As noted in the GC's Report, at the October 4, 2016, MCA Board Meeting, during the discussion in which Ms. Miller and Ms. Lichter decided they wanted to broaden the FOC applicant pool (despite the Agenda notice Ms. Lichter recommended approval), both Mr. Baird and Mr. Donalds objected and expressed concern that Dr. Carpenter's recommendations needed to be followed. Indeed, Mr. Baird had previously posted the purpose of the FOC for discussion which was drawn from Dr. Carpenter's training materials. And based upon the above-referenced email, he proposed that the Board engage Dr. Carpenter's services for training; including to deepen his own knowledge in order to serve on the Board.

Ms. Miller and Ms. Lichter opposed the idea of engaging Dr. Carpenter's services. No motion or proposal was made at that meeting or at any one thereafter to do so. Thus, the claim in the CR that Dr. Carpenter (a) "informed Ms. Lichter that in order to continue to provide individualized assistance to Mr. Baird, the Board would need to pay Dr. Carpenter $10,000 as a consultation fee"; and (b) it was decided that the Board should not incur that expense as Dr. Carpenter's annual governance training the following summer," is wrong factually, misleading, and counter to the evidence which the preparers once again ignored. As noted in the GC's Report, Dr. Carpenter did not provide Mr. Baird with individualized training, but otherwise agreed with Mr. Baird's representations in the Complaint.

In fact, in the CR, there is no evidence showing that Dr. Carpenter was providing such training to Mr. Baird. There is a response, only as a courtesy, on September 12, 2016, to Mr. Baird's inquiry of that date. As the above-referenced email shows, he informed him upon receipt of a detailed inquiry that training would require a Board authorization request for a year coaching agreement for MCA or to pay for his services on an hourly basis of $275/hr with a two hour minimum commitment.

As noted above, Ms. Miller and Ms. Lichter had spoken with Dr. Carpenter at Hillsdale College about engaging him for MCA in June 2016. That was well prior to Mr. Baird joining the Board which did not occur until August 8, 2016. Thus, their interaction in June, 2016, had nothing to do with Mr. Baird. Moreover, at the October 4, 2016, Board Meeting, there was always the option of engaging Dr. Carpenter's services hourly. Thus, if the cost of individualized training for Mr. Baird was the real issue, they could have sought to engage him through Board motion and vote for, hypothetically, five (5) hours or $1,375.00 which the Board certainly could have afforded.

In addition, the preparers claim that "it was decided by the Board" not to incur a $10,000 expense (which also is not borne out by any of the Board Meeting Minutes). This never occurred; at least not in the Sunshine. The Board never reviewed nor decided by motion and vote not to incur such an expense. There was certainly no consensus not to do so either. Ms. Miller and Ms. Lichter did not want any such engagement and were themselves unwilling to seek a motion or vote since they would have to vote against what they claimed they were originally interested in. Further, the claim that Mr. Baird would be able to attend Dr. Carpenter's training the following summer is not factually accurate. The next training, as previously noted, was set for November 2016, Mr. Baird had already registered for it on September 10, 2016, and had informed Ms. Lichter accordingly. (See, email communication from J. Baird to K. Lichter, sent

on Saturday, September 10, 2016, at 10:30 a.m. Ms. Lichter acknowledged receipt at 10:35 with "Great News").

So everyone knew on October 4, 2016, that any possible engagement of Dr. Carpenter would involve training for the Board not just for Mr. Baird. What was at stake at that time were issues of who controlled the Board. It was clear that Mr. Baird was asking too many questions which upset Ms. Lichter and Mr. Hull. He had followed through on the applications received and sent his peers notice as early as September 23, 2016. The pool of applicants were clearly ones Ms. Lichter and Ms. Miller did not want. Mr. Baird uploaded a proposed statement of purpose on October 2, 2016, that Mr. Lichter, Ms. Miller, and Mr. Hull really were not interested in either. He had uploaded a Treasurer's Report claiming that he had not received information he requested to complete it.

On October 4, 2016, by ignoring the statement of purpose provided by Mr. Baird, Ms. Lichter knew she could drag matters out to decide who would be appropriate applicants, what the FOC's purpose would be, and so on. Indeed, with Mr. Baird's resignation, followed by Mr. Donalds' resignation in November 2016, Ms. Lichter and Ms. Miller would control a three member Board. There was nothing more that needed to be done. There would be no Financial Oversight Committee. Ms. Lichter's and Ms. Miller's commitment to Dr. Carpenter's training principle dissolved as unwanted just six (6) weeks after Ms. Lichter had emailed the MCA Board "I trust his advice."

To have a sense of what was lost when Dr. Carpenter's training and recommendation were pushed aside, let's look at some examples of the principles contained in the training materials with which MCA Board Members were familiar. Dr. Carpenter noted that the following steps that should be undertaken in the financial oversight process:

> (a) Do not wait for the annual audit to determine whether the internal controls are being rigorously followed. If you do, you're giving an embezzler 12 months to steal.
>
> (b) Develop a board treasurer job description that contain practices intended to help the treasurer spot fraudulent activity soon rather than later. For example, the treasurer should review the monthly bank statements of all school accounts. (Dr. Carpenter, "Navigating Your Way to School Success", at 42).

Dr. Carpenter had also advised that the Board should make reasonable efforts as to the accuracy of enrollment figures submitted to the state; something Mr. Baird requested as well. Dr. Carpenter noted: "A good first step to doing so is to direct management to submit a written monthly report to the board reflecting all changes in enrollment since the previous reporting period. Like all management reports, the board should attach it to its Minutes." (Id., at 43). When the Board supposedly took over the role of the FOC, none of these principles were followed. The claim that the Board successfully assumed the role of the FOC does not accord with the following evidence: (a) the previous practice of the FC; (b) Sections 9 and 18 of the Application; and (c) Dr. Carpenter's training. Equally significant, the preparers of the CR did

not include any of this evidence in their findings. The evidence was contrary to the narrative desired.

4. The Claim in the CR that Mr. Baird was Never Prevented from Performing His Duties

According to the Coleman Report: "This firm has not found any evidence that Mr. Baird was prevented from performing his duties." (CR, at 16). Shortly, thereafter, the preparers restate their position as follows: "We have found no evidence that Mr. Baird was unable to perform his duties as Treasurer, instead it appears that Mr. Baird was confused about his role and the duties he was required to perform." As will be shown, these claims are misleading, inaccurate, and once again ignore evidence that contradicts what the preparers wanted to find. And, as will also be shown, the assertion that Mr. Baird was confused about his role comes from Ms. Lichter's condescending remark to that effect to Mr. Baird in her September 26, 2016, email to him in her effort to have him back off from the questions he had for Ms. Turner. Her pressure to do so was because Mr. Hull had complained to Ms. Lichter and had pressured her to intervene.

The preparers cite Ms. Turner's email to Mr. Hull on October 5, 2016, as evidence of all she did to help Mr. Baird. No one disputes that. It is readily acknowledged on page 10 of the General Counsel's Report. But that is not the issue. As a threshold matter, her email was sent the day after the Board meeting when she sent information and responses that were needed prior to the October 4, 2016, Board meeting. Had the information she provided been sent prior rather than after the meeting, there would not have been the concerns that we raised and Mr. Baird could have finalized his Report. Ms. Turner, at the direction of Mr. Hull, sent it on October 5, 2016. The hours she put in that morning could have been done earlier. Mr. Baird's email was sent on September 29, 2016, and he waited until February 2, 2016, three days after his request, to upload his Treasurer's Report. The problem should not be laid at Ms. Turner's doorstop. As will be noted, Mr. Hull admitted to Mr. Baird on October 5, 2016, that he had dropped the ball and caused the delay. The preparers conveniently do not include this communication which was presented in the General Counsel's Report on pages 12-13. Let's look more carefully at the sequence of events, communications, and the issues involved.

On September 29, 2016, at 9:12 a.m., Mr. Baird emailed Ms. Turner advising her that he had a list of questions drawn from his review of the July and August 2016 emails. He asked her to provide the information by Monday, October 3 if she could and it represented too much of a burden to let him know. Mr. Baird then listed 14 questions he requested her to answer, two of those for example, involved Amazon.com gift cards. (See, September 29, 2016, email from J. Baird to S. Turner sent at 9:12 a.m.). There was nothing inherently inappropriate about the request for information about these gift cards. This was a matter that had been previously raised approximately a year before at a Finance Committee meeting that both Mr. Hull and Ms. Turner attended. In the meeting Minutes, the following is noted under the category of "Team Reports: Reviewed September bank statements. Mr. Mathias, in reviewing the accounts tied to the school debit card requested more detail on Amazon.com purchases…" The Minutes continue with the following: "ACTION ITEM: Ms. Turner will work with Resource Room Director, Mrs. Gena Smith, to reconcile all Amazon-com textbook purchases." (October 12, 2015, Meeting Minutes of the Finance Committee). From an oversight standpoint, the new Treasurer acted appropriately, especially given that there was no Finance Committee in place.

Mr. Hull talked about the scope of the request and Ms. Turner then requested permission from him on September 29, 2016 to send Mr. Baird the documentation on Amazon.com cards. (September 29, 2016, email from Ms. Turner to D. Hull sent at 10:03 a.m.). He granted her request and she sent Mr. Baird Amazon documentation with an explanatory note. She also informed him "but most of my amazon records are not scanned" and invited Mr. Baird to audit her paper files if he wanted to." The claim by the preparers that everything was on the Google Drive could have been the case if most of the Amazon records had not been scanned. Ms. Turner sent the information at 11:41 a.m. that morning. (See, September 29, 2016, email from S. Turner to J. Baird). Shortly after granting Ms. Turner's permission, Mr. Hull called Ms. Lichter about Mr. Baird's request and asking to intervene in the matter. Subsequent to their conversation, Ms. Lichter wrote to Mr. Baird the following (and the email will be quoted in its entirety):

> Good morning Joe! I spoke with Mr. Hull this morning about some questions you had for Mrs. Turner. I understand that you are still in the onboarding process and learning, but I think those questions should be asked during an oversight committee meeting. The school makes many purchases and Dr. Carpenter wants the board to be keeping an eye on things and looking for anything irregular, not questioning every single expense. Turner has a big job, and I do not was to add anymore to her plate. During these finance oversight meetings, she will be there to answer any questions or concerns. Perhaps we can schedule the first meeting ASAP to alleviate any concerns. If you have any questions, please let me know. I will be handling some real estate today, so I won't be available until later. Have a great day! (September 29, 2016, email from K. Lichter to J. Baird, set at 10:58 a.m.).

After acknowledging having spoken with Mr. Hull, she began her communication in a patronizing manner claiming that Mr. Baird was "still in the on-boarding process and learning, but I think those questions should be asked during an oversight committee meeting". By that time, Mr. Baird had already read intensively in Dr. Carpenter's training materials and was preparing a statement of purpose for the FOC. Moreover, there was no financial oversight committee. So when would he be able to ask his questions? Ms. Lichter had received the Committee Applications on September 23, 2016, and clearly had no intention of staffing the committee. She then later adds a "perhaps" we can schedule such a meeting ASAP, which she knew would not occur.

In addition, her effort to undermine Mr. Baird by editorializing what Dr. Carpenter wanted, without any basis for it beyond how she wanted to read into the matter to get what she wanted, is as concerning as it is inappropriate. Ms. Lichter then informed Mr. Baird: "Ms. Turner has a big job, and I do not want to add anymore to her plate. During these finance oversight meetings, she will be there to answer any questions or concerns." What right does a Board Chair have to tell another Board Member, who is the elected Treasurer, outside of a Board Meeting, that she does not want to add more work to a business manager and that Mr. Baird would have to wait until there was a financial oversight committee meeting before he could get his answers. It is submitted she has no such right. The preparers try to protect Ms. Lichter from the undersigned's claim that she was essentially informing Mr. Baird to back off and that is not

the conclusion they wanted to reach. What else would it be? According to the preparers, Ms. Lichter was really directing Mr. Baird to the appropriate forum he could ask his questions: a forum that had not been established and never would be! The preparers' conclusion cannot be sustained in light of the evidence. Ms. Lichter's goal was to prevent her fellow Board Member from obtaining relevant information to prepare his report and ran interference for Mr. Hull and Ms. Turner so they would not have to deal with him until some undefined point in time in the future. And why would a forum outside of a Board Meeting be the best place to ask questions that are Board specific?

Mr. Hull's actions bothered Mr. Baird. After the October 4, 2016 Board Meeting, he asked Mr. Hull if Ms. Turner had already put in three hours so far to answer him, why she could not send the information to him. He thus merely asked for what she had apparently already done. (See, the October 4, 2016, email from J. Baird to D. Hull sent at 9:17 p.m.). Mr. Hull responded the next morning, October 5, 2016. He acknowledged the following: "After giving it some thought, I agree with you that the request for information should be done by email. Your idea to have a written record is a good one." (October 5, 2016, email from D. Hull to J. Baird sent at 7:07 a.m.). Mr. Hull then stated the following:

> There is no explanation of 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. (Id.).

Mr. Hull's statement is an admission, made after the Board Meeting, that he had indeed thwarted Mr. Baird's requests for information before the Board Meeting. The preparers ignored these communications. Why? They were certainly aware of them. They were referenced in the GC's Report and they were sent to counsel as part of a public records request. They were ignored because they did not fit the narrative the preparers wanted. Rather, the preparers tried to shift the focus onto Mr. Baird. They asserted that as soon as he received the information he should have submitted it and then amended the report. They assert this without regard to the fact that he would need Board authorization to do so, or, at the very least, request the Board Chair to place it on the next month's agenda. The additional flaw in their argument is that after Mr. Baird left the Board, no effort was ever made to undertake an amended report despite the claim that the Board had become its own self-policing FOC.

Finally, in the late afternoon of October 5, 2016, Mr. Baird emailed Mr. Lichter a copy of several pages from Dr. Carpenter's training materials and identified pages that addressed the issue of oversight he though Mr. Lichter might be interested in reading. (See, October 5, 2016, email from J. Baird to N. Lichter, sent at 5:41 p.m.). The next morning, Mr. Baird informed Ms. Lichter he was resigning. That afternoon, Mr. Lichter emailed the MCA Board and Mr. Hull the following:

> 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.).

While Mr. Lichter's email was in the General Counsel's Report (see, pp. 13-14), the preparers of the Coleman Report did not want to go near it and ignored it entirely. This was because Mr. Lichter's conclusion that Mr. Baird was "forced off the board because the board and management refused to allow him to perform his proper role as treasurer," was not only correct, but also was at odds with the conclusion reached by the preparers of the CR and had to be swept aside, if their narrative was to work. But given the evidence, anyone can see that their narrative doesn't work. As a final note, the claim that Mr. Bolduc has had no problem with downloading information from the Google Drive is a "throw in" argument that is irrelevant and a deflection from the issues under review. Mr. Bolduc's activities in 2019 do not shed light on the events and realities some two and a half years prior to his work the board (his first meeting wasn't until January 23, 2019) and as will later be shown, did not submit any Treasurer's Reports. The fact that he has enjoyed a close relationship with Ms. Lichter and Ms. Miller may be fine for him relationally, but it does nothing to explain the core issues in Mr. Baird's Complaint or his experiences between August 8, 2016 – October 6, 2016.

III. Sunshine Violations and Board Governance Issues

A. Sunshine Violations

In the Coleman Report, the preparers found no Sunshine Law violation in connection with Mr. Lichter's September 29, 2016, email communication noted above. Instead they tried to

shift the burden of responsibility onto Mr. Baird for responding to her. They noted: "Ms. Lichter's email to Mr. Baird dated September 29, 2016, at 10:58 a.m., was not a Sunshine violation, as it was the first communication from one Board Member to another...It is Mr. Baird's response dated September 29, 2016, that constituted a violation of the Sunshine Law as his response created an exchange of responses." (CR, at 20-21). In support of their claim, the preparers rely upon AGO 2001-20. They note that as a legal matter "an email communication of information from one council member to another is a public record but does not constitute a meeting subject to the Sunshine Law when it does not result in the exchange of council member's comments or responses involving foreseeable action by the council (AGO 01-20)." As will be shown, their assertions and their reliance on and reading of AGO 2001-20 display a glaring misunderstanding of the Sunshine Law in an effort to rescue Ms. Lichter from her knowing actions.

We begin by turning back to the text of Ms. Lichter's email. Ms. Lichter wrote personally to Mr. Baird ("Good Morning Joe!") advising him, in essence, to back away from his questions to Ms. Turner because she "has a big job , and I do not want to add any more to her plate." Thus, she was telling Mr. Baird what she wanted him to do. And she told him to bring his questions and concerns to the still non-existent Finance Oversight Committee. She was careful not to say bring them before the Board where they belonged and which constituted the appropriate forum. Mr. Baird's need to obtain information to complete his Treasurer's Report for the October 4, 2016, meeting was a matter that would foreseeably come before the Board. Despite the preparers representations, there is nothing in the email in which Ms. Lichter was providing him with information, let alone anything that could constitute a public record. Ms. Lichter was telling her fellow Board Member what she wants him to do and expected him to follow what she wanted: (1) stay away from Ms. Turner, she is too busy; and (2) bring up your questions at a future FOC meeting. She then invited a reply when she notes: "If you have any questions, please let me know. I will be handling some real estate today, so I won't be available until later."

An astonished Mr. Baird felt compelled to reply. He informed her that he "wasn't questioning every expense," and he "was not sure that a committee meeting is the right forum to some of these questions". He then noted that the issues were matters that would come before the Board: "I have a Treasurer's Report to prepare for Tuesday and that the report needs to include a statement that says 'I found no irregularities'." (September 29, 2016, email from J. Baird to K. Lichter).

Ms. Lichter knew the process when she wrote to Mr. Baird. She could have put in the text of the email "Do Not Reply," because the matter would be discussed at the October 4, 2016, Board Meeting. Indeed, a review of her August 25, 2016, email to the Board, in which she attached information, shows she understood the process because she told her colleagues "Do Not Reply". With this in mind, the preparers' reliance on AGO 2001-20 is misplaced and actually applies to Ms. Lichter's August 25, 2016, email, not to her September 29, 2016 one. Let's look at the question presented to the Attorney General for review:

> May a member of the City of Port Orange City Council copy another council member directly with a communication via the use of computer

> e-mail so long as the e-mail communicates only factual background information and does not result in the exchange of the council members' comments or the council members' responses on subjects requiring council action and so long as the public record is maintained?

The Attorney General Opinion ("AGO") involved a communication that provided factual background information from one city council member to other council members that did not result in the exchange of comments or responses. Under such circumstances, there would be no violation. Moreover, attention is also called to AGO 96-35 which involved emailing a written memorandum to school board member in which a member told his/her peers that he/she intended to recommend a course of action at a Board Meeting but did not solicit responses from other Board Members (and nor were any responses sent). The Attorney General found no wrong-doing.

In the matter before us, Ms. Lichter did not send information in the form of a factual background or a course of action memorandum to MCA Board Members informing them not to respond nor soliciting a response. Ms. Lichter sent a very personal email to Mr. Baird telling him how he should handle his work and inviting a response back ("if you have any questions," and that she would be available after her real estate work was done.) In sum, she invited Mr. Baird's response. And he responded. To say that she did not violate the Sunshine Law, but Mr. Baird did, is ridiculous.

In the State of Florida's Government-In-The-Sunshine Manual (Vol. 41, 2019), the following is noted: "The Sunshine Law requires boards to meet in public; boards may not take action on or engage in private discussions of board business via written correspondence, e-mail, text messages or other communications." (See, p.22). Similarly, in AGO 89-39, the Attorney General noted: "to the extent that such computers are used to communicate between board members on matters coming before the board for action, such discussion would be subject to the requirements of the Government in the Sunshine."

Even assuming arguendo that Mr. Baird should not have replied to Ms. Lichter's email, the personal content and invitation to reply set in motion the very violation the preparers try to deny. But they can't deny what the law shows. Ms. Lichter violated the law and she cannot run away from it. It is quite preposterous to argue, as the preparers try to do, that Ms. Lichter really emailed Mr. Baird because she did not want to embarrass him at a public meeting. It would seem that their conclusion must ultimately be that Ms. Lichter ever so sensitively decided it would be best to denigrate Mr. Baird privately. The real issue is that she did not want to embarrass herself publicly by informing her peers, and any public attendees, that she had been willingly used by Mr. Hull to halt Mr. Baird's ability to finish his report. This is borne out by her decision not to bring forward the fact of the communication and its contents to cure the problem at a public meeting. See, Bassett v. Braddock, 262 So.2d 425 (Fla. 1972); Tolar v. School Bd of Liberty County, 398 So.2d 427 (Fla. 1981); and Sarasota Citizens for Responsible Gov't v. City of Sarasota, 48 So.3d 755 (Fla. 2010).

In this game of smoke and mirrors being played by the preparers, it is quite telling that they acknowledge that "Ms. Lichter may have overstepped her responsibilities" when she got

herself involved in specific management issues, without MCA Board authorization, in violation of Board policy. (See, CR, at 21).

Similarly, on October 7, 2016, after Mr. Baird resigned, he emailed the Lichters concerning his frustration with working with Mr. Hull; including the incomplete nature of the responses received and that "the scanning job is sloppy and much important information is obscured from view". (October 7, 2016, email from J. Baird to K. and N. Lichter). He attached several pdf receipt areas to his email for review. Ms. Lichter responded: "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." This was sent to him from her personal gmail account.

It is admitted in the CR that both the September 26 and October 7, 2016, emails respectively disclosed actions taken that were inappropriate and outside the scope of Ms. Lichter's authority and wrongfully involved herself in management matters. Ms. Lichter acted on her own without Board knowledge and approval. The preparers candidly note that "pursuant to the Manual, she should have brought the problem at the October 4, 2016 Board Meeting or thereafter. Likewise, her email to Mr. Baird on October 7, 2016, should have been brought to the attention of the Board as it concerned problems of the school." (CR, at 21). Their findings support those contained in the General Counsel's Report (See, p.18).[5]

The acknowledgement that Ms. Lichter's September 26, 2016, email involved an overstepping of her authority in violation of MCA Board policy is important for an additional reason. It is an admission that her wrongful involvement and interference in management affairs constituted a thwarting of Mr. Baird's work. Had she not done so, had she ignored Mr. Hull's promptings, in all likelihood, Mr. Baird would have received the information he needed to properly complete his report. Thus, this acknowledgement completely contradicts the position taken earlier that no one prevented Mr. Baird from carrying out his duties and responsibilities.

As a final note, the section (see, p.21) includes the statement that given the Mediation Settlement and trainings flowing from it "in our opinion no additional cure needs to occur." (Id.). Thus, wrongdoing had occurred and corrective action was needed. This was also noted in the previously referenced Board approved Cure Document (See, item 4 at pp. 3-4).

IV. The Coleman Report and the Problem of MCA Board Governance

A. The Quorum Problem

In the CR, the preparers have disputed that the four quorum violations identified in the GC's Report (at pages 19 and 25) ever occurred. They have asserted that "the MCA Board did not hold or conduct meetings wrongfully or impermissibly." (CR, at 21). And then later they

[5]The preparers state that the October 7, 2016, email did not constitute a Sunshine Law violation since Mr. Baird had resigned. Why this was put in is unknown. There is nothing in the counsel's report ever claiming the October 7, 2016, email involved Sunshine Law violation.

reiterate the claim adding that "the Board...did not violate the law, MCA Bylaws, nor the 2017 Charter." (Id., at 22). As will be shown, the arguments in support are (a) convoluted; (b) the interpretation of Robert's Rules is misguided; (c) facts presented are wrong; (d) the one statutory reference given leaves out important aspects of the law; (e) the multiple Attorney General Opinions in the GC's Report are ignored; (f) the statutory requirements weren't followed; and so on.

The preparers refer to paragraphs 4.14 and 4.15 of bylaws executed on August 16, 2012, that address the issues (a) of what constituted a quorum; and (b) that a director who is present "by means of communication equipment is deemed to be present in person at the meeting." They refer to F.S. 1002.33(9)(p)(3) that provides that "members of the governing board may attend in person or by means of communications technology". They argue that the MCA Policies Manual has conflicting provisions relative to electronic participation and what constituted a quorum. The section referred to pertains to voting requirements. (CR, at 22-23). Thus, it is acknowledged that the policy section involved (Policy 3.0 Board Meetings) contain categories pertaining to quorum and voting. The preparers then take the incredible step of arguing that according to Robert's Rules, the 2012 bylaws took precedence over the Policy Manual which contain the very categories of bylaws identified in the two editions of the policy manuals. Their argument seems to be that the categories of quorum and voting in the first document must be better and different than categories of quorum and voting in the Policies Manual even though they appear under the category of Board Meetings and the rules the Board itself must follow. These rules are those the Board passed and included in the Policies Manual; self-governing rules that are, by their very nature, bylaws. The same game of slight-of-hand is played later when the preparers compare the category of "meetings", in connection with annual meetings from paragraph 4.4 of the 2012 executed bylaws, with similar provisions in the Policies Manual, which govern board behavior.

Under Robert's Rules of Order (11th edition, 2011), the bylaws of an organization include the following categories: (1) the name, nature, and purpose of the organization; (2) members and officers; (3) election process; (4) meetings; (5) types of meetings, (6) notice of meetings and agendas; (7) quorum; (8) voting and so on. (Id., at pp. 10-14, 21, 345-349 and 565-595).

If one reviews the April 26, 2018, and January 23, 2019, Policies Manuals, one will see, at the beginning, the categories of organizational philosophy and organization structure (see, p. 1 for each). A review of Policy 1.0 would show the category to Board Membership which includes (a) Board Powers; (b) election process; and (c) resignation and removal processes. Policy 3.0, noted above, includes: (a) Board Meetings (including notices and agendas); (b) types of meetings (governance, annual, general, special or work sessions); (c) quorum; (d) voting and voting by proxy; (e) records of proceedings and maintenance of minutes and so on. The organizational section, and Board Policies 1.0 and 3.0 fully conform to the categories and content of bylaws set forth in Robert's Rules. To claim they are not bylaws because of the initial creation of bylaws at the time the Application was being completed in 2012 is nonsense.

What is telling too is that the preparers decided to ignore (or did not closely read) the category "voting" contained in both editions of the Policies Manuals. It provides, in pertinent part, the following: "All motions shall require for adoption a majority vote of those present and

voting, except as provided by statutes, these bylaws, or parliamentary authority…" (Emphasis added. See the references in both Policies Manuals at 8.13 respectively "These bylaws" meant the very ones contained in the above noted Policies Manuals! Thus, everyone understood these sections to be bylaws. They prescribe the Board's rules for governance. And if one turns to the end of Policy 3.0, it is noted that these bylaws were adopted by on April 13, 2014, and amended by vote on June 8, 2015, and April 11, 2016. Hence, they supersede the bylaws first adopted on August 16, 2012.[6] The preparers' claim that the bylaws contained in the Policies Manual are really not bylaws and can be disregarded as non-existent in favor of the alleged 2012 document is really an example of logical legerdemain at its finest ("now you see them, now you don't"). Let's move on now to more formally discuss the quorum issue. In both Policies Manuals, it is noted for there to be a quorum "a majority of current board members must be present at a meeting to constitute a quorum, no business shall be concluded in the absence of a quorum." (Id., at 11).

Under voting as noted above, for a motion to be adopted there must be a "majority vote of those present and voting". In this CR, it is noted that Section 9 of the 2017 Charter Application provides that a majority of voting members of the MCA board constitute a quorum. There is no 2017 Application. There is only a 2012 Application. Moreover, there is no reference to a quorum in that document. In the Charter itself, one finds the language attributed to the application. Then comes the key additional language that is left out of the preparers' discussion: "A majority of those members of the Governing Board present shall be necessary to act." (Charter at 38). If one then returns to the bylaws in the Policies Manual and reviews the category "voting by proxy" one finds the following language:

> Board Members may not vote by proxy. In circumstances where attendance at the meeting is impossible, the Board member may participate electronically provided that all members and the public are able hear all discussion and votes. Members who are participating electronically may not be considered in the count to determine whether quorum has been met. (Emphasis added, Id., at 14).

Thus, the bylaws do not provide that a Board Member cannot vote electronically. They provide that those who appear electronically cannot be included in the count to determine if there is a quorum. If there are three members, as in this case, and two appear by electronic communication, they cannot be counted and there is no quorum. Hence, the meeting cannot proceed. Significantly, the preparers ignore the Attorney General Opinions that define quorum because they do not fit the outcome desired. It is, therefore, important to restate them here. In AGO 2010-340, the Attorney General defined the term quorum as

> The number members of a group or organization present to transact business legally, usually a majority; and the minimum number of

[6]As a comparative matter, if one goes on line the District's "Policy Manual" contains the District School Board's bylaws which contain many of the same categories set forth in the organizational section and policies 1.0 and 3.0 in the MCA Policies Manual.

> 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. (Emphasis added).

Accordingly, to establish a quorum count requires physical presence which is consistent with MCA's own bylaw. This is re-emphasized by the Attorney General in the July 20, 2016, Informal Opinion also ignored by the preparers. Preparers refer to the language of F.S. 1002.33(9)(p)(3) which allows for governing board members to attend by means of media technology. This must be done in accordance with the requirements of F.S. 120.54(5). F.S. 120.54(5), provides that "if a public meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be pay be provided by such means, the notice shall so state." The notice also must state "how persons interested in attending may do so and shall name" locations where such technology facilities will be available. No such notice was ever provided to the public, and the meetings under review were held in violation of the very statutes the preparers claim supported their position.

Hence, the MCA Board did not follow its own bylaws, multiple AG Opinions, Robert's Rules, and the provisions and requirements of 1002.33(a)(p)(3) and F.S. 120.54(5), incorporated into it, when it held the four meetings referenced in both the CR and the GC's Report. Had two members been physically present, for example, the third could have appeared electronically and voted. If public notice that the meeting was being held by means of media technology communication had been provided that may have been different. But that didn't happen. There was no quorum at the four meetings which meant Mr. Bolduc's election to the Board and the business matters voted on at the meetings were void ab initio. Despite the vociferous denial of impropriety, at the July 2, 2019, Board Meeting, the Board believed it was important to correct the record, passed a resolution reappointing Mr. Bolduc. The Meeting Minutes state that to put the matter behind the Board and move forward:

> Mr. Arnold suggested that the board adopt a resolution which would reappoint Mr. Bolduc in a duly noted and attended public meeting, in essence ratifying every vote that Mr. Bolduc had ever made up to this point. The legal term is "nunc pro tunc" which applies retroactively to correct an earlier action; a common occurrence. The BOD extends that it is putting an end to this discussion so that it will not be an ongoing issue with the district. (MCA Board Meeting Minutes for July 2, 2019).

What is equally distressing about this is that after claiming no wrong-doing or impropriety, Mr. Bolduc seconded the motion to reappoint himself and then voted to reappoint himself as part of the resolution. How could he do this when he was not on the Board when the first vote was held and the resolution was to affirm in July what occurred in January? The rules of the road were broken again.

B. Issues Pertaining to MCA Minutes and Agendas

The preparers of the CR claim that the findings in the GC's Report, that the Minutes and Agendas were limited, often with no descriptive narrative to help the reader know what occurred at a given meeting, and were often confusing and contradictory, were overstated. Instead, they downplay the problem areas noting instead that "while there are some inconsistencies in some of the minutes, on the whole, the minutes are consistent with Robert's Rule of Order and Dr. Carpenter's recommendations". Yet, there are no citations to either of these sources. (CR, at 23).

The preparers' source for Dr. Carpenter is Ms. Lichter's interpretation of Dr. Carpenter that Minutes should not be verbatim. No one has ever claimed they should be. Ms. Lichter informed the preparers that sometime after the summer of 2016, the meeting Minutes became briefer per the advice of Dr. Carpenter. Ms. Miller claimed she followed his advice and corrected her approach and limited the detail of the minutes. (CR, at 25). The only problem is that a review of the minutes from July 2016 on show no Board discussion concerning how the Minutes should be prepared, that revisions that had to be done, what Dr. Carpenter's advice was in this area, and so on.

Moreover, Ms. Lichter's and Ms. Miller's comments cannot be taken seriously. They chose not to follow Dr. Carpenter's best practice, advice and recommendations when it came time to do so at the October 4, 2016, Board meeting as discussed above. They did not want to expend money to have him train Board Members and they did not rely on his recommendations and his advice pertaining to best practices thereafter. After the October 4, 2016, meeting, the documents Mr. Baird provided to Mr. Lichter and his response, Dr. Carpenter disappears from Board discussion as if he never existed. The preparers note that "admittedly, there are some errors in the Minutes, but overall they substantially meet the requirements of Robert's Rule of Order and no additional detail is required." Then later they further admit "there may have been error's in the dating of Meeting Minutes, as well as at times two sets of Minutes for the same date." (CR, at 25-26). The preparers conclude that given the inconsistencies they are recommending greater care in the process of preparation and review. (Id., at 26).

At the end of the day, it is acknowledged in the CR that there were indeed multiple problems that needed to be attended to, despite their efforts to minimize them. But what is ignored, despite the representations, is that Robert's Rules actually sets forth the recommendation for a fairly detailed set of Minutes that need not be verbatim. (See, Robert Rules, 11th Edition, supra, at pp. 468-476). Equally telling, once again, is what the preparers of the CR left out from the bylaws in the Policies Manual in their discussion of MCA's Meeting Minutes. In this context, the category "Minutes," identified in the CR on pp. 23-24, is really drawn from language within the category "Records of Procedures." What they chose to do is leave out key language in that section that is contrary to their narrative, and is actually closer to the language contained in Robert's Rules in the pages noted above (which are also left out of the CR). This key language addresses the content of the minutes. In item 2 of the final paragraph of the Records of Proceedings, one finds the following: "The names of persons who were present to discussions and votes relating to the transaction or arrangement, the content of the discussion including any alternatives to the proposed transaction or arrangement, and a record of any votes

taken in connection with the proceedings". (Policies Manuals, 2018 and 2019, at page 15 respectively, emphasis added to the text). Thus, MCA's own bylaws insist on a degree of detail not acknowledged by either Ms. Lichter and Ms. Miller nor found in the post summer 2016 Minutes through June 3, 2019.

In addition, the preparers' presentation of language from the category "Agendas" (see, CR, at 24) also leaves out key language that also does not fit comfortably into their narrative. They quote items 1 and 2 from the second main paragraph. However, item 5, which they left out, reads, in pertinent part as follows: "The Board shall transact business according to the agenda prepared by the Principal or designee and submitted to all Board Members in advance of the meeting..." But at the October 4, 2016, Board Meeting, for example, Ms. Lichter, as the Board Chair, did not want to transact business as prescribed in MCA's bylaws. So, she ignored the rules and did what she wanted to do, hardly an exemplar of the Dr. Carpenter school of best practices and procedures.

Further, as noted in the GC's report, documents that should have been attached to the Agenda for public review were never attached. The on-going mantra has been "we put them on the google drive." But, as everyone knows, the google drive was designed for the Board not for the public. It took a Mediation Settlement Agreement corrective action plan to try to get this fixed for the benefit of the public.

C. Representations Concerns F.S. 286 and The School Advisory Counsel and Employment Committee

1. F.S. 286

The preparers of the CR, advanced the incredible position that "the requirements of Florida Chapter 286 that apply to School Districts do not apply to charter schools and cannot be the basis for finding a violation of the Charter Contract." Realizing that they were wrong, they then added a footnote which stated that under the charter school statute, specifically F.S. 1002.33(16)(b)(1), F.S. 286.011 applies to charter schools. After listing the statutes from which a charter school is exempt under F.S. 1002.33(16)(a), the statute notes under subsection (16)(b) that "additionally a charter school shall be in compliance with Section 286.011, relating to public meetings and records, public inspection and criminal and civil penalties." As a threshold matter, had they read the bylaws in Policy 3.0-Board Meetings, they would have found under Governance Meetings the following language: "The Board will meet in accordance with the Florida Sunshine Law, Section 286.011 and shall meet in executive session only when and to the extent permitted by Florida law." (Policies Manual at 10).

According to the preparers' view, since the statute only references F.S. 286.011 to be in compliance with, it is implied that they can be out of compliance with the rest of F.S. 286 which makes no sense. Specifically, F.S. 286.011 cannot be dissociated from F.S. 286.0114 which also deals with public meetings and provides that "members of the public shall be given a reasonable opportunity to be heard on a proposition before a board of commission." In this context, the preparers have overlooked the provisions of MCA's own bylaws that align with F.S. 286.0114. In Policy 3.0, one finds the category "Audience Participation," which track the provisions of F.S. 286.0114 providing in pertinent part the following:

> The MCA Board recognizes the value of MCA governance of public comment on educational issues and the importance of allowing members of the public to express themselves on MCA maters of community interest.
>
> In order to permit the fair and orderly expression of such comment, the Board shall provide a period for public participation at those public meetings of the Board during which action may be taken and publish rules to govern such participation in Board meetings.
>
> The presiding officer of each Board meeting at which public participation is permitted shall administer the rules of the Board for its conduct.
>
> The presiding officer shall be guided by the following rules:
>
> 1. Public participation shall be permitted as indicated on the order of business and before the Board takes official position on any action item under consideration. (Policies Manual, at 14).

Similarly, under "meetings," one finds the following language:

> In accordance with law, all meetings at which official acts are to be taken are declare to be open public meetings, and no resolution, rule, policy, regulation, or formal action shall be considered binding except as taken or made at such a meeting. All meetings of the Board shall be open to the public, except as provided by Florida statute, and the order of business of any regular meetings shall include an opportunity for the public to address the Board. (Policies Manual, at 11, emphasis added).

Thus, the scope of the provision of F.S. 286 that MCA must follow are clearly broader than F.S. 286.011 noted by the preparers and are part and parcel of the school's own bylaws.

2. Student Advisory Council

With respect to the Student Advisory Council ("SAC"), the preparers of the CR note the following: "While MCA did not follow the formalities of the Charter Application, the Board functioned effectively as the SAC Committee..." (CR, at 26). This claim is about as credible as the claim that Board functioned effectively as a Finance Oversight Committee. There is no evidence in any of the Board Agendas or Minutes of any discussion or effort to create an SAC after the dissolution of the PTCA in May 2016. Thus, it was never even on the Board's radar screen to consider. To claim the Board took it over effectively, is to assume there was a debate and discussion in the Sunshine about (a) the purpose of an SAC; (b) recruitment of prospective members; (c) the categories to be followed as set forth in the Application on page 63 and set forth in the CR (see, pp. 26-27); and (d) undertake and carry out the tasks involved. The