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August 16, 2019
Via Email

Mr. James D Fox, Esq.
Roetzel & Andress
850 Park Shore Drive
3rd Flr
Naples, FL 34103

Re: Mason Classical Academy, Inc. v General
Our File No. 10047-01

Dear Jim:

As you are aware this law firm represents Mason Classical Academy("MCA"). We are in receipt of your letter to Shawn Arnold, Esq. dated August 14, 2019 and will respond to that letter herein. We are quite frankly stunned at some of the assertions contained in your letter and the tone of the letter. The ink is barely dry on the Mediation Settlement Agreement and your client is already threatening to declare a breach, especially at a time in which all parties involved should be astutely focused on the children returning to school this week.

We are frankly incredulous that you would attempt to argue that MCA has violated the covenant of good faith and fair dealing which is inherent in all contracts in the State of Florida. Let me remind you that: MCA and The District School Board of Collier County, Florida (the "District") have a contract; the District chose to conduct a year long investigation of MCA; the District did not inform MCA it was conducting an investigation at the outset, rather MCA found out about the investigation by reading about it in the Naples Daily News; after MCA discovered the existence of the investigation, the District allowed MCA the "opportunity" to provide information as part of the investigation only after MCA's attorney requested the opportunity; the opportunity to provide input turned out to be a mere "token" one, as the "input" consisted of Jon Fishbane, Esq. interviewing David Hull and two others for 3 hours; without MCA's knowledge, the District met with representatives of Hillsdale College (an entity with which the District has no contractual relationship) in an apparent effort to harm MCA (an entity with which THE DISTRICT **DOES** have a contractual relationship); Mr. Fishbane's report literally included none of the information provided by MCA; and, finally, after taking more than a year to conduct an investigation, the District disclosed the report and began considering a termination of the Charter within a matter of days without considering the cures that MCA had initiated in response or

allowing MCA time to respond. While your letter certainly sets forth the law, your client apparently does not know or understand the meaning of "good faith and fair dealing." In an effort, however, to move past these issue, we have done the best we can to respond to your client's "concerns" below.

Sunshine Law and Agenda Violations

The terms to which the parties agreed at mediation are set forth in the Mediation Settlement Agreement. Anything not contained in that document is not relevant. As you are well aware, neither the Sunshine Law (§286.011, Florida Statutes) nor the Charter Statute (§1002.33, Florida Statutes) contain any requirements that an agenda be posted for a public meeting. Instead, the Sunshine Law requires that a board "provide reasonable notice" of all public meetings. Courts have acknowledged that while notice of a public meeting must be posted, there is no specific requirement that an agenda be posted. *Yarbrough v. Young*, 462 So. 2d 515, 517 (Fla. 1st DCA 1985) ("The better view, however, is that reasonable notice is mandatory, although a posted agenda is unnecessary."). Public boards are also not restricted to discussing or acting upon only those topics posted on a meeting agenda. *Hough v. Stembridge*, 278 So. 2d 288, 291 (Fla. 3d DCA 1973). While an agenda is not required, it is considered a best practice. The Attorney General has opined that it is "in the spirit of the Sunshine Law" to provide advance notice, especially of controversial or sensitive topics, to allow the public to participate in a meaningful manner. Inf. Op. Fla Att'y Gen (March 24, 2006).

The inclusion in your letter of the quote made by MCA's Board Chairwoman continues a trend of the District taking statements completely out of context, which was started by Jon Fishbane, Esq. in his report. This continued behavior appears to be a deliberate attempt to paint MCA in a bad light and to undermine the school. In the quote that you included, Mrs. Lichter was sharing her frustration that MCA staff had not posted the Mediation Settlement Agreement before the meeting, something that she wanted to have done. The comment you included was directed to a public comment with concern that MCA had already violated the Mediation Settlement Agreement. Mrs. Lichter correctly pointed out the Mediation Settlement Agreement had not been voted on by the parties, thus MCA could not be bound by the terms until it had been accepted. As you are well aware, a document (though signed by a representative of a public agency) is not an enforceable contract with a public agency until the agency's board votes to accept it. Thus, this action cannot logically amount to a breach.

To alleviate any of the concerns that your client appears to have, you can be assured that MCA is doing what it can in its power to ensure that the Mediation Settlement Agreement will be followed in the future with respect to correctly posting items in advance.

Board and Staff Professionalism

We cannot find any specific provision of the Mediation Settlement Agreement that correlates directly to your recollection of what was "agreed." There is an indirect reference in paragraph 4 of the Mediation Settlement Agreement, and please assure your client that the existing Board members, and all future Board Members, have and will adhere to this paragraph. Even you must agree that the events of the past two months have been hectic and stressful for the MCA community and its Board Members. What both MCA and your client need more than anything is a cease fire on attacks of the other. The quotes you noted in your letter are not a violation of any Pillar of Respect. We specifically direct your attention to your final quote from an August 8 meeting, where Chairperson Lichter asked a legitimate question, "Why is there this effort to continue undermining the school?" We do not read that as a disrespectful statement at all. Rather, it is a legitimate question of the perceived behavior of your client, which is even evidenced by your letter. In that regard, we would ask you to answer that question on behalf of your client. This is an extremely high performing school. Why is the District intent on continuing to undermine the school? This is not a personal attack, rather a pointed question targeted to make your client look inward and determine if its motivations are consistent with protecting the interests of the students which these two organizations serve.

Flawed Grievance Policy

MCA will take your comments regarding the Grievance Policy into consideration. As you noted, but glossed over, the policy in question was a first draft prepared by a board member without input from counsel. A second draft was posted prior to the next meeting. That draft contained input from counsel. The board is working on a third draft of the policy. For your information, there have been no public comments on the first or second drafts.

The District agreed in the Mediation Settlement Agreement that complaints would first go through the MCA grievance policy. Now it appears the District is trying to say something different. There is a grievance policy in the District and MCA has its policy. The parties agreed in the Mediation Settlement Agreement that MCA parents should exhaust their administrative remedies at MCA before going to the District.

Attempts to Stack the Board

MCA agreed in the Mediation Settlement Agreement that "The governing board shall be increased from three (3) members to five (5) members by October 15, 2019, with staggered 1, 2, and 3 year terms." There is no provision in the Mediation Settlement Agreement regarding who is appointed to the governing board, nor does the Mediation Settlement Agreement give the District any right to have any input into who is on the governing board. There is no provision in the Charter School Contract between the District and MCA which provides that the District has

any right to have any input into who is on the governing board of MCA. Finally, there is no provision in the Charter Statute (§1002.33, Florida Statutes) which gives the District **ANY** right to have any input into who serves on the governing board of MCA. MCA has the right to appoint whoever it wants to it governing board. The District's wish/desire to have parents on the MCA governing board is irrelevant. If MCA decides that it is better to have board members who are not parents of students at the school, that is MCA's prerogative. The District's continued insistence on injecting itself into the composition of the governing board of MCA is unwarranted and quite frankly, inappropriate. MCA has been working diligently to comply with this provision of the Settlement Agreement and will continue to work to comply in a timely fashion.

Your suggestion that there has been no effort to implement the staggering of terms is ridiculous. Pursuant to the terms of the Mediation Settlement Agreement, MCA has until October 15, 2019 to increase the size of the governing board. It may be that the composition of the enlarged board may drive the determination of how the staggering of the terms will be done. The MCA board members are volunteers. They do not have a staff of hundreds at their beck and call. To suggest that MCA has breached the Mediation Settlement Agreement because it has not accomplished that provision within two weeks of the mediation conference and within eight days of the approval of the Mediation Settlement Agreement by the two boards is nonsensical.

Your mention of Conrad Willkomm and his interest in joining the board is ironic, for several reasons. First, one of the demands made in Jon Fishbane, Esq.'s report and in Hillsdale's Notice of Termination was to increase the size of the board. MCA began that process shortly after receipt of Jon Fishbane's report. Mr. Conrad Willkomm expressed an interest in joining the board. Mr. Willkomm was interviewed and determined to be an excellent candidate. MCA is now being criticized for attempting to comply with the District's demand. Second, Mr. Willkomm is not "a friend of the chairwoman's" as you allege. Mr. Willkomm has never had dinner with Mrs. Lichter or socialized with her in any way outside of the MCA setting. It appears that your admonition to MCA about "Guessing, especially wrongly, about people's motives…is difficult to reconcile with the implied covenant of good faith in a contract" does not apply to the District. Mr. Willkomm has been appointed to the board.

Finally, six weeks ago Jon Fishbane, Esq. told Shawn Arnold, Esq. that he was going to send Mr. Arnold a list of candidates for the governing board. The list was supposed to be generated by Hillsdale. To date MCA has received nothing. MCA welcomes information on all who have an interest in joining the board. However, the duplicity of the District to say we are going to provide a list of people, then to block most who would be interested by threatening to close the school, and then lecture MCA about the fact that it is picking from the candidates who actually came forward is appalling.

Lack of a Principal and Teaching Staff

It is the epitome of hubris that the District has a concern about the fact that MCA has no principal and has 14 vacant teaching positions and then to suggest that MCA owes the District any explanation in this regard. Unfortunately, the District's report is directly responsible for the fact that MCA has no principal. MCA does not have 14 vacant teaching positions. Neither the Mediation Settlement Agreement, the Charter Contract, nor the Charter Statute (§1002.33, Florida Statutes) provide the District with any authority to address this issue. MCA is diligently seeking a replacement for the principal and fully intends to comply with the terms of the Mediation Settlement Agreement. Letters like yours, which make their way in the public realm, make it even harder to fill staff positions, which is what independent persons who have reviewed your letter have opined to be your intent. A clear written declaration from the District that this is not the case would be appreciated.

Rejecting its Contract with Hillsdale

MCA has never "refused to continue its contract with Hillsdale" as you state in your letter. Hillsdale unilaterally decided to terminate the contract it had with MCA. On June 17, 2019, Hillsdale sent a letter to MCA in which it informed MCA that MCA had until June 30, 2019 to cure all of the issues contained in Jon Fishbane, Esq.'s report and if not, the contract would be terminated on August 5, 2019. On August 6, 2019 (one day after the date of termination), Hillsdale attempted to rescind the termination. There is no basis under Florida law to rescind a termination after it has taken effect. As indicated in my letter to Hillsdale dated August 7, 2019, MCA is willing to discuss a renegotiation of the contract with Hillsdale. Such a discussion is warranted in light of the fact that Hillsdale has violated the covenant of good faith and fair dealing when it did the following: participated in discussions with representatives of the District about the termination of the Charter School Contract between MCA and the District, without providing notice of such meetings to MCA; made no effort to investigate the validity of any of the allegations contained in Jon Fishbane, Esq.'s report; refused to consider any response to that report from MCA prior to termination of the relationship; demanded that MCA comply with each recommendation of Mr. Fishbane without allowing MCA to provide any response to the accusations; gave MCA an arbitrary 24-day deadline for such "compliance"; gave MCA notice of cancellation of the agreement between it and MCA without any due process being afforded to MCA; and, then terminated the contract with MCA over the allegations in the report. To say that Hillsdale's actions have caused MCA to question the credibility of Hillsdale representatives and the ability of the two organizations to work together in a collegial manner would be an understatement.

There is nothing in the Mediation Settlement Agreement which requires MCA to continue with Hillsdale as its "partner." To the contrary, the Mediation Settlement Agreement specifically recognizes that as of the date it was signed, Hillsdale had provided notice of termination. While

a continuation of this third party relationship may have been your client's "goal of mediation," the Mediation Settlement Agreement does not contain any promises by either party with regard to Hillsdale.

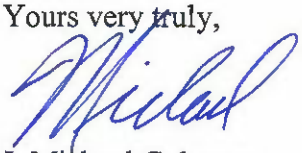
Further, Florida law provides that all contracts can be amended unless there is a provision that states otherwise. There is no provision in the Charter School Contract which states that it cannot be amended. MCA is in the early stages of determining if it will renegotiate with Hillsdale, seek a new "partner" or proceed forward without a "partner". There is nothing in the Charter Statute (§1002.33, Florida Statutes) that requires MCA to have a "partner" and furthermore your client does not have any policy which requires Charter Schools to have a "partner" as none of the other Collier County Charter schools have such a "partner." If MCA decides to move forward without a "partner" or have a new "partner" it will so inform the District and amend its application to the Charter School Contract.

Best and Brightest

There is nothing in the Mediation Settlement Agreement about this issue. MCA disagrees with the District's audit and the conclusions contained in it. The auditor for the Florida Department of Education will determine whether any money needs to be returned, not the District. Only the State of Florida can make a finding that the money must be returned and there is a process for that, which affords MCA the ability to make its arguments. MCA has set forth its position in that process. As you are well aware, this issue is set for a mediation conference.

Your letter is a perfect example of the District's continuing violation of the covenant of good faith and fair dealing. If the District had any interest in working with MCA, why didn't Ms. Patton or the Director of Charter Schools at the District call or email Mrs. Lichter about the issues raised in your letter? It is MCA's position that the best interests of the MCA students would be better served if MCA did not have to continually respond to these types of unfounded allegations and tactics by the District.

Yours very truly,



J. Michael Coleman

Copy to: MCA Board of Directors, S. Arnold, Esq.