA's contract with Hillsdale? Mr. Hull and Ms. Lichter had skillfully done so on their own. The MCA leadership team sued Mr. Baird to use him as the fall guy in order to deflect attention away from what actually had happened.

## X. CONCLUSION

On November 5, 2019, Ms. Lichter declared that the Coleman Report exonerated her, her fellow Board Members, Mr. Hull, and Mr. Whitehead from the findings in the GC's Report. As we have seen, it did not. The preparers' exclusion, misuse, and fragmentary usage of evidence, along with factual and legal errors to try to craft a predetermined outcome that would fit the narrative Ms. Lichter and her supports wanted, and paid a great deal of money for, didn't work. Indeed, in many instances the preparers' themselves acknowledged wrong-doing and serious

problems consistent with the findings and conclusions in the GC's report; albeit played down, minimized, and whitewashed to make the façade look cleaner.

The reality is the scope of MCA policy violations, statutory violations, disregard of AGO opinions, deception, contempt for transparency, persons, MCA's pillars and the classical values upon which the school is claimed to rest is extensive. And with a more intensive evidentiary review along with evidence presented that was not in the GC's Report of June 3, 2019, it is far more extensive than previously realized.

After the GC's Report came out, and MCA parents and other members of the community expressed their upset, Ms. Lichter treated the very constituents who supported her for years, with contempt and derision and attacked them publicly as enemies instead of trying to talk and repair with them. She also rabble-roused supporters to go after those she had targeted and continues to target. Ms. Lichter, Ms. Miller, Mr. Hull, Mr. Whitehead, and Mr. Bolduc, among others, as leaders of a classical school, would do well to heed the words of Cicero in his great essay On Duties (2): "Men who are eager to terrorize others become frightened of the very people they are intimidating." (Cicero, On the Good Life, Penguin Bks, 1971, at 132).

The Mediation Settlement Agreement ("MSA") has been violated with impunity as the multiple letters to MCA counsel have established out in great detail. Contempt has been shown not only for MCA itself, but also for the requirements to show civility, not to engage in inappropriate Facebook or other social media postings, proper meeting notices, the Sunshine law, agendas, and so on (as well as multiple First Amendment violations).

Most recently, Ms. Lichter's contempt and cynical disregard for appropriate process (and she was supported, tragically, by several of her fellow Board Members) showed no bounds when she used the Coronavirus Health Emergency conditions as a cover to hire Mr. Hull to an Executive Director's position, no doubt with Mr. Hull's knowledge and participation in such contempt and cynicism. Indeed consideration of Mr. Hull's appointment was not on the agenda. Ms. Lichter maneuvered it on as an item to add to the agenda after the meeting began so the public could not participate in a voting item in violation of F.S. 286.011, F.S. 286.0114, and MCA bylaws.

One of the reasons given was that Mr. Hull had a Master's Degree in on-line education. If true, why wasn't he taking the lead to apply such skills a month before? Everyone knew what was unfolding. And why did it require an elevation to an Executive Director's position in order to apply such skills? Further, Mr. Hull was hired in 2014. He has never wanted to use such alleged talents to advance MCA technologically and try to keep pace with the District or other charter schools. He has sneered for years at computerized learning.

Finally, what professional development training has he completed to be up-to-speed in this area? Ms. Lichter used the cover of a health crisis, in essence, to restore him to his principal's position despite the presence of Ms. Vickaryous, and Mr. Hull will no doubt have considerable say in overseeing and directing her work. And, in the meantime, he will also be able to continue on as an Executive Officer for CCMG.

As if that was not enough, on March 23, 2020, a Board Meeting was held not only to approve the contract for Mr. Hull but also another contract with a company called Captivated Health. It was an action item placed under "Unfinished Business" to be brought forward for approval by Mr. Bolduc. The only problem was that Mr. Bolduc had a financial interest in the company. He did not disclose that Captivated Health was entering the Florida market under his directorship. His directorship would be announced two days later.

On March 25, 2020, the Globe Newswire announced the following:

> BOSTON, March 25, 2020 (GLOBE NEWSWIRE) -- Captivated Health is pleased to announce that it has established offices in Tampa, Florida and is now offering its proven healthcare financing solution to Florida independent Private and Public Charter schools. Captivated Health helps schools control costs with insightful, actionable data and improves the member experience through a 24/7/365 concierge service passionately committed to making healthcare easier and more affordable.

Thus, two days before it was announced to the public that Captivated Health was entering the Florida Market, Mr. Bolduc moved and the Board, including Mr. Bolduc, voted to approve the contract for which Mr. Bolduc had the inside track and knowledge and which inured to his personal and private benefit. This is what makes the following section of the announcement so significant:

> Managing Captivated Health's Tampa-based team will be David Bolduc, who serve as Director for the Southeast Region. David has deep experience in underwriting (American International Group), risk analysis and captive management (Strategic Risk Solutions) and reinsurance. David holds a Bachelor of Arts in Business Economics from Brown University. He also Holds an Associate in Risk Management (ARM), Associate in Reinsurance (Are) and is Chartered Financial Analyst (CFA). David also brings first-hand experience with educational institutions, having served as a member of the Gulfview Middle School Advisory Committee, and Board Member of Mason Classical Academy.

Accordingly, not only is Mr. Bolduc Captivated Health's Director for the Southeast Region, it is also expressly noted that he is a Board Member of Mason Classical Academy. Mr. Bolduc hid all of this from the Board and the public when he moved to approve and voted on the approval of the contract. He also had the matter placed on "Unfinished Business". But a review of the Board Meeting Agendas going back through December 2019, shows no "New Business" item for discussion pertaining to Captivated Health which is a division of the Borislow Insurance Company located in Massachusetts.

With this in mind, the charter incorporated Florida ethics statutes pertinent to public officials. F.S. 1002.33(26)(a) and (b) provides the following:

> (26) STANDARDS OF CONDUCT AND FINANCIAL DISCLOSURE.

(a) A member of a governing board of charter school, including a charter school operated by a private entity, is subject to ss. 112.313(2), (3), (7), and (12) and 112.3143(3).
(b) A member of a governing board of a charter school operated by a municipality or other public entity is subject to s. 112.3145, which relates to the disclosure of financial interests.

In this context, the Ethics statutes, F.S. 112.313(3) provides in pertinent part the following:

(3) DOING BUSINESS WITH ONE'S AGENCY.
No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, ha a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision.

And F.S. 112.313(7) provides in pertinent part the following:

(7) CONFLICTING EMPLOMENT OR CONTRACTUAL RELATIONSHIP
(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the sate; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

Finally, F.S. 112.3143, which pertains to voting conflicts, provides in subsection (3)(a), in pertinent part the following:

(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special

> private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by who he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

It is submitted that Mr. Bolduc's actions stand in violation of F.S. 1002.33(26), F.S. 112.313(3) & (7), and F.S. 112.3143(3)(9). In so doing, he also violated MCA Policy 6.0 – Conflict of Interest, which addresses many of the statutory issues noted above. These represent serious statutory and ethical violations for which he is accountable as a Board Member of a public school.

In the CR Report and in the Board approved cure document, one repeatedly sees the statement that no corrective work is further recommended as to Mr. Hull because he has resigned. Ms. Lichter, Mr. Hull, and Board Members have once again deceived the public. Ms. Lichter no doubt felt that in light of the CR, she would bide her time and reinstate Mr. Hull when she saw an opening to do so. While the CR Report tried to let Mr. Hull off the hook because he resigned, it recognized, whether expressly or impliedly, the problems his actions engendered.

This Reply, and the most recent Board actions, have shown the depth of Ms. Lichter's, Mr. Hull's, Ms. Miller's, Mr. Bolduc's, and others' capacity to deceive, mislead, terrorize, and control MCA stakeholders and the public through their statements and actions. Look at MCA's pillars. They have taken a mallet to them and shattered them beyond recognition. We are beyond the Aristotelian idea of hubris; an excessive pride for violating a divine rule or law, especially a moral law. This Reply sadly discloses that MCA's leadership appears to be so enamored of its power that it has lost touch with its conscience which is tragic for a classical school built on virtue.

Jon Fishbane - April 6, 2020
Jon Fishbane
District General Counsel

**Agenda Item Details**

| | |
|---|---|
| Meeting | Jun 09, 2020 - Regular School Board Meeting |
| Category | Informational Items |
| Subject | D2 Review of MCA Issues |
| Type | Information |

**FEDERAL STATUTE:**
n/a

**FLORIDA STATUTE:**
1002.33

**SCHOOL BOARD POLICY:**
n/a

**EXECUTIVE SUMMARY:**
General Counsel will review with the Board for informational and discussion purposes multiple areas of concern involving Mason Classical Academy. These will include, but not be limited to, Mediation Settlement Agreement violations, multiple letters concerning same and other matters sent by outside counsel to MCA's counsel, General Counsel's Reply to the Coleman Report, and MCA Board and employment events since March 20, 2020, and related matters.

**LEGAL APPROVAL:**
The item was reviewed and approved by Jon Fishbane, District General Counsel.

**CONTACT:**
Jon Fishbane, District General Counsel
(239) 377-0498

ResponsetoCR.Part1.pdf (2,252 KB) ResponsetoCR.Part2.pdf (2,287 KB)

Ltr to Michael Coleman.pdf (324 KB) Ltr to Shawn Arnold.pdf (339 KB)

April-28-2020-Principal_s-Report-_1_.pdf (16,141 KB) ComplainttoMCA.pdf (132 KB)

VickaryousComplaint.pdf (363 KB) april_30_principal_report.pdf (3,988 KB)

EmployeeContracts.pdf (605 KB) D2_060920_Review of MCA Issues_1.pdf (206 KB)

D2 Review of MCA Issues.pdf (53 KB)

MCA email communications_Nov. 2019 from K. Lichter.pdf (1,033 KB)

Letter to MCA Councel 121619.pdf (92 KB) Letter to MCA Counsel_May 28_2020.pdf (7,166 KB)

EXHIBIT N

**Agenda Item Details**

| | |
|---|---|
| Meeting | Jul 28, 2020 - Regular School Board Meeting |
| Category | Unfinished Business |
| Subject | D2 Approval of Placing Mason Classical Academy on Probationary Warning Status Subsequent to Board Review and Discussion |
| Type | Action |
| Fiscal Impact | No |
| Recommended Action | Approve D2 of Placing Mason Classical Academy on Probationary Warning Status Subsequent to Board Review and Discussion. |

**FEDERAL STATUTE:**
n/a

**FLORIDA STATUTE: 1002.33**

**SCHOOL BOARD POLICY:**
n/a

**EXECUTIVE SUMMARY:**
At the June 9, 2020, Board Meeting, the General Counsel and the District's outside counsel provided the Board with detailed information and discussed multiple areas of concern involving Mason Classical Academy ("MCA"), including but not limited to, multiple violations of law and Mediation Settlement Agreement, matters contained in outside counsel letters to MCA counsel, investigative issues, and personnel actions taken. These matters will be supplemented and updated including recent personnel actions taken. The General Counsel will recommend the Board to place MCA on probationary warning status.

**LEGAL APPROVAL:**
The item was reviewed and approved by Jon Fishbane, District General Counsel.

**CONTACT:**
Jon Fishbane, Esquire, District General Counsel
(239) 377-0499

**Motion & Voting**

A motion was made to approve placing Mason Classical Academy on Probationary Warning Status with a compliance date of November 6, 2020. The probationary period would extend until March 1, 2021.

Motion by Erick Carter, second by Jory Westberry.
Final Resolution: Motion Carries
Aye: Erick Carter, Stephanie Lucarelli, Jen Mitchell, Roy M Terry, Jory Westberry

A motion was made to authorize Mr. Jon Fishbane, District General Counsel, to prepare a letter of notice to be sent to Mason Classical Academy which would detail all the requirements.

Motion by Erick Carter, second by Roy M Terry.
Final Resolution: Motion Carries
Aye: Erick Carter, Stephanie Lucarelli, Jen Mitchell, Roy M Terry, Jory Westberry

EXHIBIT O

CCPS | Collier County Public Schools

District General Counsel

August 6, 2020

Mason Classical Academy
c/o Mr. Raul Valles, Jr.
Rocke, McLean, Sbar
2309 S. Mc Dill Ave.
Tampa, Florida 33269

c/o Mr. Jeffery Wood
Tripp, Scott
110 Southeast Sixth St.
Fifteenth Floor
Fort Lauderdale, Florida 33301

Dear Counsel,

As a consequence of ongoing violations and continued disregard of a) the terms and conditions of the Mediation Settlement Agreement ("MSA") entered into by the District School Board of Collier County ("the District" or "the Board") and the Mason Classical Academy School Board ("MCA" or ""MCA Board"), on August 1, 2019, and approved by both Boards respectively on August 6, 2019; b) MCA policies and procedures; c) the Charter Agreement between the parties, including MCA's Application which is incorporated by reference therein; and d) Florida and Federal law, the District School Board voted 5-0 at the July 28, 2020, regular Board Meeting to place MCA on Probationary/Warning status through March 1, 2021. As part and parcel of such status, multiple areas of violation and concern will have to be addressed and corrected by the MCA Board by November 6, 2020. These will be specifically itemized below.

In this regard, the District, through its outside counsel Mr. Fox, informed and notified MCA's counsel on multiple occasions about the above-mentioned violations and concerns that the District had relative to MCA Board and Board Member actions and behaviors that warranted attention and corrective action. Such information and notification were provided especially in Mr. Fox's four detailed letters on August 14, 2019, September 4, 2019, December 16, 2019, and May 28, 2020, respectively. (MCA counsel was also provided with the undersigned's 80-page response to the Coleman Report which contained new and supplemental information from the

EXHIBIT P



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e: FishbJ@collierschools.com | www.collierschools.com

June 3, 2019, Investigation Report). The matters addressed and sought to be or acted upon and corrected by the MCA Board were ipso facto treated as if they did not exist.

With the foregoing in mind, the MCA Board, and the school itself which is under its legal authority, must address, respond to, and correct the following areas by November 6, 2020. These areas are itemized as follows:

1) All Board Meeting Minutes over the last several months that have not been prepared and approved, including, minutes for all regular, special, and emergency meetings, must be undertaken, completed, and approved by the Board;

2) All emergency and special meetings called and held to address routine business matters must cease. Emergency and special meetings are to be called for emergency reasons or to address special matters only that cannot be taken up at a regular MCA Board meeting;

3) All documents and agenda items must be timely uploaded, and linked to the given agenda item (and not directing the public to find them on MCA's calendar), and made available for public review and participation at MCA Board Meetings for discussion;

4) Shade Meetings must be properly held and conducted in accordance with law; specifically FS §286.011 (8);

5) IRS Non-Profit 990 Forms must be brought current in accordance with the Charter Agreement. Subsequent to the July 28, 2020,Board Meeting, MCA's Business Manager sent Dr. Kirton, at the District, those for 2018 which is certainly appreciated;

6) An independent annual financial audit for the past two years, plus an independent compliance audit of the MSA's corrective action plan, must be undertaken and completed by an independent auditing firm in accordance with the Charter Agreement, Florida statute, and the MSA;

7) (a) The employment contracts of MCA employees Joseph Whitehead and Gena Smith, as well as any other employee of MCA, that contain language authorizing or allowing the receipt of advanced payment for work not undertaken or completed must be removed. Counsel for MCA must certify to the District whether or not any such funds and payment were, at any time,

requested by, disbursed to, or issued in any form, whether in whole or in part, to Mr. Whitehead, Ms. Smith or any other MCA employee operating under any such contract.

(b) Copies of such revised contracts, once removing the language as noted in 7 (a) above is removed, and approved by the MCA Board, will be sent to the District by MCA counsel to Mr. Fox;

8) On April 1, 2020, MCA Board Member Mr. Bolduc prepared his resignation letter, which letter was posted for public review at the April 14, 2020, Special Board Meeting. He advised that he would be departing at the end of the school year in May 2020. His letter denotes that this was agreed to through discussion with Board Chair Ms. Lichter outside of the Sunshine. Despite this, Mr. Bolduc has remained in office and recently voted himself to continue on in office as a Board Member. MCA counsel must explain the contradiction in light of Mr. Willkomm having resigned from and having left the Board in April 2020;

9) At the apparent MCA organizational meeting, which was noted under the category of New Business at the July 8, 2020, Board Agenda as "Election of Officers", MCA Board Members voted themselves into office in disregard of the staggered term provisions set forth in paragraph 7 of the MSA. The staggered terms policy was to have been prepared and put into place by October 15, 2019. This has never been done. Of the persons on the Board at that time, exclusive of Mr. Willkomm, one Board Member should no longer be on the Board as of the date of the recent apparent organizational meeting. In light of Mr. Bolduc's resignation, this would mean either Ms. Lichter or Ms. Miller (Mlinarich) will need to depart the Board immediately;

10) (a) The District will insist on MCA Board Member and employee civility, professionalism, and responsibility in its day-to-day dealings with parents, the community, and one another. The principles of civility, professionalism, and responsibility are set forth in the MCA Board's (a) Pillars of Character Development; (b) Social Media Policy, (and Guidelines set for in SE 25.0); (c) Civility Policy (SE 48.0); (d) Conflict of Interest Policy (B 6.0); and paragraph 4 of the MSA, providing that the Board was to publicly attest, through resolution, that

it would affirm and adhere to MCA policies. These principles and policies have been continuously ignored and violated;

(b) Since the approval of the MSA, Board Members have engaged in a pattern and practice of acting in a derogatory manner by speech or action toward (1) parents who had questions or disagreed with Board Members; (2) Members of the Community; (3) District personnel and so on. In the Cure Document issued on July 2, 2019, and in the Coleman Report issued in November 2019, Ms. Lichter and Ms. Mlinarich agreed to discontinue engaging in social media comments, lack of civility and put downs of others, and so on. They and other Board Members have not honored their word;

(c) Board Member social media attacks and abusive comments directed toward MCA parents and former parents, members of the community, and others, including supporting other persons' attacks, as found in the "Hostile Takeover" (whose founder appears to be Mr. Lichter), as well as other social media outlets, must cease immediately. These are contrary to the above referenced MCA policies, norms, and the MSA;

(d) In this context, the Board collectively through resolution or motion, must publicly disavow, as a Board, such negative comments, as set forth in the Hostile Takeover and other social media outlets, including, but not limited to, Facebook, Instagram, and so on, toward MCA parents, former parents, students, employees, and members of the community. This will allow for a clean slate moving forward;

11) MCA websites, including those holding themselves out as such, must be open to MCA parents and the public. MCA is a public school and a governmental entity subject to the provisions of the First Amendment of the U.S. Constitution and Article I, Section 4 especially of the Florida Constitution. Access to such social media websites and accounts may not be regulated, prevented, or abridged on the basis of viewpoint by the Board, or anyone else acting on behalf of the Board, without a full public review, discussion, and vote at a duly held MCA Board Meeting. See, Knight First Amendment, Institute at Columbia University v. Trump, 302 F.Supp, 3d 541, 577 (S.D. N.Y. 2018), aff'd, 928 F.3d 226 (2d Cir.2019); Packingham v. North

Carolina, 137 S.Ct. 1730 (2017), and Davidson v. Randall, Case No.17-2002, (4th Cir., Jan 7, 2019);

12) Revised parent contracts, including the one prepared after the MSA went into effect, must be sent to Dr. Kirton for District/Board review in accordance with the terms of the Charter Agreement;

13) Mr. Hull may not serve as MCA's Executive Director and must step down from that position. The Charter Application does not provide for such a position which was arbitrarily and secretly created. The Application document clearly delineates that the principal reports directly to the MCA Board. A new MCA principal has been hired and is now in place. Mr. Hull's contract has identical language, relative to his duties and responsibilities, to that of the recently terminated Principal Ms. Vickaryous, thus demonstrating that he was to be the real principal. The creation of an Executive Director's position for Mr. Hull was in violation of the Cure Document, the MSA, and the Charter Agreement into which the Application is incorporated by reference; and

14) (a) The District is aware of toxic mold issues that are of concern for the health, safety, and well-being of MCA students and staff. These issues were openly discussed at a public meeting when the Director of Facilities for MCA, Mr. Walkiewicz, was questioned by MCA Board Members about it. Mr. Walkiewicz was later terminated from his employment at MCA, apparently for making such information public. In addition, apparently hot water lines are needed on the school building's second floor and which have not been installed;

(b) In this context, the District will need a report from an independent expert that all such items have been addressed, remediated, and corrected. The District will also need to receive an updated fire inspection report once school has commenced at MCA;

(c) With the foregoing in mind, the District is hereby requesting, as part of this letter, a copy of the full mold and water penetration report conducted by RMS Mold Testing; including the report prepared by John Causgrove, which report or reports, are, upon information and belief, within MCA's possession or control.

As noted, above items 1-14 must be completed and submitted to the District by November 6, 2020. It is requested that this letter be forwarded to all MCA Board Members and key staff for review and handling.

Sincerely,

Jon Fishbane

Jon D. Fishbane
District General Counsel

Cc: District School Board Members
Dr. Patton
Mr. Fox

TRIPP SCOTT
ATTORNEYS AT LAW

JEFFREY S. WOOD
Direct Dial: 954.765.2926
Email: jsw@trippscott.com

September 9, 2020

**VIA FIRST CLASS U.S. MAIL (fishbj@collierschools.com)**
John Fishbane, Esq.
Collier County Public Schools, General Counsel
5775 Osceola Trail
Naples, FL 34109

Re: *Mason Classical Academy, Inc. ("MCA") v. School Board of Collier County Public Schools ("School Board")*

Dear Mr. Fishbane:

As you know, this firm represents MCA. The express purpose of this letter is to formally notify the School Board, pursuant to Section 120.595(4), Florida Statutes that MCA intends to file an unadopted rule challenge petition with the Florida Division of Administrative Hearings relating to the placement of MCA on "Probationary Warning Status" thirty (30) days following receipt of this letter pursuant to Section 120.56(4), Florida Statutes.

Section 120.595(4), Florida Statutes "Challenges to Agency Action Pursuant to Section 120.56(4)", states as follows:

> (a) If the appellate court or administrative law judge determines that all or part of an agency statement violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance on the statement and any substantially similar statement pursuant to s. 120.56(4)(f), a judgment or order shall be entered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.



EXHIBIT Q

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(b) Upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rulemaking under s. 120.54(3)(a), such notice shall automatically operate as a stay of proceedings pending rulemaking. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings under this paragraph remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. The administrative law judge shall award reasonable costs and reasonable attorney's fees accrued by the petitioner prior to the date the notice was published, unless the agency proves to the administrative law judge that it did not know and should not have known that the statement was an unadopted rule. Attorneys' fees and costs under this paragraph and paragraph (a) shall be awarded only upon a finding that the agency received notice that the statement may constitute an unadopted rule at least 30 days before a petition under s. 120.56(4) was filed and that the agency failed to publish the required notice of rulemaking pursuant to s. 120.54(3) that addresses the statement within that 30-day period. Notice to the agency may be satisfied by its receipt of a copy of the s. 120.56(4) petition, a notice or other paper containing substantially the same information, or a petition filed pursuant to s. 120.54(7). An award of attorney's fees as provided by this paragraph may not exceed $50,000.

The School Board placed an agenda item on the July 28, 2020 School Board meeting for the "Approval of Placing Mason Classical Academy on Probationary Warning Status Subsequent to Board Review and Discussion." The School Board then voted in favor and approved of the placement of MCA on Probationary Warning Status at the same meeting. The specific unadopted rule which will be challenged by MCA is the arbitrary creation of "Probationary Warning Status" which substantially affects the interests of MCA as School Board members indicated that violation of this agency action by MCA could result in termination of the Charter Agreement entered into between MCA and the School Board.

An "Unadopted Rule" means an agency statement that meets the definition of the term "rule," but that has not been adopted pursuant to the requirements of s. 120.54. Fla. Stat. § 120.52(20). Furthermore, "Invalid exercise of delegated legislative authority" means action that goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

(a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;



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(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

(f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

There is no statutory provisions found in Section 1002.33, Florida Statutes, Florida Administrative Code, the Charter Agreement, nor is there a provision in School Board Policy 9800 which allows the School Board to place a charter public school on "Probationary Warning Status." In fact, there previously was a reference and inclusion to a "probationary" status which sponsors, such as the School Board, could place charter public schools. This reference was found within the 2011 Florida Statutes, specifically Section 1002.33(9)(o), Florida Statutes. However, this provision has been removed and no such status exists under current charter law. *See* https://www.flsenate.gov/laws/statutes/2011/1002.33. Therefore, the "Probationary Warning Status" constitutes an unadopted rule which the School Board has not adopted pursuant to formal rulemaking procedures; the unadopted rule substantially affects the interests of MCA; and the agency action exceeds the School Board's delegated legislative authority.

Therefore, MCA will file the unadopted rule challenge against the School Board thirty (30) days from the date of this letter and seek attorneys' fees and costs related to that action. This petition will not be filed if the School Board immediately withdraws the agency action and unadopted rule levied against MCA.

Please note that this letter is sent solely in accordance to the procedural requirements of filing of a petition in the Division of Administrative Hearings relating to rule challenges. This letter shall not be construed to limit MCA's remedies, both in law and equity, in any other proceeding regarding recent breaches of the Mediation Settlement Agreement by the School Board as well as any ethical violations by the School Board's attorneys and members.



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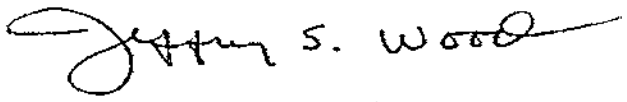
Despite the potential filing of this unadopted rule challenge, MCA has every intent of responding to your letter sent to MCA on August 6, 2020 within the time frame specified within that letter. MCA does not in any way disagree with the Sponsor's authority to supervise and monitor the school as specified in Section 1002.33, Florida Statutes and related statutes.

Sincerely,



Jeffrey S. Wood
Tripp Scott PA

cc: (see below)

David Hull, Executive Director
dhull@masonacademy.com

School Board of Collier County:
WestbcJo@collierschools.com
lucars@collierschools.com
mitchj3@collierschools.com
cartcc1@collierschools.com
terryro@collierschools.com

James Fox, Esq.
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September 28, 2020

**VIA EMAIL**

Jeffrey S. Wood, Esq.
Tripp Scott
110 Southeast Sixth Street, Fifteenth Floor
Fort Lauderdale, FL 33301
jsw@trippscott.com

Re: Your September 9, 2020 letter "Mason Classical Academy, Inc. ('MCA') v. School Board of Collier County Public Schools ('School Board')"

Dear Mr. Wood:

We are writing in response to your above letter claiming that the School Board had somehow issued an unadopted rule in notifying MCA of its various defaults. The position you are asserting cannot be supported in law, as contractual matters and communications related thereto are not "rules" as that term has been defined in the law.

We suggest that your client familiarize itself with its own charter application documents, the history of the settlement negotiation and the Florida Statutes, before deciding that you do not have to abide by either the Charter, the MSA, or the Florida Statues. The charter itself provides terms under which the Charter may be terminated (Charter at section D, pp. 3-4). Among these is "Failure to cure a material breach of any term or condition of this Charter after written notice of noncompliance." The written Notice(s) provided to you are thus contemplated in the Charter itself. The fact that your client does not want to accept the notice or make the needed corrections, does not make the notices a rule.

The Legislature has clearly defined what constitutes a rule. Section 120.52(15), Florida Statutes (2013), defines a rule as:

> each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute

EXHIBIT R

> or by an existing rule. The term also includes the amendment or repeal of a rule....

Not every statement or policy of an agency is a rule. "An agency statement or policy is a rule if its effect requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law. See *Fla. Dep't of Revenue v. Vanjaria Enters., Inc.*, 675 So.2d 252, 254–255 (Fla. 5th DCA 1996); *Balsam v. Dep't of Health & Rehabilitative Servs.*, 452 So.2d 976, 977–978 (Fla. 1st DCA 1984). When terms apply only to specific contracts they are not "generally applicable." *Cf., Florida League of Cities, Inc. v. Admin. Com'n*, 586 So. 2d 397, 406 (Fla. 1st DCA 1991) (saying a sanctions policy "isn't one of 'general applicability' as it applies only to municipalities who are late or not in compliance in submitting their comprehensive plans."). In addition, a contract of definite duration, such as in this case, is not a rule. See, *Wood v. Florida Board of Professional Engineers*, DOAH Case No. 12-2900RU, (Feb. 20, 2013). The Charter itself states its terms there is nothing that magically turns a contractual provision into a rule.[1]

Moreover, contractual compliance provisions in the Charter also do not meet the definition of a rule, nor do the penalties for non-compliance. In *Dep't of Highway Safety & Motor Vehicles v. Schluter*, 705 So. 2d 81 (Fla. 1st DCA 1997), the court addressed whether certain policies that only occur under certain circumstances at the discretion of a supervisor are rules. The courts said, "[t]hey cannot be considered statements of general applicability because the record establishes that each was to apply only under "certain circumstances." Consequently, as in Department of *Highway Safety & Motor Vehicles v. Florida Police Benevolent Ass'n*, 400 So.2d 1302 (Fla. 1st DCA 1981), these statements should be considered effective merely as guidelines, in that their application was subject to the discretion of the employee's supervisor. [These] declarations cannot be said to have been 'intended by their own effect to create rights, or to require compliance, or otherwise to have the direct and consistent effect of law.' *Id.* at 82.

Therefore, the fact that the School Board has discretion in supervising MCA's performance under its contract does not make contractual enforcement a rule.

Finally, it is both dismaying and revealing that your client is objecting to placing it on notice of its contractual defaults. Indeed, it was your client who told us that it was our duty to place MCA on notice of the School Boards concerns and to give it notice of defaults. (See, Letter of Sean Arnold to Jon Fishbane, July 9, 2019, p.3). Indeed, it would seem that what your client really wants is simply not to be held responsible for its breach of in Charter contract and its breaches of the Mediation Settlement Agreement ("MSA"). Your advice that the Settlement Agreement has no teeth or consequence for violation, and its attendant implication that it can be violated with impunity is contrary to law. "It is the policy of this state to encourage settlements and enforce them whenever it is possible to do so." *See Antar v. Seamiles*, LLC, 994 So. 2d 439, 442 (Fla. 3d DCA 2008) citing *Robbie v. City of Miami*, 469 So.2d 1384, 1385 (Fla.1985) (finding that "settlements are highly favored and will be enforced whenever possible"); *Hernandez v. Gil*,

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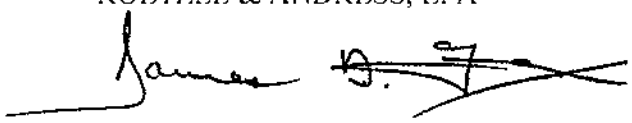
[1] Any further examination is unnecessary, because the definition of what constitutes a rule is clearly preempted by the Legislature. *Sarasota Alliance For Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

958 So.2d 390, 391 (Fla. 3d DCA 2007) (same). The multiple breaches of the MSA and the need for enforcement, as you know, would be brought directly to the ALJ for review. Unless, you start advising your client appropriately as to the law of settlement rather than encouraging it to breach the MSA and not accept any provisions that it decides it does not like in the wake of the August 6, 2020 letter. After all, both boards approved the MSA. We wonder how your client will tell a judge that it nevertheless gets to pick and choose whatever it wants. That violation of the MSA is even contemplated and carried out, apparently with your support and recommendation, suggests what we feared all along: Your client never intended to, does not now intend to, and never will abide by its agreements with the School Board.

Sincerely,

ROETZEL & ANDRESS, LPA



James D. Fox

JDF

CC: Client
Jon Fishbane, District School Board General Counsel
MCA Board Members

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