REPLY OF THE DISTRICT GENERAL COUNSEL TO THE COLEMAN LAW FIRM'S INVESTIGATIVE REPORT OF ALLEGATIONS MADE AGAINST MASON ACADEMY

Submitted To: The District School Board of Collier County
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I. INTRODUCTION

This will serve to respond to the Investigative Report of Allegations made Against Mason Academy prepared by the attorneys of the law firm of Coleman, Hazard, Taylor, Klaus, Doupé, & Diaz, P.A., and submitted to Mason Classical Academy ("MCA"). There is no submission date noted in the Investigative Report (hereinafter referred to as "the Coleman Report" or "the CR"). At a press conference held outside the Collier County School District's Martin Luther King Jr. Administrative Building, on November 5, 2019, MCA Board President, Kelly Lichter, announced that the Coleman Report had been received and that it fully exonerated MCA, its Board Members, and Administrative Staff from the findings and conclusions reached in the Investigative Report for Mason Classical Academy prepared and submitted to the District School Board for Collier County by its General Counsel, Mr. Fishbane, on June 3, 2019, (hereinafter referred to as "the General Counsel's Report" or the "GC's Report").

A review of the Coleman Report will show that the claim of exoneration is not only completely misguided, but also cannot be sustained based upon the facts and the evidence. It contains multiple factual and legal errors, and its preparers often acknowledged that wrong-doing had occurred; though down-played at times as merely technical errors and at other times cured through the mediation settlement process. In this connection, the preparers of the Coleman Report have referred to issues and events that occurred after June 3, 2019, and not contained in the General Counsel's Report, in an effort to shift the focus away from the findings in the General Counsel's Report, and try to find wrong-doing by the District in an effort to be able to issue MCA a clean bill of health. These efforts will be shown to be erroneous. Further, what is disconcerting is not what is included in the Coleman Report, but what is, from an evidentiary and legal standpoint, excluded, whether overlooked, by-passed, knowingly left out, or presented in fragmentary form from the larger context of a given document. The decision not to include important evidence was necessary to craft the narrative and reach an exoneration outcome that was determined from the beginning. The non-included evidence and law will be presented and discussed in this Reply. Finally, the Reply will provide supplemental evidence and findings that did not originally appear in the GC's Report including evidence received and reviewed after June 3, 2019.

Among the many items that will be presented in this Reply, the evidence will show the following:

1. The District did not violate the dispute resolution provisions of the Charter Contract. MCA never sought dispute resolution through the Charter. It sought mediation through the Florida Department of Education which the District supported.

2. Mr. Lichter and Mr. Hull used Mr. Baird to try to stack the Board in the manner they wanted including using him to try to get rid of Board Member Mr. Donalds.

3. Despite the contractual language in the Application, Ms. Lichter and Ms. Miller did not want an independent Financial Committee or an Audit Committee and thwarted the process in disregard of Dr. Carpenter's advice. The claim in the Coleman Report that the MCA's Board took them over and properly exercised oversight authority cannot be sustained.

4. Mr. Hull and Ms. Lichter prevented Mr. Baird from carrying out his duties as Treasurer.

5. The Sunshine law was violated and MCA Board Members violated multiple Board policies, procedures, and provisions of law in connection with Board governance.

6. Ms. Lichter violated her duty as a Board Member and Board Chair by unilaterally entering into a contract with Hillsdale College without public notice and Board authorization.

7. Mr. Hull, Mr. Whitehead, and Board Members Lichter and Miller violated multiple Board policies and provisions of law in their treatment of Mrs. Parker and beyond.

8. Mr. Hull violated the provision of FERPA.

9. Mr. Hull demonstrated a pattern of demeaning parents, stakeholders, and faculty members.

10. Mr. Hull thwarted MCA's relationship with Hillsdale College.

11. Mr. Hull was reinstated to a position equivalent to Principal under the cover of the COVID-19 crisis and in disregard of the MCA Board's Cure document.

12. Board Member Mr. Bolduc violated multiple statutory provisions, including Florida's ethics laws, by knowingly advancing a health contract which would inure to his personal benefit.

II. Review of Initial Evidentiary Concerns and Representations in the Coleman Report Pertaining to Matters After June 3, 2019

A. Initial Evidentiary Concerns

Since the issuance of General Counsel's Report on June 3, 2019, it has been the position of MCA's leadership that the Report was one-sided. The Coleman Report adopted this narrative in order to position its findings and conclusions in a certain way. The claim has been without foundation from the beginning. The Coleman Report does not address that more than thirty (30) persons were interviewed including parents, former faculty members and then current MCA administrative staff (Mr. Hull , Ms. Turner, and Mr. Marshall)[1] and thousands of pages of documents (emails, MCA policies, agendas, board meeting minutes, MCA finance committee agendas and meeting minutes, MCA's application, the Charter Contract, financials, and so on). Two former Board Members/parents were also interviewed: Mr. Baird and Mr. Donalds.

[1]The Coleman Report claims that current staff members were not interviewed (see page 7). Mr. Hull, Ms. Turner, and Mr. Marshall were current staff members.

In this regard, as noted in the General Counsel's Report, many of the parents interviewed thought very highly of the curriculum. That was not the issue. And indeed the undersigned was certainly aware that there were parents who were not interviewed that had no problem with the school. That was also not the issue. The scope of concerns of improper conduct, wrongful actions, experiences of denigration and so on by MCA's Board and administrative personnel could not be dismissed on the theory that since there were many who had positive experiences with the school, it followed that there were neither serious problems to address, nor violations of policy, procedure, and law that had occurred over several years.

In addition, Mr. Hull sent the undersigned extensive documentation on two separate occasions in November 2018; documents that the undersigned informed MCA's then counsel, Mr. Arnold, as a matter of professional ethics, that his client had sent on his own. Mr. Hull asked that documents be carefully reviewed and considered and they were. Mr. Arnold thanked the undersigned for the courtesy notification and noted that he was unaware that Mr. Hull had sent such communications. (November 26, 2018, email communication from S. Arnold to J. Fishbane, sent at 8:35 a.m.).

On April 5, 2019, Mr. Arnold sent the undersigned the Audit Report on Applying Agreed Upon Procedures for the period of July 1, 2017 – June 30, 2018, from McCrady & Associates, which, contrary to the CR Report, was not a financial document. Mr. Arnold believed it should be reviewed and made a part of the investigation. And during the meeting on April 29, 2019, with Mr. Hull, Ms. Turner, and Mr. Marshall, the undersigned noted with respect to his investigation that he was missing the Charter School Financial Condition Reports for March and July 2018. Ms. Turner promptly emailed them that afternoon and they, along with the McCrady Report, were made part of the evidence received. Mr. Hull was also asked at the meeting if there were any additional documents he would like to provide for the undersigned to consider. He responded that there were not. Thus, the claim in the Coleman Report (p. 7) that MCA documents were not reviewed and considered, or would not be received or accepted for review, or were prevented from being accepted for review and consideration, is simply wrong.[2]

As the Coleman Report unfolds, it appears that the claim of one-sidedness was because neither Ms. Lichter nor Ms. Miller were interviewed by the undersigned. To redress the alleged one-sidedness, counsel believed they had to interview Ms. Lichter and Ms. Miller, individually. This would place them where they wanted to be, at the center of attention during the investigative process where they could spend more time exonerating themselves rather than acknowledging what the evidence showed.

Yet, what was never considered by MCA counsel, in preparing their Report, was whether Ms. Lichter and Ms. Miller, as MCA Board Members, had a right or entitlement to be interviewed by the undersigned. The answer is no. They had no such right or entitlement. Under prevailing law, "A municipal corporation speaks only through its records, and not through opinions of individual officers". Beck v. Littlefield, 68 So.2d 889, 892 (Fla. 1953). With respect

[2]The plethora of evidence received and reviewed, including the referenced financial documents, was set forth and identified on pages 4-5 of the General Counsel's report that is not referenced in the CR.

to Board actions and decisions, the General Counsel's Report relied extensively on MCA Board Meeting Minutes, Agendas, policies, documents reviewed and discussed by the Board, and emails. Given the plethora of such documentation, the undersigned concluded that there was no need to interview Ms. Lichter or Ms. Miller. The evidence spoke for itself. For example, in the CR, Ms. Lichter acknowledged that she had delayed the Financial Oversight Committee process. This acknowledgment was already in the evidence. There was no need to ask her about what was already known.

While the General Counsel's Report has been accused of one-sideness, it is ironic that in preparation of the Coleman Report, Mr. Baird and Mr. Donalds were not interviewed, Ms. Turner was not interviewed, Mrs. Donalds was not interviewed, and apparently neither was Mr. Marshall. Moreover, Mr. Longenecker, the Board Treasurer after Mr. Baird departed, apparently was also not interviewed. Mr. Bolduc was interviewed. Yet, aside from his being improperly selected to serve on the Board on December 14, 2018, which will be more fully addressed later, he did not attend his first Board Meeting until January 23, 2019. Thus, he had no involvement or understanding of the issues raised in the Baird Complaint nor matters prior to his first meeting. Mr. Bolduc apparently had no knowledge of the reprehensible emails sent by Ms. Lichter to District Board Members in April 2019 and, if he did, he did nothing to address them at a Board Meeting in light of Mason's civility policy, virtues, pillars, and so on. Thus, to use Mr. Bolduc as a viable and objective reporter is questionable. This becomes ever more so the case given that he was delegated by the Board in October 2019, to meet with the Coleman team to fix those facts that were deemed to be inaccurate based on initial submissions to the Board by the Coleman firm. In the October 21 and 25, 2019, Board Meeting Minutes, the Board Chair, and Mr. Bolduc, acknowledged there were factual inaccuracies and recommended that Board Members meet with the preparers. Ms. Miller advised that she was meeting with them that very day to review inaccurate facts, concerns, and so on. And as will be seen, Mr. Bolduc's credibility has been further eroded by his moving to approve a health contract in which he has a personal financial stake.

B. <u>Representations in the CR Pertaining to Matters Occurring After the Submission of the General Counsel's Report:</u>

The preparers of the Coleman Report have tried to create an image of General Counsel and District wrong-doing by melding the undersigned's Report and methodology with MCA's cure document and the posting notice of the July 11, 2019, School Board Special Meeting. The CR then combined all of this into an assertion that the District violated the terms of the Charter Contract. Aside from a muddled effort to meld facts and issues together, the preparers of the Coleman Report ignored or overlooked key documents to create a distorted picture of what had actually occurred. In so doing, a review of the CR would show that the facts and legal conclusions presented were wrong.

To this end, it is best if this section of the CR is presented in its entirety. It reads as follows:

> While the conduct and events that transpired after the release of the Fishbane Report are not part of the scope of this investigation, it is important to consider such events in order to give context to the

> concerns about Mr. Fishbane's methodology. The Fishbane Report was dated June 3, 2019. On Sunday, July 7, 2019, a little over one month after the publication of Fishbane's Report, and one week after MCA sent a response to Fishbane's Report District titled, "Alleged Defaults and Cures" the District posted on its website an agenda item to discuss termination of MCA's contract at its July 11, 2019 Board Meeting. The District did not provide notice to MCA of its intent to terminate the Charter. Instead, MCA was made aware of the agenda item by a member of the MCA community. The entire yearlong investigation, its findings, and the District's move to discuss termination, was conducted in opposition to Florida Statute, Section 1002.33, the "Charter Statute," and MCA's own charter contract. There, one will find a detailed outline of a clear dispute resolution process. Those steps are as follows:
>
> Step 1: The district is required to provide a written communication identifying any problems and proposing a solution.
>
> Step 2: The School is required to have 15 days to respond and accept the proposed action or offer an alternative action.
>
> Step 3: If efforts at agreement fail, the parties may mediate the dispute with FDOE.
>
> These are pivotal due process steps in the process that MCA should have been afforded, but was not. In this case, the District ignored the required steps and moved straight to a discussion of termination of the top elementary, middle and high school in Collier County. (CR, at 8).

In making such assertions, the preparers of the CR ignored or overlooked a key communication from MCA's counsel to the undersigned dated July 3, 2019. Mr. Arnold wrote, on behalf of his client, the following:

> Jon,
> At a duly noticed meeting held by the Mason Classical Board on July 2, 2019, the board discussed your averments as set forth in your document dated June 3, 2019. The following document is The response by Mason to the District's concerns. Where appropriate, The School outlines steps it will take going forward in the document attached.
>
> We have also given FDOE a request to mediate this dispute in addition to the Best and Brightest money dispute, which is a lower of the two matters in terms of priority at this time. We look forward to discussing this matter further to address concerns of the District and the School in this matter.

This communication, to which the 21 page MCA Board approved "Alleged Defaults and Cures" document was attached ("the Cure Document"), provided the steps, "where appropriate", that the school "will take going forward." It neither mentioned, sought, nor tried to invoke the dispute resolution process contained in the Charter Contract. It stated what MCA planned to do.

Moreover, the MCA Board sought mediation through the Florida Department of Education (FDOE). At the July 8, 2019, Board Meeting, at the recommendation of Mr. Arnold, the MCA Board voted unanimously to proceed with mediation under the auspices of the FDOE. (See, July 8, 2019, MCA Board Meeting Minutes under the hearing "Ratification of Mediation"). Thus, in connection with the July 2, 2019, Board Meeting, counsel's July 3, 2019, communication to the undersigned, and the July 8 Board Meeting, the MCA Board decided that the dispute resolution process, occasioned by the GC's Report, would be sought through the FDOE, not the District School Board of Collier County.

In fact, on or about July 9, 2019, the parties, through counsel, were contacted by the FDOE to discuss the possibility of proceeding with mediation. These discussions connected with that inquiry continued over the next few days. Thus, the Coleman Report thoroughly misconstrued what happened. Dispute resolution was sought through the FDOE, not through the District School Board. There was no request by MCA to bring the Cure Document to the District School Board to review for the purpose of settlement. The Cure Document was sent to District School Board Members by the undersigned to review and try to understand MCA's position. The claim that the District violated the Charter is simply wrong. The conclusion reached was in disregard of the facts and the documentary evidence.

At the July 11, 2019, District School Board Meeting, the undersigned requested the Board to vote to proceed with mediation and try to make it work. There was no recommendation to close MCA, just the opposite. Actually, the decision to hold a Board Meeting on July 11, 2019, arose because of extensive parental questions and concerns received by the District derived from the results of the General Counsel's June 3, 2019, Report. There were many inquiries as to whether parents should continue to enroll their children at MCA or enroll them elsewhere. Given the considerable public pressure for answers, it was determined to hold a Special Board Meeting prior to the Regular Board Meeting scheduled for July 29, 2019, given that the latter was only two weeks away from the opening of schools.

Since it was recognized that the Board needed to listen to parents and the public about the multiple issues involved in an open meeting, the July 11, 2019, date was chosen. The undersigned via an Executive Summary for the meeting, included the statutory criteria pertaining to potential closure, because under the pressures of the circumstances a full airing of all issues could be held publically. As the Executive Summary shows, no recommendation to close was made. In fact, shortly before the meeting, the parties had reached a fundamental understanding to mediate. Prior to public speakers, the undersigned informed the District School Board and the public immediately of the decision to mediate. (See, the Minutes of the July 11, 2019, Special School Board Meeting of the District School Board of Collier County). Nobody from the District came to the meeting with any intent or predetermined agenda to close MCA. Far from it.

The goal was to listen to everyone in attendance who wanted to speak, no matter how long it took.[3] Thus, the inference to the contrary on pp 8-9 of the Coleman Report is simply wrong. Moreover, especially after the meeting, everyone knew that the Board and District staff, including the undersigned, were focused on participating in the dispute resolution process through FDOE mediation and not the closure of MCA.

In fact, it is quite telling that on July 17, 2019, MCA Board Member Mr. Bolduc responded to a concerned parent as follows: "Thank you for your email. We are fully confident MCA will remain open." And some two weeks later, on July 30, 2016, in an email sent by Mr. Arnold at 1:08 p.m. to an MCA parent, Mr. Arnold forthrightly noted that "the School is not going to be terminated". The preparers of the Coleman Report decided not to include Mr. Bolduc's or Mr. Arnold's respective communications, which speaks volumes about the actual mindset of MCA, and its leadership, prior to the mediation scheduled for August 1, 2019.

C. The Coleman Report's Inquiry Into the Issues Pertaining to the Financial Oversight and Audit Committees and the Allegations that Mr. Baird Was Prevented from Performing His Duties

1. The CR's Presentation of Allegations and Family History Between the Hulls and the Bairds

(a) The Misusage of Mr. Baird's Email Statement to Mr. Hull in February 2018

On pages 9 – 20 of the Coleman Report, the preparers responded to the General Counsel's Report by looking into the Financial Oversight and Audit Committees and Mr. Baird's claims that he was impeded in carrying out his duties as Board Treasurer. Rather than exploring the substance of Mr. Baird's allegations, the preparers tried to shift the focused to the relational history between the Baird and Hull families. (Id., at 10). To this end, the CR focused upon their relationship during the period prior and up to the time he joined the Board. They then present a portion of an email where Mr. Baird praised Mr. Hull and then on to a series of email exchanges in 2018. In one of those emails, Mr. Baird acknowledged that he and Mr. Hull had conflicted over an educational matter involving one of his children and apologized for it. In the CR Report, the preparers lifted a sentence of the exchange in which Mr. Baird, as part of apology, noted: "I have a terrible tendency to be combative when faced with differing views and opinions." They then proceeded to use this statement twice (pp. 11 & 12) in order to try to construct an image that the statement is evidence that Mr. Baird's FDOE complaint arose out of anger linked to this disagreement.

[3] As it turned out, 28 people came forward to speak. (See, the July 11, 2019, Minutes noted above). This is separate and apart from the numerous emails sent to the Board and others addressing their concerns and positions on the matter.

Yet, the statement was not only taken out of context, but also in order to present the desired image, the preparers decided to leave out Mr. Hull's reply to Mr. Baird. Let's look at the exchange. In the February 16, 2018, email, before making the above statement, Mr. Baird wrote to Mr. Hull the following:

> I want to apologize for my behavior in our meeting the other day. I became upset and allowed my emotions to dictate a lot of things that were said. Consequently, I am afraid I did a bad job of articulating our concerns, and it looks like I miscommunicated some very important things.

Only then came the above-noted statement. But following that, Mr. Baird added the clause "for that I am very sorry..." Mr. Baird took responsibility for the disagreement. He forthrightly apologized for his actions and essentially asked for forgiveness ("for that I am very sorry") and this was linked to his expression of appreciation for all Mr. Hull's efforts and thanked him for his work. Mr. Baird finished the email as follows: "Thanks for your understanding and willingness to address our concerns". Mr. Hull's reply, which was sent some eight minutes after receiving the email, reflected his effort to reach back to Mr. Baird and accept his apology. He wrote:

> You have absolutely nothing to apologize for. We are all humans and flawed, especially me. I love to hear that you don't feel like the concerns are insurmountable! It is my mission on life to help children develop hearts and mind sin accordance with their parent's goals. It was proven difficult, but I refuse to give up. Thank you or always being there for me to help make that happen. We probably see eye-to-eye more than either of us believe. (February 16, 2018, email correspondence between Mr. Hull and Mr. Baird).

Why was all that left out of the Coleman Report? Why was Mr. Hull's reply excluded, including his statement "Thank you for always being there for me to make that happen?" The answer appear to lie in the recognition that to include all of it would not fit the negative image and the narrative being presented. When context is disregarded, and such information excluded, the preparers' assertions of objectivity must be seriously questioned.

(b) The Issue of Home Schooling and Participation in MCA Athletics

In the section on the history of the two families, it is noted that between April 30 – May 24, 2018, Mr. Hull had advised the Bairds that with respect to their home education program for their children "there was no provision that allowed the children to continue with sports at their previous charter school," (pp. 11-12). Yet, it is then added that "through the advice of counsel, MCA had determined that no homeschool children were eligible to participate in MCA sports unless there was an open seat that the school". This advice was different from Mr. Hull's advice. The preparers then asserted that MCA was at capacity and to admit any of the children to play sports would have been illegal (Id., at 12). But this representation was not accurate. At the time of the May 2018 communications, due to declining enrollment in the upper school, there were seats available to enable the Baird children to participate. In this context, the preparers directed the readers' attention to F.S. 1006.15(3)(c) which provides, in pertinent part, the following:

> An individual home education student is eligible to participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend pursuant to s. 1002.31, or may develop an agreement to participate at a private school, in the interscholastic extracurricular activities of that school, provided the following conditions are met:

There is no language in subsection (3)(c)(1-7), that refers to the seating availability requirement referenced on p. 12 of the CR. Significantly, the preparers overlook the provision set forth in F.S. 1002.31 which is referenced in the text of F.S. 1006.15(3)(c) above. F.S. 1002.31 pertains both to District Schools and Charter Schools. F.S. 1002.31(6)(a) provides the following:

> A school district or charter school may not delay eligibility or otherwise prevent a student participating in controlled open enrollment or a choice program from being immediately eligible to participate in interscholastic and intrascholastic extracurricular activities.

The statute provides that a charter school may not prevent a student participating in a choice program from "being immediately eligible to participate in interscholastic or intrascholastic extracurricular activities." A home education program (a home school program) is certainly a choice program. Chapt. 1002, which includes home education program, has as its heading "Student and Parental Rights and Educational Choices" (emphasis added).

Thus, it would seem that the Baird children were prevented from participating in MCA's interscholastic extracurricular sports activities. But even assuming arguendo that Mr. Hull did not understand the statutory issues, he could have contacted or received written guidance on this specific issue either from the FDOE's office of educational choice or from the FHSAA; or could have informed the Bairds to do so. But it is highly unlikely he would have wanted the Bairds to contact the FHSAA in May 2018. MCA had initiated membership in 2016 with the FHSAA that began with a two year provisional probationary period. After not completing the 2 year probational period, MCA requested a third probational year for the 2018 – 2019 school year to complete its membership requirements in the organization. At the conclusion of the 2018-2019 school year, MCA was removed from membership in the FHSAA "for failure to meet the standards set forth in the FHSAA new membership process." (See, the August 5, 2019, email communication between the FHSAA and MCA parent Ms. L; which document had been provided to the CR preparers pursuant to a public records request in the summer of 2019).[4]

[4]It should be noted that Mr. Baird has advised that he spoke with the FHSAA and was informed that the agency found no reason why a homeschooled student in Florida could not participate in the particular Charter School's extracurricular sports program.

Equally important, a parent whose child had been home schooled between 2016-2018 informed the undersigned that his child played on MCA extra-curricular sports teams during that time period. Thus, Mr. Hull's representations to the Bairds that homeschooled students were not included in MCA's after school sports teams was not truthful. The preparers' effort to try to take a February 2018 statement and apply it to a May 2018 context to argue that Mr. Baird filed his June 2018 Complaint because his children would not be allowed to participate in MCA sports distorts reality and has no foundation in the evidence.

A review of the emails between the Bairds and Mr. Hull in May 2018, show multiple efforts by Mr. and Mrs. Baird to discuss the issue with Mr. Hull who decided he no longer wanted to deal with the matter. In fact, he dismissively informed them to remove his name from the email chain and informed them they should deal directly with Mr. Marshall. It strongly appears that Mr. Hull carried the resentment attributed to the Bairds because they had withdrawn their children from MCA which would affect his high school graduation class number. Mr. Hull did not take that well. Equally to the point, despite the preparers' effort to attribute "the one-sided" anger to Mr. Baird, they overlooked the fact that there was no reference in his complaint to the non-inclusion of his children in MCA's sports program. But even assuming for the sake of argument that Mr. Baird felt anger over the issue when he filed his complaint, what has that have to do with addressing the substantive nature of the contents raised? Nothing. The preparers never contacted Mr. Baird to discuss this issue.

(c) <u>Ms. Lichter's and Mr. Hull's Efforts to Use Mr. Baird to Stack the Board</u>

In the lengthy discussion on family history in the CR, it is noted that Mr. Hull admitted that he was "instrumental in getting Mr. Baird elected to the Board. He believed Mr. Baird would be an asset to the Board as Mr. Baird represented to have a classical education which fit with MCA's vision." (CR, at p. 10). It is then noted that "Mr. Hull denies that he wanted Mr. Baird on the MCA Board in order to stack the Board in his favor". This is punctuated by a rather defensive footnote that asserts that "Mr. Baird's feeling that this was Mr. Hull's intention is not actual evidence of any such intent by Mr. Hull." The preparers concluded the paragraph with "their families often participated in events together and socialized outside of school, including parties together and Christmas caroling together in December 2017." One wonders what caroling in December 2017, or socializing together, other than deflection away from substantive considerations, have to do with Mr. Hull allegedly wanting Mr. Baird on the Board in the first part of 2016.

Indeed, the preparers of the CR decided not to include the email exchanges between Mr. Hull and Mr. Baird that occurred in early 2016. But such exchanges should be included. In a telling email sent from Mr. Hull's personal email account to Mr. Baird on January 12, 2016 at 9:30 p.m., one can see Mr. Hull maneuvering to get Mr. Baird on the Board because of his mistrust of Mr. Mathias, Mr. Donalds, and Mr. Lane. The subject line of the email is "Vote". Mr. Hull wrote in pertinent part the following:

I've given a lot of thought to last night's board meeting. The vote or lack thereof, was not good. I have a bad feeling that the men are trying to make sure the board stays "balanced" in the wrong way. If Joanne Janopoulos gets on the board, which I think may be a goal of Matt and Byron, things will change. They simply do not have a clear understanding of what must be done to keep this school on the straight and narrow, and what it takes to survive these initial years.

In fact, between you and me, Chuck Marshall's first comment to me early this morning was that he almost made a public comment that he feels you should be added to the board. That surprised me. Of course, I like Chuck a lot. We butt heads, but in a good, "balanced", way.

Anway, here is my thought. You may want to write a follow-up letter to the board explaining your business experience and other attributes Jason and Byron are looking for. If you don't want to, I completely understand. But last night was the first time I actually felt like something is seriously wrong. Byron was not different, just more intense. Jason gave me the impression that someone got to him and changed his way of thinking somehow. Something is just off with him. I don't know what it is.

It stinks writing an email like this. Drama is not my thing. But The school is. And it must be protected.

Thanks for considering.

Mr. Baird replied on January 13, 2016, at 7:45 a.m. He expressed his reluctance to submit a letter to the Board. He believed that explaining his business background would not sway either Mr. Lane or Mr. Donalds to accept him. In fact, he felt they would oppose him. He predicated their possible opposition on his belief that he viewed the role of classical education in connection with MCA's mission, and its relationship to boardmanship, differently than they did. He then recommended that Mr. Marshall throw his hat in the ring concluding that Mr. Lane and Mr. Donalds would find it difficult to vote against him.

Mr. Hull responded from his home email a short while later, at 8:45 a.m., as follows:

If Chuck were on the board, we would be a testing company with many more students always chasing test scores and dollars. I love Chuck, but he's right where he should be.

I completely understand where you are coming from, and I agree. To be honest, I can't think of many reasons why the 2-2 board is a bad thing since they are so opposite. That just means that nothing will ever change. That's a good thing!

> Let's hit the beach sometime soon!

It is certainly clear that Mr. Hull had a vision of how he wanted the Board constituted to his advantage including having a Board that would continually be in stalemate mode so he could do whatever he wanted to do.

But the matter did not end there. Mr. Hull and Ms. Lichter held conversations with one another about MCA Board composition and wanted Mr. Baird's support in the process to get them where they wanted to go. On March 9 2016, at 9:48 p.m., Board Chair, Mrs. Lichter, emailed Mr. Baird from her personal email address the following:

> Thank you for asking. I told David that I spoke to you yesterday and was asking for advice on how to get rid of Byron. I am comfortable with you saying that I informed you but please make it clear that I was not spreading the rumor. I trust you and Sarah very much and know that you both care deeply for the school and for the Hull family. Thank you for listening and standing by us during these trying times. (Emphasis added).

This remarkable email tells us a great deal about what was really going on. Ms. Lichter had obviously been in contact with Mr. Hull about Board composition matters and had informed him that she sought Mr. Baird's advice on how "to get rid of Byron" [Donalds]. It is beyond inappropriate for a Board Chair to try to use a potential Board Member to get rid of another Board Member with the assistance of the School Principal. For the preparers of the CR to claim that Mr. Hull and Ms. Lichter did not want to stack the Board in Mr. Hull's (and Mr. Lichter's) favor, is belied by the evidence. It is again of serious concern that such critical evidence was ignored and excluded from the CR. Once again, it calls into serious question the preparers' assertion of objectivity. With respect to Ms. Lichter's email, it is possible she chose not to disclose it to counsel.

At the August 2, 2016, Board Meeting, Ms. Lichter informed the Board that Mr. Lane had resigned. On August 8, 2016, at a Special Meeting, Mr. Baird was unanimously elected to the Board as its newest member and the new Treasurer. The evidence shows that Mr. Baird's perception/feeling that Mr. Hull sought to stack the Board in his favor was accurate. Mr. Hull's concern with Mr. Lane thwarting what he wanted to achieve was now resolved with the departure of Mr. Lane and the election of Mr. Baird. (See, the Minutes of the August 2 and August 8 meetings, respectively).

It is equally revealing that behind the scenes, Ms. Lichter was secretively maneuvering to get rid of Mr. Donalds. And, at a time when Ms. Lichter was presenting herself as Mrs. Donalds' staunch supporter on the District School Board, she was actively working behind her back to get rid of her husband from MCA's Board. None of this was addressed in the CR. It was safer to sweep it under the carpet lest their narrative collapsed.

2. The Coleman Report's Discussion Concerning the Finance and Audit Committees

(a) Introductory Considerations and the Preparers' Position in the CR

The writers of the Coleman Report took issue with the conclusion reached in the General Counsel's Report that MCA breached its contractual obligations under the Application, which was incorporated by reference into the Charter Contract, when, after the dissolution of the Finance Committee in July 2016, the Board voted at the October 4, 2016, Board Meeting in favor of the Motion to Approve the Creation of Financial Oversight Committee ("FOC"); a committee that never met nor oversaw anything. It was fundamentally a shell committee that existed in name only. Issue was also taken in connection with a similar finding in the GC's Report in connection with the Audit Committee.

Despite the District School Board's approval of the Contract in 2013, the first time an Audit Committee was considered was at the December 14, 2016, Board Meeting when Board Member Miller made a "Motion To Establish Audit Committee" consisting of Mr. Marshall, Mr. Longenecker, and Ms. Miller which was unanimously approved. (See, the Minutes of the December 14, 2016, MCA Board Meeting). The Audit Committee never met. Hence, like the FOC, it was a shell committee that existed in name only. And in connection with the creation of the Audit Committee, the Board never followed the membership criteria set forth in the Application. Therefore, like the FOC, the Board breached its contractual obligations under the Charter Contract into which the Application was incorporated.

In the CR, one finds the following response:

> There is no evidence to support such a conclusion. The MCA Board chose to serve as the Financial Oversight Committee provided necessary financial and auditing oversight functions while the financial and audit oversight may not have done exactly as provided in the Charter Application, the necessary functions were performed" (CR, at p. 9). This position was repeated more briefly on page 12. The position taken does not state that the Board chose also to serve as the Audit Committee as well, but it seems to be implied. Later, it is noted that a separate Audit Committee was not needed because the Board actually performs the functions of an Audit Committee. The position taken changes somewhat on page 15, when the writers acknowledge at the very least (a) the lack of a FOC appears to be technical in nature, due to the Board performing the necessary functions of the Financial Oversight Committee; and (b) "the lack of a separate Audit Committee appears to be a technical violation of the Charter Application, but one that did not cause any harm to the school as the necessary duties continued to be performed by the Board" (CR, at 15).

As the following will show, such findings and assertions (a) were made without any foundation in the evidentiary record and in disregard of it; (b) represent a misreading the legal and contractual issues involved; (c) disregarded the reasons why such committees were determined to be important from the beginning (to provide oversight and support to the Board in