

INVESTIGATIVE REPORT

FOR

MASON CLASSICAL ACADEMY

Submitted to:

The District School Board of Collier County, Florida

By: Jon Fishbane, District General Counsel

TABLE OF CONTENTS

<u>Subject Matter</u>	<u>Page No.</u>
I. Introduction	3 - 4
II. The Evidence Received and Reviewed	4 - 5
III. Methodology	5
IV. The Financial Oversight Committee	6 - 18
V. Board Governance and Oversight	18 - 28
VI. MCA Board and Administration Oversight: Grievances, and Parental and Student Concerns	28 - 52
VII. The Issue of Potential Conflict of Interest	52 - 54
VIII. Financial Issues and Best and Brightest Program	54 - 56
IX. Faculty Concerns	56 - 57
X. Miscellaneous	57 - 58
XI. Conclusions and Recommendations	58 - 61

I. Introduction:

On or about June 7, 2018, Joseph Baird, a former Mason Classical Academy (“MCA” or the “School”) Board Member, Treasurer, and parent of students previously enrolled at the School, filed a detailed Complaint with the Florida Department of Education’s Office of the Inspector General (“OIG”). In it, he alleged multiple areas of wrongdoing involving especially MCA Board Members Lichter and Miller and the School’s Principal Mr. Hull. His allegations and concerns will be more specifically addressed beginning in Section IV of this report. On June 8, 2018, Mr. Baird supplemented his Complaint by submitting the OIG additional information, including a link to the State’s Department of Corporations Sunbiz site, concerning a corporate entity, the Classical Charter Management Group, LLC, which identified Mrs. Lichter and Mr. Hull as business partners along with an MCA employee, Mrs. Smith, who was MCA’s Curriculum Coordinator.

On June 13, 2018, Edward G. Rawls, Jr., Director of Investigation at the OIG wrote to Mr. Baird acknowledging receipt of the Complaint “regarding various concerns with the Mason Classical Academy School Board of Directors and Administration.” (See, letter from E. Rawls, Jr., to J. Baird, June 13, 2018). Mr. Rawls informed Mr. Baird that based upon his office’s review and analysis, the OIG had concluded that the concerns raised in the Complaint, “do not fall within our jurisdictional purview.” It was determined that on the basis of statutory and Florida Constitutional review, the matter more appropriately fell within the authority and jurisdiction of the local school board (in this case the District School Board of Collier County). Mr. Rawls added that to assist him in finding resolution to his concerns he was referring Mr. Baird’s Complaint to those parties that have the authority over the matters he raised. Mr. Rawls concluded his letter as follows:

By way of this letter, we are forwarding your complaint information to the Director of Independent Education and Parental Choice, to the District Superintendent in Collier County, and the School Board Chair, for their review and action deemed appropriate.

He copied Mr. Miller, Dr. Patton, Mr. Terry accordingly. Dr. Patton and Mr. Terry brought the Complaint to the attention of the undersigned and, given the scope of the issues raised, as well as the multiple parental calls, complaints, and student departures from MCA, that had come into the District over several years, which were not being addressed by MCA, to carefully review and look into the matter.

Sometime in early August 2018 inquiries were being made by concerned parents whose children had attended MCA and former faculty members, to express their interest in coming forward to discuss the matter. Mr. Hull became aware of people coming forward. It led to him to email Dr. Rogers, the District’s then Director of Charter Schools, in order to express his concerns. In his communication, he noted the following:

We take complaints seriously because that is a great way to self-reflect and become a stronger institution for students and their families. However, there has only been one official complaint in over 4 years of operation.

This could very well be a result of CCPS interference, or MCA is just that good at pleasing our parent base. There are other issues along these same lines that do not paint the CCPS governance in a good light, but I will refrain from pointing those issues out at this time. (See, September 4, 2018, email from D. Hull to S. Rogers sent at 1:59 p.m.

The tone of his email, both defense and aggressive in nature, with respect to people coming forward in the early stages of review and investigation, was of some concern.

Many people did indeed come forward. Many were parents and faculty members who expressed fear of retaliation (for themselves and their children) by Mr. Hull. Over the next several months, in discussions with District staff who received calls from MCA parents seeking educational advice from them, it was learned that such fearfulness had been communicated to them as well. The undersigned also met with Mr. Hull, Mr. Marshall, and Ms. Turner at MCA on April 29, 2019. Overall, we spoke with over thirty (30) people.

As a consequence of these conversations, a very considerable amount of email communications were received from multiple sources and providers (including those received from Mr. Hull in November 2018 who wanted the undersigned aware of them as part of the investigation). Many issues surfaced that needed follow up, review, and investigation. Some were linked directly or tangentially to Mr. Baird's Complaint some were not. This led to a widening of the scope of the investigation, the time needed to complete it, and bring it to closure.

II. The Evidence Received and Reviewed

The evidence received, reviewed, and considered has been extensive. In addition to the information received from MCA parents and faculty members and District staff along with extensive email communications as previously noted, MCA Board Meeting Minutes and Agendas going back to 2013 were reviewed as well as Finance Committee Meeting Minutes from 2014 – 2016, Mr. Baird's October 4, 2016, Treasurer's Report and resumes of persons seeking to be part of the proposed revised Financial Audit Committee at that time. In addition, the undersigned reviewed MCA principal reports, documentation linked to meetings, MCA Policy Binders (dated April 26, 2018, and its updated version dated January 23, 2019).

Moreover, the following other important documents were reviewed: MCA's 2013 Application and the charter documents between MCA and the District School Board of Collier County, MCA's 2018-2019 Progression Plan, Unaudited Financial Statement, McCreedy and Associates documentation, MCA Charter School financial condition reporting documents, and MCA's May 29, 2018, salary planning document.

Further, the undersigned reviewed corporate organization documents pertaining to Classical Charter Management Group, LLC ("CCMG") and charter school application documents involving the American Classical Charter Academy from multiple school districts which CCMG was apparently providing consulting services, multiple letters to MCA parents from Mr. Hull from 2015 and 2018, multiple social media postings from 2015 and 2018, District

records of transfers from MCA to the District, home education, and private schools, and 2017-2018 Best and Brightest program documentation involving MCA.

Finally, as part of the legal analysis, the undersigned reviewed Florida case law and statutes pertaining to issues under review, including FS 1002.33, Federal Statutes implementing regulations, USDOE Office of Management letter rulings, and FAQ's pertaining to FERPA, Florida Attorney General Opinions, and several cases and statutes cited therein, Sunshine Law materials, MCA policies, Roberts Rules of Order, ESE procedural safeguards, Florida Commission on Ethics Opinions, and FAC 6A-10.081 (Principals of Professional Conduct for the Education Profession in Florida).

The above pretty much covers all of the materials reviewed and considered.

III. Methodology:

As previously noted, the documentation reviewed in this investigation was extensive. In order to be able to meaningfully organize and interpret the evidence, the undersigned, in consultation with District staff, looked for commonalities in the multiple documents and interviews to determine if certain patterns of observation and experience could be ascertained. For example, where multiple reporters of information expressed observing or being the recipient of the same or similar patterns of action and behavior with respect to MCA Board Members and administrative staff, whether as to given events or over time, credence was given to such information. Thus, such same or similar patterns of action and behavior demonstrated a regularity of conduct over time that had to be taken seriously into account for the purposes of careful review and interpretation.

This principle of observation and experience was also applied if reporters of information related the same or similar statements, actions, behaviors, usage of language, including body language and gestures, as well as linguistic responses and voice tonalities. Moreover, credence was given to same or similar linguistic expressions, and expressions of emotion articulated by reporters with respect to Board Member and Administrator actions, behaviors, or experience of similar events. Such sameness and similarity evidenced a commonality and regularity of actions and behavior over time that had to be taken into account.

In this context, reporter statements and observations that wandered away from the issues under review or involved extraneous information, were given lesser weight. The same held true where statements and observations were found to be unclear and confusing. The credibility of a given reporter's statements and observations were also examined in connection with documentation received, where applicable.

The undersigned also took seriously the statements expressed by Mr. Hull, Ms. Turner, and Mr. Marshall at the meeting with them on April 29, 2019, at MCA. Finally, and perhaps most importantly, in reviewing the extensive email communications, Board Meeting Minutes, Policies, and so on, the central priority analytically was to let the documents speak for themselves.

IV. The Financial Oversight Committee:

In his Complaint, Mr. Baird has identified two core issues pertaining to the Financial Oversight Committee (a) its formation and membership; and (b) his inability to properly undertake his role as Board Treasurer and receive financial and accounting information. These will be addressed sequentially.

A. (1) Overview of the Central Allegations Pertaining to Formation and Membership on the Committee

In this Complaint, Mr. Baird has alleged that MCA Board Members Lichter and Miller, along with Mr. Hull and Mr. Marshall, knowingly created an environment where fraud could occur by preventing the formation of a Financial Oversight Committee. He contended that Mr. Hull took a leading role in halting his efforts to help form it. Mr. Baird alleged that at the September 6, 2016, Board Meeting, the Board agreed that he should (a) notify all school parents that a committee was being formed; (b) solicit resumes of persons interested in serving on a Financial Oversight Committee (“FOC” or “Committee”); and (c) individually interview interested candidates, discuss the interviews, then vote on the most suitable applicants to serve on the Committee. Mrs. Lichter advised that in anticipation of the October 4, 2016, Board Meeting, Mr. Baird should get training from Dr. Carpenter who consults with Hillsdale College and provides training for charter school board members.

Mr. Baird has also alleged that in a phone conversation with Mr. Hull prior to the October 4, 2016, Board meeting, he had informed him that Dr. Carpenter believed the Board should move forward immediately with the formation of an FOC. Mr. Baird alleged that Mr. Hull called him to request that the formation of the Committee not go forward at that time. Mr. Baird allegedly responded that Dr. Carpenter was quite clear that the Board should not delay forming an FOC and that he intended to follow Dr. Carpenter’s advice. Moreover, Mr. Baird has alleged that at the October 4, 2016, Board Meeting, Board Member Miller wanted to halt the determination and vote on who would serve as Committee members and was allegedly supported in her efforts by Board Member Lichter and Mr. Hull and the matter never proceeded to a consideration of membership and vote.

A. (2) The Factual Record Pertaining to Formation and Membership of the FOC

According to the July 11, 2016, Board Meeting Minutes, the Board approved a “Motion to dissolve the existing Finance Committee in anticipation of the formation of a newly defined Financial Oversight Committee”. It was noted that Board President Mrs. Lichter “will email her notes from Hillsdale Board Training to Jason Lane to assist him in defining the new Financial Oversight Committee.” Mr. Lane was the then Board Treasurer. The vote was 3-1. Board Member Mr. Donalds opposed dissolving the Finance Committee. There is nothing in the Minutes setting forth any discussion on the matter or the reasons why there was a need to dissolve the Finance Committee at that time.

A review of MCA's records shows that the Finance Committee met almost monthly from at least to January 26, 2015, through May 9, 2016, as a Board delegated Committee with well-developed Minutes describing the work of its membership and contributors. The Finance Committee reviewed and discussed the following: cash flow, profit and loss reports, balance sheets, reserved accounts, the proposed fiscal year budgets, including explanations of fund balance and risk management, as well as school insurance, construction loans, payroll, bank statements, CAM costs, Board policies pertaining to financial matters, donations, commercial loans, GoFundMe proceeds, loan repayments, and so on. The work of the Committee and related financial issues was regularly brought to the Board for review and discussion; often by Mr. Mathias with contribution from Ms. Turner. Hence, there was a regular and continuous flow of financial information reporting to MCA's Board.

The Minutes of the August 2, 2016, Board Meeting reflect that Board President Lichter reported that Mr. Lane had resigned from the Board and had presented his letter of resignation accordingly. It was announced thereafter that the Board hold a Special Meeting on August 8, 2016, to discuss replacing Mr. Lane as Board Treasurer.

At the August 8, 2016, Special Meeting, Mr. Baird was approved through motion and vote to serve as a Board Member and the new Board Treasurer. During Board comments at the end of the September 6, 2016, Board Meeting, the Minutes provide the following: "The Board Members discussed the role of the Financial Oversight Committee and possible members". What the work of the FOC would involve is not presented in the Minutes nor are there any documents attached to give any reviewer a reasonable sense of its function. The Board apparently agreed that a new Financial Oversight Committee should be formed and that Mr. Baird proceed to notify MCA parents to see who might be interested in serving on it. In this regard, Board Members and Mr. Hull believed it was important to follow the training recommendations of Dr. Carpenter that a school such as MCA should have a committee such as an FOC in place to protect its interests.

On September 20, 2016, Mr. Baird sent an information notice to the MCA Committee from the schools email system (info@masonacademy.com, subject: **Financial Oversight Committee**). He noted that the MCA Board was seeking "volunteers to help run the Financial Oversight Committee." He requested that all interested persons complete the application attached prior to September 24, 2016. Mr. Baird then noted that the purpose of the FOC was to "provide financial oversight for the school by providing recommendations for improvement to the Board of Directors." He then noted that some of the duties and responsibilities of committee members would include the following: (1) review of MCA's 403B Retirement Plan; (2) assist with auditor selection; (3) review of internal controls; (4) review of financial policies; (5) review of IRS 990 form; (6) review of MCA's insurance policies; (7) ensure compliance with state and federal regulations; and (8) review of MCA's financial statements. It was anticipated that the FOC would meet on a quarterly basis. (See, the September 20, 2016, email sent from MCA to the MCA community concerning joining the FOC).

On September 23, 2016, in the early evening, after the close of business, Mr. Baird sent all Board Members and Mr. Hull an email that he had uploaded to the school's google drive for their review all the applications that he had received to date for the FOC. He noted: "Please

review and interview applicants as you see fit. Come prepared to the next meeting to discuss and vote on the candidates.” He then added the following: “Please check with David Hull for his perspectives on any candidate you may be considering.” He promised to send along any additional information he might receive. As a precautionary note to Board Members and Mr. Hull, Mr. Baird noted “Do not reply to this email.” (See, September 23, 2016, email from J. Baird to MCA Board Members and Mr. Hull sent at 6:41 p.m.). Thus, Mr. Baird had provided the applications of persons interested in serving on the FOC to Board Members and Mr. Hull for review well in advance of the October 4, 2016, Board Meeting.

In the morning of September 26, 2016, Mr. Baird sent Mr. Hull an email noting that he thought it might be helpful to obtain feedback from the teachers of students whose parents have applied for a position on the Financial Oversight Committee. He felt that since teachers interacted with parents, “some of our teachers could provide some insights regarding potential candidates.” He asked Mr. Hull if he had any suggestions as to how the Board could obtain this information recognizing that he doubted that Mr. Hull “would want all Board Members interviewing teachers.” Mr. Hull responded that “we should probably not involve the teachers if that’s okay.” He added that he would serve as the go between if necessary. He wrote: “If you feel strongly about it though, give me the name of the candidate, and I will speak with the teachers to see if he/she has any information.” Mr. Baird replied that he would trust Mr. Hull’s judgment. He asked Mr. Hull if he could speak with him by phone, “if you have some time today to voice some concerns.” He felt speaking by phone would be easier than emailing back and forth and asked if Mr. Hull had some time that day. Mr. Hull wrote back “can it be another day? I’m swamped.” (See, September 26, 2016, email chain between J. Baird and D. Hull).

On October 2, 2016, two days before the Board Meeting, Mr. Baird wrote to the Board Members and Mr. Hull. He informed them that he had uploaded two documents to the School’s google drive for them to review before the meeting: (a) Finance Committee Purpose; and (b) Finance Committee Application list. He then noted “when discussing individual candidates, please refer to them by the letter next to their name instead of by name.” He also requested that they all “come prepared to discuss and vote on proposed purpose of the Finance Committee.” He informed them as well not to reply to the email. (See, October 2, 2016, email from J. Baird to MCA Board Members and Mr. Hull).

Moreover, in the Finance Oversight Committee purpose document that he had attached, he recommended the following to assist the Board and Mr. Hull as part of the review at the Board Meeting:

The primary means by which this financial oversight will happen is through the implementation of policies and rigorous monitoring. The Committee will evaluate current management policies, internal controls, insurance policies, legal regulations, etc. in order to provide recommendations for improvement to the Board of Directors. The Committee has no decision making authority whatsoever, and the committee’s membership will be evaluated annually by the Board of Directors.

On the Agenda for the October 4, 2016, Board Meeting, four items are identified as action items under New Business. The third action item identified was “C. Finance Oversight Committee Members.” The action recommended was to approve and the Agenda identifies Ms. Lichter as the Board Member who would bring the matter forward.

However the Board Meeting Minutes provide that there was a “Motion to Approve Creation of Financial Oversight Committee” which was voted on and passed unanimously. This was not listed on the Agenda as an action item; nor do the Minutes have anything concerning any discussion about the FOC, its goals, purpose, composition of membership, and so on. In fact, a review of the Minutes show no action was taken on Members serving on the Committee including no effort to move to table or defer the matter to the next meeting. The investigative record reveals that eight applications were received. All applicants were parents. The applications were not attached to the Agenda for public review. Moreover, the applications and the qualifications of the applicants were not discussed at the Meeting.

During the undersigned’s meeting with Mr. Hull, Mr. Marshall, Ms. Turner, and MCA’s counsel on April 29, 2019, at MCA, Mr. Hull and Mr. Marshall stated that they did not review the applications and resumes of the candidates. However, Mr. Hull noted that he remembered that the applications included those of Board Member spouses. He could not recall how he knew that. He did remember speaking with Board Member Miller that the applicant pool should include more than parents.

At the Meeting itself, Ms. Miller expressed her concern that the Board needed to see if other members of the community with expertise were willing to serve in order to broaden the pool of applicants who had already applied. Ms. Lichter concurred. Mr. Donalds did not concur nor did Mr. Baird who expressed concern that the recommendation of Dr. Carpenter was not being followed. Mr. Donalds recalled that not to follow Dr. Carpenter, who all Members respected, was a matter of concern for him. No applicants were either identified or discussed as capable and competent to serve on the Committee. While an FOC was formed, it was an empty shell. No one ever reached out to the community again to reopen the application process. The existing applicant pool was shelved, and the FOC died on the vine.

In the Minutes of the December 14, 2016, Board Meeting there is noted a “Motion to Establish Audit Committee Consisting of Chuck Marshall, Josh Longenecker, and Laura Miller.” Mr. Marshall was the Compliance Officer of MCA at the time. Mr. Longenecker, who had been approved to serve was the Board’s Treasurer. Ms. Miller made the Motion, Mr. Longenecker seconded it, and the Motion passed unanimously.

Missing from all this was a discussion or documentation as to (a) why such a Committee was called for then; (b) what was its purpose; (c) what was the nature of its oversight; (d) why it included only three Board Members and a Compliance Officer; (e) why there were no efforts to seek applicants from the MCA (and general community) to be part of it; (f) when the Committee would meet; (g) how an essentially Board Member Committee would report to itself, and so on. In this context, MCA Meetings records show that this Committee never met nor ever presented any report. Like the FOC, the Audit Committee died on the vine. No other FOC, Audit Committee, or their equivalent has been constituted by the Board.

B. (1) Overview of Central Allegations Pertaining to Mr. Baird's Claims that He Was Blocked in his Ability to Carry Out his Role as Board Treasurer

Mr. Baird has alleged that not only did Board Members Lichter and Miller, along with Mr. Hull and Mr. Marshall, seek to halt the setting up a functioning Financial Oversight Committee, they also worked to prevent him from carrying out his duties and responsibilities as Board Treasurer.

In this regard, based on his understanding of Dr. Carpenter's work, Mr. Baird has alleged that it was appropriate for him to be able to ask for and look into financial records, funding from the District, including whether or not too much had been received, monthly lists, MCA student enrollments and withdrawals from the school, employee expense reports, and so on. He expressed his concern that unless he could carry out appropriate due diligence, as Treasurer, into MCA's finances, both he and MCA could be at risk. In his view, based on his reading of Dr. Carpenter's work, he contended that not to be able to undertake such a review, he would be negligent in his undertakings, risked breaching his fiduciary responsibilities as Treasurer which could expose him to personal liability. Accordingly, Mr. Baird has alleged that when he expressed these concerns, he was treated in a condescending fashion by Mr. Hull and Mr. Marshall and essentially informed by Board Members Lichter and Miller that he should back off and not try to scrutinize or manage Mr. Hull's and Ms. Turner's work. (See, Baird Complaint, at pp. 4-6).

B. (2) The Factual Record Pertaining to Whether Mr. Baird was Blocked in his Ability to Carry Out his Duties as Board Treasurer

Sometime in late August or early September 2016, Mr. Baird met with Susan Turner, MCA's Business Manager, to go over his role as Treasurer. She spent several hours with him going through the school's finances and reports; providing him with documents and showing him how to access the school's google drive. Mr. Baird found her assistance helpful.

To help him with the preparation of his first Treasurer's Report (the August 27, 2016, Minutes shows that he had not yet submitted any report) on Thursday morning, September 29, 2016, Mr. Baird emailed Ms. Turner concerning questions he had in follow up to his review of MCA's August financials. He noted, in connection with the fourteen questions he provided to her for review, that it would be helpful if she could respond by Monday evening, October 3, 2016, if possible. He added: "If this puts an undue reporting burden on you, please let me know."

Mr. Baird asked Ms. Turner, for example, "what is the employee reimbursement policy? Who approves? Can I see expense report for July and August?" He wanted an explanation of Amazon gift card purchases and how to understand certain purchases. He asked, "on 8/31, we transferred \$20k from FEFP into the Donations account. Why?" He also asked for explanations on several transactions such as "who is Curran Taylor and what is check #2345 in the amount of \$11,685 for?" And "what is the \$469k deposit from Doug Schuman on 8/5 for?" (See, the September 29, 2016, email communications between J. Baird and S. Turner).

Ms. Turner expressed her concern with the scope of Mr. Baird's request to Mr. Hull. Shortly after 10:00 a.m. that morning she emailed Mr. Hull whether it was acceptable to provide Mr. Baird the Amazon gift card documentation so that he would see that "we're tracking it and not open to theft?" Mr. Hull promptly replied "of course." (See, the September 29, 2016 email between S. Turner and D. Hull).

Shortly, thereafter, Mr. Hull contacted Board Member Lichter that Mr. Baird's requests were extensive and impacting his staff's time. Subsequent to their conversation, Mrs. Lichter emailed Mr. Baird at 10:58 a.m. with the subject line reading "Treasurer's Role." In her email, she essentially informed Mr. Baird that he needed to back off and inferred that as a new treasurer his actions were probably a function of not really understanding what his role was. She wrote: "I spoke with Mr. Hull this morning about some questions you had for Ms. Turner. I understand that you are still in the on-boarding process and learning, but I think those questions should be asked during an oversight committee meeting."

According to Ms. Lichter, Dr. Carpenter had advised that the board should "keep any eye on things and looking for anything irregular, not questioning every single expense." She then informed her fellow Board Member as follows: "Ms. Turner has a big job and I do not want to add anymore to her plate." In essence, she would make herself available at finance oversight meetings "to answer any questions or concerns...If you have any questions, please let me know." (See, September 29, 2016, email from K. Lichter to J. Baird sent at 10:58 a.m.). At 12:55 p.m., a surprised Mr. Baird responded to Ms. Lichter as follows:

I didn't think any of the questions I had were inappropriate, and I certainly wasn't questioning every single expense. I'm not sure that a committee meeting is the right forum to ask some of those questions in any case. Regardless, I have a treasurer's report to prepare for Tuesday, and that report needs to include a statement that says "I found no irregularities". There may be some disagreement about what questions are appropriate and which are not, but at the end of the day I feel that I need answers to a lot (not all) of those questions before I can legitimately say "I have examined the bank statements and the financial reports and found no irregularities."

(See, September 29, 2016, email from J. Baird to K. Lichter, sent at 12:55 p.m.).

Mr. Baird added that he thought he had acted appropriately and had received Mr. Hull's permission to engage Ms. Turner and was mindful of her time commitments. He felt giving her a list of questions at one time rather than calling her when questions arose was the most efficient way to minimize the time to complete the work involved. It should be noted that about an hour prior to writing Ms. Lichter, Ms. Turner sent Mr. Baird the supporting documents concerning the Amazon gift cards with accompanying explanatory information.

Mr. Baird received no further documents from Ms. Turner and Mr. Hull until after the October 4, 2016, Board Meeting. As a consequence, on October 3, 2016, Mr. Baird uploaded to

the google drive his Treasurer's Report for October 4, 2016, that he considered incomplete and informed the Board accordingly. His Report listed those account balances as of August 31, 2016, that he received and verified. He then noted:

I have been prevented from completing my examination of the financial and bank statements for August 2016 due to management's failure to provide pertinent information I have requested. I will complete my investigation upon receipt of this information.

(See, October 4, 2016, Treasurer's Report to the MCA Board signed by Mr. Baird).

At the October 4, 2016, Board Meeting, Mr. Baird expressed his concern with not being provided the necessary documentation to complete his work. Mr. Hull countered that Mr. Baird was adding undue burden to his staff. Ms. Miller supported Mr. Hull's concerns. Mr. Donalds questioned why Mr. Baird was not being appropriately assisted. He noted that such requests were not unfounded and that the time needed to help him with his work would not affect instructional time. Ms. Lichter also supported Mr. Hull's concerns about adding to Ms. Turner's workload. She did not publicly disclose her September 29, 2016, email to Mr. Baird acknowledging that she had spoken with Mr. Hull and had informed Mr. Baird to back away and to bring his concerns to the Financial Oversight Committee when Ms. Turner could be available to respond to questions. No one at the meeting discussed when the Committee would commence its meetings. And no one at the meeting discussed what the role of the Treasurer would be and what would constitute reasonable requests for information. Instead, Ms. Lichter asked Mr. Baird and Mr. Hull to meet together to resolve the issues in moving forward. In the Minutes of the October 4, 2016, Board Meeting, under the report of the Treasurer, it was noted that "issues with regard to contacting staff were discussed and resolved." This representation was not accurate.

After the Board Meeting, Mr. Baird emailed Mr. Hull at 9:17 p.m. (October 4, 2016). He informed him that "the last thing I want to do is increase Ms. Turner's workload. I know you both work very hard and put in many more hours than most of us realize." He added that as requested, he will schedule a meeting with Ms. Turner to go over the questions. Mr. Baird concluded with the following request of his own:

Before I do so, I wonder if you would mind sending me the information she already has on hand. You mentioned in tonight's meeting that she has already put three hours into answering my questions. I would like you to explain to me why all of the work she has completed so far was not sent to me. In the spirit of not taking up any more of her time than is absolutely necessary, it would be beneficial to have that at the very least. In this way, our meeting at the school should be short and sweet.

(See, September 29, 2016, email from J. Baird to D. Hull).

On October 5, 2016, at 7:07 a.m., Mr. Hull responded to Mr. Baird's email stating: "After giving it some thought, I agree with you that this request for information should be done by email. Your idea of having it in a written record is a good one." He advised that Ms. Turner

will make the request a top priority of hers and will “email the answers by the end of the this week....” Mr. Hull then stated the following:

There is no explanation for why the work Ms. Turner completed was not sent other than it was a total communication failure on my part. I was thinking something completely different about this matter, and I blew it. I offer my apologies. It won't happen again. Please let me know what you'd like, and we will get to you. Today, the focus will be on your list of questions.

Mr. Baird replied to Mr. Hull's email at 8:32 a.m. thanking him for his assistance. He noted that he would be “happy to prioritize those questions for you in order to minimize the disruption to your daily operations... I will look for a response from Mrs. Turner later this week.” At 10:37 a.m., Mrs. Turner emailed Mr. Baird with the responses to his questions. (See, September 26, 2016, email exchange between J. Baird and D. Hull).

Shortly, after Ms. Turner sent him the responses, Mr. Baird emailed Mr. Hull at 10:42 a.m. noting the following: “I'm afraid we've gotten off on the wrong foot. I would like to meet with you in person to talk things over. Can you let me know your next availability?”

Mr. Hull replied shortly thereafter (at 10:49 a.m.). He stated that he thought that they “were going to do that this week, but last night and this morning should have resolved many of your concerns.” He informed Mr. Baird how time consuming it all has been for him adding “we have done our best to get you the information you requested.” (See, October 5, 2016, email from D. Hull to J. Baird). Mr. Hull did not provide any dates or times he was available to meet. No meeting between the two men ever took place.

At the end of the day on October 5, 2016, (at 5:41 p.m.), Mr. Baird emailed Mr. Lichter attaching pages from Dr. Carpenter's Manual and specifically identifying those pages that addressed oversight policies that he thought Mr. Lichter might be interested in reading. (See, October 5, 2016, email from J. Baird to N. Lichter). The next day, at 9:48 a.m., in a lengthy email, Mr. Baird informed Mrs. Lichter that he was resigning from the Board. Mr. Baird informed her that he was concerned that Mr. Hull was “fighting every type of oversight. He does not want to be held accountable to the Board.” In Mr. Baird's view, “Dr. Carpenter stands for everything David does not want.” (See, October 6, 2016, email from J. Baird to K. Lichter. See, too, J. Baird's October 6, 2016, resignation letter).

That afternoon (at 2:03 p.m.), an upset Mr. Lichter emailed MCA Board Members and Mr. Hull. His concerns and observations are worth quoting:

It is disappointing that Mr. Baird's questions and requests for documentation were met with resistance by the management team. His efforts were even called “co-managing” at Monday's board meeting. Since when are a sitting treasurer's questions and requests for financial documents deemed “co-managing?” How ridiculous! As a result of management's and the board's resistance to following institutional best practices and Dr. Carpenter's

recommendations, Mr. Baird was unable to confidently execute his fiduciary duty to present an accurate financial report to the board and had to resign. Who can blame him?

Why the board refused to empower Mr. Baird to faithfully carry out his duties as treasurer raises several questions. First, which party is governing the school? Is the board governing or is management governing? If the board is governing, why would it defer to management and allow it to decide which questions management would answer and which documents it would provide to the treasurer?

Mr. Lichter further contended that “increasing the management team’s authority while limiting that of the Board Treasurer would place the future of the school and its reputation at risk. “Not because of any wrong on the part of the management team but because they lack oversight.” In his view, a Treasurer must be allowed to ask questions, request documents, and obtain more training. He then observed: “Without transparent and cooperative management, it will be impossible for the treasurer to fulfill his fiduciary duties and the management team will be scrutinized for appearing to be hiding something. Why put the school through this?” Mr. Lichter concluded that Mr. Baird had been “forced off the board because the board and management refused to allow him to perform his proper role as treasurer.” (Id.).

On Friday morning, October 7, 2016, Mr. Baird sent the Lichters a long email at their respective personal email addresses. He expressed his frustration with working with Mr. Hull; including his concern with the incomplete nature of the responses he received. He wrote:

I am sure that David will say he provided me with everything I asked for and gave me his full cooperation. Please review the attached pdf files which show some of the information he sent to me. The scanning job is sloppy and much important information is obscured from view. When I saw the way this information was presented to me, I was frustrated because I realized that I would have to go yet again to Susan and ask her to re-do some of the work. This would have only re-ignited the fire and made the situation worse. I also realized that I was going to have to go through this ridiculous exercise every month. This was a major contributing factor in my resignation.

In support of his claims, he attached some seven (7) pdf receipt areas for their review. (See, October 7, 2016, email from Mr. Baird to K. and N. Lichter and attachments).

Mrs. Lichter responded to Mr. Baird in the early afternoon as follows: “I plan to meet with David and Susan to discuss since it looks like I will take over these responsibilities until we find someone. Thank you for sharing.” She sent her response from her personal gmail account.

At the November 1, 2016, Board Meeting, Ms. Lichter recommended Mr. Longenecker as a new member of the Board to replace Mr. Baird. The Motion to Approve her recommendation passed. Mr. Longenecker also became the new Board Treasurer. (See, the

Minutes of the December 14, 2016 Board Meeting). Mr. Longenecker did not present his first Treasurer's Report until March 24, 2017, reflecting a more than five month hiatus between Treasurer's Reports being submitted. However, a review of the record shows two different sets of March 24, 2017, Minutes with different information on it; although in both Mr. Longenecker's report is noted. In this context, between March 24, 2017 – January 26, 2018, the record of Board Minutes show, no Treasurer's report was submitted. The next time one was submitted was at the April 20, 2018, Board Meeting. Thus, from Mr. Baird's resignation on October 6, 2016 – April 20, 2018, only two (2) Treasurer Reports had been submitted to the Board for review. In fact, one does not find one through the October 22, 2018 Board Meeting. Thus, only two Treasurer Reports to the Board were provided over a two year period. Treasurer Reports were submitted to the Board only for review and these were done via the google drive and not attached to either the respective meeting agendas or the respective approved Minutes during this period for public access and review in spite of references to them being attached to the Minutes. After the April 20, 2018, submission, MCA Meeting Minutes show that no further Treasurer Reports were submitted to the time of Mr. Baird's Complaint to inform the Board of financial matters.

C. Discussion and Applicable Law, Policy, and Charter Documents

On July 11, 2016, the Board approved the dissolution of the Finance Committee over the objection of Board Member Donalds. While there was apparent discussion at the September 6, 2016, Board Meeting as to who would serve on a new Financial Oversight Committee, and the need to form such a Committee, what the duties and responsibilities of the Committee would be, beyond apparent quarterly meetings, was not presented. The previous Financial Committee met almost monthly and the Business Manager Ms. Turner, regularly attended and provided financial information to support it.

At the end of the day, the FOC never had members appointed to it nor did it ever meet. Rather than discussing whether the eight applicants were qualified to serve, and vote to approve qualified candidates so that FOC could at least commence its work, Board Members Miller and Lichter decided to stymie the process by claiming they needed to broaden the applicant pool to include non-parents. While the item was noted as an action item warranting a motion and vote, Board Member Lichter decided she would not bring it forward nor did she seek a motion to defer or table it until the next meeting. No effort was ever made thereafter to seek a broader applicant pool. Board Members Lichter and Miller did nothing to support it as a functioning committee; nor did Mr. Hull, Ms. Turner, or Ms. Marshall ever advise that an FOC was important to the school.

Board Members all admired the training, advice, and support of Dr. Carpenter. Dr. Carpenter had strongly recommended the need for a finance committee or financial oversight committee. In his Complaint, Mr. Baird discussed the critical importance of following Dr. Carpenter's advice. In a recent communication, Dr. Carpenter noted that except for the fact that he did not personally provide Mr. Baird with training, "Mr. Baird's representations of my remarks are substantially accurate." Dr. Carpenter's ideas were discussed by Mr. Baird at the October 4, 2016, meeting and affirmed by Mr. Donalds, but they were neither followed nor implemented.

In Ms. Lichter's September 26, 2016, email to Mr. Baird, after speaking with Mr. Hull, she directed him not to burden Ms. Turner further and stated that the information could be provided at a Financial Oversight Committee. But despite that assertion she never allowed it to reach fruition.

Equally significant, in MCA's 2012 Application to enter into a Charter Contract with the District, it set forth a detailed Organizational Plan under which is the section on governance (Section 9). The Application is incorporated by reference into the 2013-2017 Charter Contract with the District School Board and reincorporated by reference into the renewed 2017 Charter Contract.

In the Organizational Plan of the Application (See, p. 60), there is to be constituted a Finance Committee and an Audit Committee under the authority of the Board. The duties and responsibilities of the Finance Committee are to include the following:

Finance Committee:

The Finance Committee shall assist the Governing Board in carrying out its budget and finance duties. At least one member of the Governing Board shall serve on the Finance Committee. The Business Manager shall be required to attend all Finance Committee meetings. Specifically, the Finance Committee shall:

- (1) Make recommendations to the Governing Board in the following areas:
 - (a) Financial planning, including reviews of the charter school's revenue and expenditure Projections
 - (b) Review of financial statements and periodic monitoring of revenues and expenses
 - (c) Annual budget preparation and oversight
 - (d) Procurement
- (2) Serve as an external monitoring committee on budget and other financial matters.

This work was undertaken until the Finance Committee was dissolved. As a side note, the claim by Board Member Lichter that Mr. Baird's request was burdensome to Ms. Turner, is inherently problematic. Ms. Turner had regularly assisted and met with the Finance Committee. Mr. Hull had informed Mr. Baird that Ms. Turner had put in three hours of time in gathering information prior to October 5, 2016. Nevertheless, it is reasonable to assume that she had previously provided a minimum of three hours monthly to work with the committee and sit in on the meetings. At the October 4, 2016, Board Meeting, both Mr. Baird and Mr. Donalds' questioned how the requests were unreasonable and excessively burdensome on her time.

Similarly, under the Application (and the Charter), an Audit Committee was to be formed. In Section 9 of the Application, the duties, responsibilities, and membership were to include the following:

Audit Committee:

The Audit Committee shall consist of two Governing Board members, one volunteer member who is a parent of a student attending the charter school, and one volunteer member who has

experience in accounting or financial matters. The Principal and Business Manager shall serve as ex-officio, non-voting members of the committee. The Audit Committee shall:

- (1) Evaluate the request for proposal for annual financial audit services
- (2) Recommend the selection of the financial auditor
- (3) Attend the entrance and exit conferences for annual and special audits
- (4) Meet with external financial auditors at least monthly after audit field work begins until the conclusion of the audit
- (5) Be accessible to the external financial auditors as requested to facilitate communication with the Governing Board and the Principal
- (6) Track and report progress on the status of the most recent audit findings and advise the governing on policy changes needed to address audit findings
- (7) Provide other advice and assistance as requested by the Governing Board; and
- (8) Be subject to the same requirements regarding the confidentiality of audit information as those imposed upon the local school board by the Audit Act and rules of the state auditor.

At the December 14, 2016, Board Meeting, the Board approved the creations of an Audit Committee. The Board did not follow the membership criteria set forth above. Mr. Marshall was not a volunteer parent of a student attending MCA. He was one of the school's executive employees. There was no volunteer member, who had experience in accounting or financial matters, who was asked to serve. The Audit Committee never met. Like the FOC, it was an empty shell.

Accordingly, given the dissolution of the original Finance Committee, and the fact that the Financial Oversight and Audit Committees were shell committees that never met or oversaw anything, the Board breached the terms of its own Application and thus has been in continual breach of the Charter Contract since the dissolution of the Finance Committee in July 2016. In sum, the Board has breached its financial and auditing oversight obligations under the Contract.

Moreover, it was not appropriate for Ms. Lichter to write to Mr. Baird on September 26, 2016, subsequent to listening to Mr. Hull's complaint. In essence, she told him he needed more training, needed to back away from requesting the information he felt appropriate to submit a Treasurer's Report because she "did not want to add anymore to her plate," and his requested information could be taken up by a yet to be formed Financial Oversight Committee. She thus, undermined a fellow Board Member. Mr. Baird responded to her incredulously trying to understand what was inappropriate about what he was doing and trying to understand why she was directing him in the manner that she did.

Of equal concern was the fact that Board Member Lichter never informed the Board and the public at the October 4, 2016, Board Meeting nor any time thereafter, of the email to Mr. Baird, its contents, the response her email invited or Mr. Hull's complaining to her that led to her emailing Mr. Baird. The email exchange involved both Board and operational matters for which it was foreseeable that they would come before the Board for review, discussion, and action. She also had the opportunity to bring the exchange forward to inform the public of it and cure the problem publicly. In this context, at the May 9, 2016, Board Meeting, for example, Board Member Lane properly read an email aloud in an effort to cure a Sunshine Law violation. (See,

the May 9, 2016, Board Meeting Minutes). Yet, Board Member Lichter chose not to follow Mr. Lane's example and publicly disclose the communication. As a consequence, it is submitted that Ms. Lichter's actions created a meeting outside of the Sunshine in violation of the Florida's Sunshine Law, drawing Mr. Baird into the web of her actions by inviting his response. As the Florida Supreme Court noted in Woods v. Marsden, 442 So.2d 934, 938 (Fla. 1983), "the Sunshine Law was enacted in the public interest to protect the public from closed door politics..." See, too, Town of Palm Beach v. Grandison, 296 So.2d 474 (Fla. 1974), Sarasota Citizens v. Responsible Government v. City of Sarasota, 48 So.3d 755 (Fla. 2010), and Tolar v. School Board of Liberty County, 398 So.2d 427 (Fla. 1981).

With the foregoing in mind, in MCA's Policies Manual (See, the volume dated April 26, 2018, and its updated version dated January 23, 2019), there is a specific section identified as "Board Duties and Responsibilities." Item 3 provides that "an individual Board member should never...become involved in specific management issues unless directed by the board." (See, p.5 in both volumes) Item 9 provides that "a Board member who learns of a problem should bring that attention to the Board. A Board member should not attempt to deal with such a situation on an individual basis." (Id., at 5) When Mr. Hull complained to Board Member Ms. Lichter about the burdensomeness of Mr. Baird's requests, she should have brought it to the Board to discuss and not have written to Mr. Baird to tell him how she felt he should handle his duties as a Board Treasurer.

When Ms. Lichter learned from Mr. Baird about his concerns with the way Mr. Hull had handled the provision of financial information, it was not appropriate for Ms. Lichter to inform him that she would meet with Mr. Hull and Ms. Turner "since it looks like I will take over these responsibilities." Whether or not Ms. Lichter ever, in fact, took over such responsibilities is not the issue. She had a duty to discuss the matter publicly with the Board and had no authority to intervene and act unilaterally on management business. (If she did take them over, she exceeded her authority). Her actions violated items 3 and 9 of the Board's policy pertaining to its duties and responsibilities. Finally, in the Governance section of the Application, it is provided that "the Governing Board will not be involved in the daily operations of the school..." (See, p. 60) Board Member Ms. Lichter apparently believed this did not apply to her when she sent her September 29 and October 7, 2016, emails to Mr. Baird.

The concerns raised by Mr. Baird in his Complaint are well-founded.

V. **Board Governance and Oversight:**

A)(1) Overview of Central Allegations and Concerns Pertaining to Board Governance

In his Complaint, Mr. Baird alleged that he was concerned that there may have been multiple Sunshine violations by the Board. He alleged that often Board Members Lichter and Ms. Miller came to Board meetings knowing how the other would vote. He expressed his concern that given the close personal relationship Mr. Hull had with these Board Members, in all likelihood, he had served as a liaison between them. He detailed a conversation he had with Mr. Hull in which Mr. Hull allegedly wanted to keep as much information from the public as possible so that MCA's management practices and Board activities would not be presented.

Mr. Baird contended that under Mr. Hull's influence, Board President Ms. Lichter changed the format of the meetings. Reports were not included in the Minutes. Minutes contained very little information and there were multiple inaccuracies in the Minutes themselves. In his view, such changes could be traced to the September 6, 2016, Meeting. Prior to then, reports to and by the Board, along with the content of meeting Minutes, were far more extensive and complete.

A)(2) Factual Record Concerning Board Governance and Oversight

a. Board Meetings, Minutes, and Agendas

While the Board met on a fairly regular basis, including the calling of multiple Special Meetings, on multiple occasions, meetings were held and, business transacted, without a quorum. These may be tracked as follows:

1. January 26, 2018, the only person present was Board Member Ms. Lichter. Board Members Miller and Longenecker called in and appeared by phone.

2. April 26, 2018, Board Members Lichter and Miller called in and appeared by phone. Board Member Longenecker was absent. Staff members Marshall and Turner were at the meeting.

3. June 30, 2018, Board Member Miller was present, Board Member Lichter called in and appeared by phone, and Board Member Longenecker was absent.

4. December 14, 2018, Board Member Miller was present, Board Member Lichter called in and appeared by phone, and Board Member Longenecker was absent.

In the Minutes of each of these meetings, it is noted: "A quorum being present, the meeting was called to order" and business was conducted. In this regard, during these meetings, business matters discussed and approved included the following: (a) approval of the allocation of Local Capital Improvement Revenue (LCIR); (b) approval of paying off long obligations; (c) approvals of multiple policies; (d) the Fiscal Year 2019 budget; (e) approval of a new Board Member (Mr. Bolduc); (f) approval of fence permit costs; (g) consent agenda adoptions; and (h) discussion of security issues.

Moreover, from January 2014 to July 2016, the record shows that Minutes for Board and Finance Committee Meeting contained descriptive narratives of the different portions of the meetings to enable the public to understand the proceedings, including Board discussion during the Board Comments portion of a given meeting. After August 2016, this changed dramatically. There is very limited, often with no descriptive narrative to apprise a reader of what transpired at a given meeting. In fact, unlike the pre-July 2016 time period, in the post July 2016 time period one sees, for example, under Board Comments, frequently no comments or limited ones such as "The Board members had a brief discussion regarding reports and oversight" (see, the October 4,

2016 meeting), which would not inform the public about the nature and content of the discussion. Thus, no one would know what Board Member comments were on this issue.

When the decision was made to alter the presentation of Minutes is not known. One finds no Board Meeting discussion about reducing Board Meeting Minutes descriptions concerning what had transpired at any given meeting. It appears that this decision was made internally. Moreover, one does not find access to documents in either the Agendas or the Minutes. There is no link, for example, that a member of the public could click on for review.

On October 6, 2017, a concerned member of the MCA community wrote to Board Member Miller seeking clarification of the following:

There are several minutes form meetings this year that make a note to attachments to minutes. For example, several meeting notes state that the president's report or principal's report is "attached" and I cannot find any further links or attachments for these notes/reports. Where would one find these reports? Are they not part of the public record?

Ms. Miller sent the email to Ms. Turner. Ms. Turner then forward the email to Mr. Marshall. Mr. Marshall responded that the documents used at the meetings were part of the public record. He added that "we do not upload the entire public record." Mr. Marshall then further clarified that while Agendas and Minutes are posted on the website, "we do not post attachments because the effort to process them would add too much extra work for staff taking away their time to deal with student issues." (See, the chain of email communications commencing on October 6, 2017, at 9:13 a.m. from H. Jinkins to L. Miller, to S. Turner, to C. Marshall). He noted that Minutes do not include attachments. Yet, he does not explain why in several of the Meeting Minutes one sees reference to, for example, "Report Attached" (See, for example, the Minutes to the August 2, 2016, and March 24, 2017, Board Meetings). Such references continued after Mr. Marshall's email. (See, the Minutes to the April 20, 2018, September 13, 2018, and the October 22, 2018, Board Meetings). These multiple attachments cannot be retrieved from either the Agendas or the Minutes.

Mr. Marshall concluded his email by noting that under the Sunshine Manual, an extract from which he attached, Minutes are defined as "a brief summary" and do not include attachments. In the extract he attached, the Manual provides, in pertinent part the following: "The term "Minutes" as used in s. 286.011, F.S., contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting; accordingly a verbatim transcript is not required." (Id.) He did not address the fact that a review of the Minutes from the post July 2016 time period show that they often lacked summaries, notes, or memoranda of the multiple events that typically occur during a Board Meeting.

In his email, Mr. Marshall denotes MCA's practice of not attaching and uploading documents to the multiple Meeting Agendas and/or Minutes. Thus, for example, one sees the Consent Agenda routinely passed without one knowing what documents pertaining to MCA business are being consented to. In addition, one sees on multiple occasions that policies are

placed and approved on the Consent Agenda without them being attached or indicating that the consent involves the first or second reading of the given policy. As will later be seen, often second readings of policies are approved on the Consent Agenda, where, by definition, there is no public second reading.

In several instances, the Minutes themselves are contradictory and confusing to the reader. For example, one finds two sets of Minutes for the August 2, 2016, Board Meeting. The first set shows Board Members Lichter, Donalds, and Miller present and adopting Minutes for the July 11, 2016, Board Meeting on the consent agenda. The second set has Board Members Lichter, Longenecker, and Miller present. Mr. Longenecker was, of course, not on the Board at that time. The August 2, 2016, meeting was set for 5:30 p.m. but the call to order of second notes 9:00 a.m. The second set shows motion and approval of the November 11, 2016, and December 9, 2016, Board Meeting Minutes along with Policy 5.0. It notes that Mr. Longenecker submitted no report but met with MCA's Business Manager Ms. Turner. There were three motions identified (all moved by Board Member Longenecker and seconded by Board Member Lichter): (a) Approve IRS form 5500; (2) Approve school recognition funds; and (3) Approve the 2017-2018 performance salary schedule.

Given the approval of the December 9, 2016, Meeting Minutes, one assumes these matters were addressed in 2017. If one reviews the January 12, 2017, Minutes, there is no reference to the November and December Minutes or Policy 5.0 under the Consent Agenda. Policy 5.0 is noted under New Business as a First Read Policy Update. There is no reference to the above-noted three other motions; nor are the motion, Minutes, or Policy 5.0 found at the Special Meeting on January 25, 2017. One cannot find reference to them in the Minutes of the March 24, 2017, Meeting as well. One finds reference to forms 5500-8955SSAA voted on at the October 6, 2017, meeting. This item was moved by Ms. Miller and seconded by Mr. Longenecker.

In the Minutes, for the March 24, 2017, meeting, the March 24, 2017, Minutes are approved on the Consent Agenda (which would not be possible). Policy S.E. 4.0 (Attendance) is also voted on and approved on Consent. Yet, the Minutes also show a Board Member had brought it up under New Business without any indication that it was moved to New Business for discussion, and there is no indication that it was then voted on.

And, at the August 25, 2017, Meeting, one sees "Motion To Adopt Agenda" moved by Board Member Miller and seconded by Board Member Lichter. But if one turns the page, one sees at that meeting under Policy Updates, "Motion To Adopt Agenda", moved by Board Member Longenecker and seconded by Board Member Miller. If there were to be policy updates, and/or discussion related to them, they are not referenced nor can one find links to them either on the Agenda or the Minutes.

One more will be referenced to help one see the extent of the confusion. The Minutes attached to the April 26, 2018, Agenda are dated January 26, 2018. A comparison of the first set of Minutes for the January 26, 2018, meeting and the second set linked to the April 26, 2018, Agenda. The items listed in the first are not contained with the second including who made the respective motions. Both note the Meeting was set for 10:00 a.m., but the Call to Order for the

second set is 8:30 a.m. The Policy items on the April 26, 2018, Agenda that are to be placed on the Consent Agenda do not appear in the Minutes. While there is reference to Policy Updates on the Agenda, in the Minutes, the notation is “none”. The only possible linkage between the Agenda and the Minutes is that the Minutes reference amending the Agenda to include an action item under New Business with respect to the Collier Marshall Program. This item was taken up and approved by vote. The Minutes show a summary description of this meeting event.

School Advisory Council

In MCA’s 2012 Application, which, as previously noted, is incorporated by reference into its Charter Agreements with the District School Board of Collier County, a School Advisory Council (“the Council”) was specifically designated to be constituted “to assist the School Principal with school-based decision-making and to involve parents in their children’s education.” To this end, membership on the council was to “reflect an equitable balance between school employees and parents and community members” with the hope that one community member would come from the business community. The duties and responsibilities of the Council were to be as follows:

- (1) Work with the school Principal and give advice, consistent with state and charter school rules and policies, on policies relating to instructional issues and curricula and on the school’s budgets.
- (2) Where appropriate, coordinate with any existing work force development boards or vocational education advisory councils to connect students and school academic programs to business resources and opportunities.
- (3) Serve as the champion for students in building community support for schools and encouraging greater community participation in the public schools.
- (4) Hear grievances from parents according to the Parent Grievance Policy.
- (5) Assist the Governing Board in filling Board vacancies. (See, 2012 Application at 63).

A review of the record shows that from early 2014 – April 2016, there was a Parent/Teacher Committee association that met regularly and frequently reported to the board through its leadership its work and activities. It is referred to in the Board Meeting Minutes as the “PTCA”. Its work primarily involved fundraising for MCA. However, at the July 25, 2015, Board Meeting its role was discussed with an indication that its duties and responsibilities would approximate those of a School Advisory Council. During discussion, it was expressed the PTCA was frustrated with the Board’s lack of communication of its own goals to PTCA. Board Member Donalds expressed his view that the Board needed to better identify and define its goals to assist PTCA in its fundraising objectives. He advised that moving forward there was a need for a professional development officer who would be responsible for overseeing MCA fundraising plans. (See, Minutes to the July 27, 2015, Board Meeting).

Board Member Lichter noted that it was Hillsdale College's recommendation that all communication go through the MCA's Governing Board. To this end, she expressed her belief that "PTCA is to support Principal Hull and teachers." She added that the Board "should have fundraising committee to formulate strategic fundraising goals which will incorporate the principal. Ms. Lichter's comments were consistent with the goal of establishing standing committees as set forth in the 2012 Application. It is provided therein that "the Governing Board is also contemplating creating other standing committees...It is anticipated that committees for fundraising, policy development, principal evaluations and an outreach committee will be created in addition to other standing or ad hoc committees." (See, 2012 Application, at 63).

In this context, the Minutes note that Mr. Lichter advised that the "PTCA reports to the principal." Ms. Wilson, one of the leaders of the PTCA, had added that the PTCA had "received non-profit status to be able to help the principal for daily operational expenses." (See, Minutes to the July 27, 2015, Board Meeting).

Nevertheless, at the April 11, 2016, Board Meeting, Board Member Donalds informed the Board that he had learned that he PTCA had decided to dissolve its 501C3 status effective at the end of the school year (2015 – 2016). At the May 9, 2016, Board Meeting, under the "Community Comments" section, the Board was also informed that "PTCA funds raised in the name of Mason Classical Academy will be donated to the school."

Subsequent to May 9, 2016, one does not hear about or hear from PTCA or any equivalent organization again. Moreover, one does not see in any of the Board Meeting Minutes subsequent to the PTCA's dissolution, whether under Reports or Officers and Standing Committees, Unfinished and New Minutes, or Board Comments any discussion or information pertaining to the creation of a School Advisory Council standing committee, membership on that committee, or the need for such a committee, (or its equivalent) to undertake the multiple duties and responsibilities as set forth in MCA's Application.

Finally, at the November 2, 2018, Board Meeting there is a unanimous vote to approve "Third Option for Contracts Review, Five Year Extension of Contract, and Third Option for Salary Review Effective November 16, 2018. (See, November 2, 2018, Board Meeting Minutes). Previously at the May 29, 2018, Board Meeting, a Salary Schedule and bonus options were unanimously approved by the Board. (See, May 29, 2018, Board Meeting Minutes). And, at what is apparently the March 31, 2017, Board Meeting (apparently because the Minutes denoting the issue are dated March 24, 2017), there is unanimous approval for the "Salary Increase and Bonus as Part of the Principal's Contract." One could provide additional examples.

What is the point of this? On April 13, 2014, the Board approved Policy B 17.0 Management Compensation Review Policy. The Policy provides that before any compensation approval, the issues must be reviewed by "the Employment Committee." Its duties and responsibilities involve obtaining research and information "to make a recommendation to the full board for the compensation (salary and benefits) of the Principal (and other highly compensated employees or consultants) based on a review of comparability data." The Policy lays out what should be included in the data and other matters. It concludes with "no member of the Employment Committee will be a staff member, the relative of a staff member, or have any

relationship with staff that could create a conflict of interest.” There is no evidence in the record that an Employment Committee was ever set up, members chosen, data gathered, and so on. The Board seems to have ignored its own policy.

B. Discussion and Applicable Law and Policies

The Florida Attorney General has defined the term “quorum” as

the number of members of a group or organization present to transact business legally, usually a majority; and the minimum number of members... who must be present for a deliberative assembly to legally transact business. Thus, a quorum requirement, in and of itself, contemplates the physical presence of the members of a board or commission at any meeting subject to the requirement.

(See, AGO 2010-340).

In AGO 2010-34, the Attorney General addressed the issue of whether a City Commission Board could adopt an ordinance that stated that the requirements of creating a quorum could be met if members appeared via electronic means. The Attorney General answered the question in the negative. He opined that Commission Board Members who appeared by electronic means could not be counted in establishing a quorum.

Similarly, Attorney General Opinion 2003-41, addressed the issue of whether only one could participate in meeting by phone. Participation was permissible under extraordinary circumstance and only “when a quorum of the board members is physically present.” The Attorney General whether a scheduling conflict rose to the level of an extraordinary circumstance was a determination left to the “good judgment of the board.” (See, too, AGO 2002-82, in which the Attorney General concluded that physically disabled members of a public board/ committee who could not attend the meeting in person could attend by electronic means “as long as a quorum of the members of the board is physically present at the meeting site”). The Attorney General reemphasized the physical presence requirement a public meeting in her Informal Legal Opinion of July 20, 2016.

If a quorum is not physically present, official business and official action (through vote, for example) cannot be undertaken. Indeed, a quorum must be physically present “to legally transact business.” (See, AGO 2009-56). This is also noted in Robert’s Rules of Order, 11th edition 2013, at §40, p. 347).

The renewed 2017 Charter between MCA and the District provides in Section 9: Governance, the following: “A majority of the voting members of the Governing Board shall constitute a quorum. A majority of those members of the Governing Board present shall be necessary to act.” In Board Policy 3.0 (“Board Meetings”), it is specifically noted that “all motions shall require for adoption a majority vote of those present and voting...” (See, subsection on “Voting” Policies Manual 26, April 2018, at 13, and the January 23, 2019 updated Manual at 13). Moreover, consistent with the above-referenced Attorney General Opinions, in

the section on Voting By Proxy, the following is provided: “Members who are participating electronically may not be considered in the count to determine whether a quorum has been met.” (Emphasis added). (Id., both editions of the policies manuals, at 14).

At four separate meetings, MCA’s Governing Board held and conducted business at which there was no quorum physically present at the school. Such meetings were thus held wrongfully and impermissibly in violation of law, MCA policy, and the 2017 Charter which was in effect when such actions were illegally undertaken.

Accordingly, it is submitted that all official actions and business undertaken at the January 26, 2018, April 26, 2018, June 30, 2018, and December 14, 2018, Board Meetings are null and void. The June 30, 2018, Meeting is of considerable concern. This meeting was called to approve MCA’s annual budget for fiscal year 2019. The meeting was held at 5:00 p.m on a Saturday and undertaken without a quorum. (Board Member Longenecker was absent, Board Member Lichter appeared by phone, and Board Member Miller was physically present). The meeting was called to order at 5:03 p.m. and ended nine minutes later at 5:12 p.m. During the nine minutes, Ms. Turner introduced the budget and Board Members Miller and Lichter moved and voted to approve it; hardly time to review and discuss something as important as a school’s annual budget. There is no discussion noted in the Meeting Minutes.

Perhaps sensing or knowing something was wrong, at the November 30, 2018, Board Meeting, the Board moved and voted to ratify the FY 2019 budget. (See, Minutes of the November 30, 2018, Board Meeting). Both Board Members Lichter and Miller were physically present at the meeting. Mr. Longenecker was again absent. Thus, at both meetings involving the budget, the Treasurer was absent. There is no discussion as to why ratification of the budget was determined to be needed. There was certainly no effort to take up and move to cure the June 30, 2018, meeting events. Accordingly, the Board in essence voted in November to ratify an illegal vote taken in June which is anything but a cure.

Equally of concern is that two weeks later at the December 14, 2018, the Board wrongfully voted to approve Mr. Bolduc as a new Board Member. It is submitted that Mr. Bolduc’s appointment was null and void ab initio. He has thus wrongfully served on the Board since his first meeting on January 23, 2019. Accordingly, all his votes from that day forward, and until such time as a cure is effectuated, must also be deemed null and void.

Given the Board’s wrongful action to approve of Mr. Bolduc (which approval is certainly not his fault), the Board in essence has operated , since December 2018, as a two person Board in material violation of MCA’s Charter with the District which provides that the “management of the affairs of the school shall be vested in the Governing Board with a minimum of 3 members.”

Board Membership

In the Board’s bylaws, under the heading “Election Process”, the following is provided: “The Directors of Mason Classical Academy shall be elected annually by the Board of Directors at an annual meeting of the Board”. (See, both Policy Manuals, noted above, at p. 3 respectively). In Policy B 3.0, under “Annual Meetings”, it is provided that “the annual meeting

of the Board of Directors shall be held in July of each year. At the annual meeting new Board Members will be elected.” (Id., at 10).

In this connection, at the Board’s October 3, 2015, Workshop, which was devoted to MCA’s Strategic Plan, the Minutes note that the current term of a Board Member is one year with no term limit. A review of the Board’s Meeting Minutes for the months of July or August, during the 2015-2018 time period disclose no annual/organizational meeting to elect Board Member and/or officers. New members were approved when there was a resignation from the Board. Thus, for example, Mr. Baird replaced Mr. Lane as Treasurer and Mr. Longenecker replaced Mr. Baird as Treasurer and later Mr. Bolduc was approved to replace Mr. Longenecker as Treasurer. However, when Mr. Donalds left after the November 1, 2016, Board Meeting, no motion was made to fill his seat with an appropriate candidate thereby reducing the number of Board Members from 4 to 3. (In fact, there is evidence that there was a period of time the Board had 5 members). Board Members Lichter and Miller have remained continually in place to the present as President and Secretary, respectively. The Board has thus disregarded its own By-laws and Policy in connection with the Board Member election/selection process.

Minutes and Agendas

In Attorney General Opinion 82-47 meeting minutes are defined to mean “a brief summary or series of brief notes or memoranda of a proceeding or transaction.” They are not expected to be a verbatim record of a board meeting. In essence, they are to serve as a record of the proceedings for the public to review and understand what has transpired. Robert’s Rules of Order, (11th edition, 2011) provide that the minutes should be a record of what was done at the meeting. The body of the Minutes should describe all main motions and the issues taken up, and the substance of committee and other significant reports. (Roberts, supra, at 468 – 471).

A review of the Meeting Minutes from July 2016 – 2019 show that except for a few Meetings such as the September 13, 2018 Board Meeting, the reporting of what was done at such meeting was either minimal or often not presented. The writing and approval of such Minutes reflects an unfortunate lack of concern for transparency for the public. Moreover, a review of MCA’s policy concerning Agendas, show a concern with the Board’s access to documents “accompanied by descriptive materials from the Principal or designee...” (See, Policy B 3.0, under Agendas at pp. 11-12 in both manuals noted above). Such documents and descriptive materials are not made accessible to the public for review.

With the foregoing in mind, the concerns raised by Mr. Baird in his Complaint are well-founded. In this context, one item connected to his Complaint needs to be addressed. There is no evidence found to substantiate the claim or belief that Mr. Hull has ever acted as a liaison between Board Members alleged in violation of Florida’s Sunshine Law. In the meeting with him, he acknowledged that as part of his work, he meets with individual Board Members as might be necessary. However, he has never brought to the attention of, nor shared with any given board member, information he has learned from another, nor has any Board Member ever asked to do so. One has found no evidence to dispute his statement. Thus, he will indeed be taken at his word.

Governing Board Oversight of Policies

Board Policy B 2.0 provides that while “two (2) readings are not required by statute, the Board prefers two (2) readings so the adoption schedule must be planned to provide for two (2) readings. (Policy Manual, both editions, at 9). Both readings must be placed on the agenda for the appropriate Board Meeting or workshop.

Item 4 under First Reading in the Policy specifically provides the following: “All policies must be included as attachments to the Agenda item. Revised policies must be in the strike out, underlined (or bolded) version to indicate changes. Attachment will be uploaded to the MCA server for Board review”.

After the first reading, the Principal is responsible for placing the second reading policy items on the agenda for the next Board Meeting. Changes recommended by the Board during the first reading must be incorporated into the proposed policy, Item 5 of the Second Reading section, mirror images item 4 of the First Reading section.

While policy items are to be included as attachments to the agenda, they are only uploaded to the MCA server for Board review. They are not attached to the agenda for the public to review nor is there a link that would enable a person from the public to have access to the MCA server to read the proposed policy (whether at the first or second reading level).

A review of the record shows that many MCA policies never go through a second reading for the public to review or open discussion held by Board Members about such rule making for the school. Many are placed on the Consent Agenda and approved without Board review or discussion. Moreover, where there are multiple policies for second reading, they are, by definition, never individually identified when placed on Consent for vote. They are simply passed through collectively. Sometimes one simply finds as well a First Reading without any second reading identified thereafter. There are multiple examples of this practice as the following will show. For example, at the August 2, 2016, Board Meeting, Policies SE 20.1, SE 19.0, and SE 53.0 were present by Mr. Marshall for a First Reading. At the August 8, 2016, Special Meeting, all were placed on the Consent Agenda without a Second Reading with an individualized review and discussion followed by vote.

On January 12, 2017, Policy SE 19.0 which was passed on Consent at the August 8, 2016, Special Meeting, was brought forward and placed on Consent at the January 12, 2017, Meeting then moved to unfinished business so it could be modified which would have created a new First Reading. Nevertheless, the Board voted on it treating it as if it were Second Reading.

This pattern of placing First Reading policy items on the Consent Agenda can be found as well at the March 25, 2017, Board Meeting, as well as at the April 26, 2018, Board Meeting where policies are identified on the Agenda, but not in the Minutes of the Consent Agenda for that meeting which was wrongly dated January 26, 2018, as previously noted.

Further, two policies were taken up as a First Reading (AP 9.0 and SE 4.0), and a vote on Policy SE 57.0, which would indicate a Second Reading was undertaken, at the December 14,

2018, meeting when there was no quorum. Since the action are null and void, it would mean the First Readings presented later as voted on as a Second Reading would have to be withdrawn and SE 57.0 would have to be brought back again at meeting where a quorum is physically present and, therefore, like the others cannot constitute approved policy of MCA until these matters are cured.

It is clear that the Governing Board has used the Consent Agenda as a means to push policies through as a substitute for Second Readings. There is simply no way the public (including the MCA community) could comment under such circumstance. While the Board bears ultimate responsibility for such actions, one does not see Mr. Marshall or Mr. Hull as persons who are responsible for of bringing proposed MCA policies forward to the Board, properly advising the Board procedurally and substantively in this area of review. In sum, the Board and the Administration suffer from a transparency problem. And as noted above, it has faltered in its duty to set up standing several committees as required under the Application; including the setting up of an Employment Committee as required under Board Policy. It has equally faltered in its oversight obligations including appropriate and careful policy review.

VI. MCA Board and Administration Oversight: Grievances, and Parental and Student Concerns:

A. The record shows a school with a strong instructional model valued and appreciated by most parents whose children attend MCA; including those parents who have taken their children out of the school to attend other schools. Parental concerns and criticism have been a function of actions (and non-actions) taken by the Administration and the Governing Board that they believe have shown a serious insensitivity to questions and concerns they have raised. These include criticism of parents as stakeholders, criticism of their children, uneven implementation of policy, arbitrariness in decision-making, discipline, and the experience that if they question the Administration in any way, by filing grievances or express disagreement, whether verbally or in writing they are seen and treated as being against the school, fringe-types who are really outsiders who do not belong at MCA.¹

This does not overlook the reality of many other parents who have experienced the administration in positive ways and have expressed their support for it. And indeed, it does not overlook the positive efforts made by Mr. Hull and Mr. Whitehead in addressing parent questions, concerns, and conflict. As will be seen, this has created an unaddressed polarizing effect, which has affected MCA's faculty who have been men and women of good will who have wanted to educate students to the best of their abilities in accordance with high academic standards.

¹Several parents have expressed concern with the rather draconian nature of the pink slip disciplinary policy. Parents of students who were suspended for a certain number of pink slips must spend a day at the school with student. Student may not return if the parent does not attend. Parents have expressed concern that if they cannot give up work, the child is penalized and cannot return to school. This creates an anomalous situation of students losing instructional time because their parents cannot leave work and give up a whole day. Most recently, Dr. Thornburg has written extensively to administration and the Board about this issue in light of his child's discipline. Mr. Hull advised the undersigned he was trying now to address these issues on a case by case basis. He did not address the deeper question as to why a child must pay instructionally if the parent cannot meet the terms of the policy.