# 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
By: Jon Fishbane, District General Counsel
April 14, 2020

## TABLE OF CONTENTS

## 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. Representations in the CR Pertaining to Matters Occurring After the Submission of the General Counsel's Report:

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) Ms. Lichter's and Mr. Hull's Efforts to Use Mr. Baird to Stack the Board

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

its decision-making); (d) disregarded the training, and purposes for the training, provided by Dr. Carpenter that all Board Members acknowledged repeatedly as vital to Board functioning, ethics, and the stability of school operations; and (e) decided in 2016 to sweep all that aside because it did not fit the way certain Board Members wanted to run things.

Under F.S. 1002.33(6), a precondition for entering into a Charter Contract is the submission of an appropriate Application for the District for review. The Application sets forth multiple categories for review and approval including the School's anticipated educational plan and program and its organizational and business plans including governance, management, employment, budget, and so on. The approval of an application by a school board means all representations contained in it are deemed acceptable and will be honored as part of entering into a Charter Contract pursuant to F.S. 1002.33(7).

F.S. 1002.33(7) provides the following:

> The terms and conditions for the operation of a charter school shall be set forth by the sponsor and the applicant in a written contract agreement call a charter. The sponsor and the governing board of the charter school shall use the standard charter contract pursuant to subsection (21), which shall incorporate the approved application and any addenda approved with the application. (Emphasis added).

In both the 2013 Contract and the 2017 renewal Contract, the Application was noted specifically as Appendix 1 to the Contract. Accordingly, when the School Board approved the Contract, and later renewed it, the Application's terms and conditions became part of the terms and conditions of the Contract that had to be followed.

With respect to the Finance Committee, the language in the Application is clear. "The Finance Committee shall assist the Governing Board in carrying out its budget and finance duties." The work of its members involved making recommendations concerning (a) financial planning and review of MCA revenue and expenditure projections; (b) review of financial statements; (c) annual budget preparation and oversight; (d) procurement; and (e) serve as an external monitoring committee on budget and other financial matters. (Emphasis added). (See, Application, at pp. 62-63).

In connection with the Audit Committee, it is noted that the Audit Committee shall, among other things, (1) evaluate the request for proposal for annual financial audit services; (2) recommend the selection of the financial auditor; (3) meet with external auditors at least monthly after audit field work begins until the conclusion of the audit; (4) track and report progress on the status of the most recent audit findings and advise the governing [board] on policy changes needed to address audit findings; and (5) provide other advice and assistance as requested by the Governing Board. (Id.).

Along with other committees that the Board contemplated creating, the Finance and Audit Committees were understood to be "standing committees" of the Board. (See, the Application at p. 63). There was nothing in the Contract (inclusive of the Application) that

authorized the Board to dissolve or reconstitute a given committee, let alone allow the Board to ignore the committees, turn them into empty entities and take over their functions. To do so, would require the MCA Board to request modification of the Application from the District School Board. That of course was never done. To cavalierly dismiss the MCA Board from wrongdoing for not having these standing committees operate and function, given the Application's clear language, as just a "technical violation," or to say that its decision "may have not been exactly as provided in the Charter," and is not a big deal, undermines the principles of contract between MCA and the District School Board, a remarkable position for a law firm to take. The Standing Committees were designed to serve as oversight, advice giving, monitoring, and recommending committees. To remove all that is to remove accountability from the process and put the Board, its members, and the school at risk. The Board cannot serve as its own oversight committee. It would create a variant of an authoritarian committee that is accountable to no one.

(b) Evidentiary Review of the Problem

In this context, let's look at the evidence of what was undertaken and provided to the Board for its benefit, before the Financial Committee was dissolved in the summer of 2016 on the alleged grounds a reconstituted committee was needed.

A review of the Agendas and Minutes of Finance Committee ("FC") meetings going back to October 2014 up until its dissolution in July 2016, discloses detailed discussions and analyses of MCA profit and loss ("P&L") statements, cash flow projections, balance sheets, audit processes, construction loans, proper recording of donations, payroll and bank statements, commercial loans, property issues, and costs. The FC meetings were typically led by Mr. Mathias with assistance and reports provided by MCA's Business Manager, Ms. Turner. Included as well were discussions concerning the cost impact on property, enrollment costs, efforts to provider tighter fiscal controls, streamlining review processes, and so on. The following will provide representative examples from the minutes of the FC meetings held in 2014, 2015, and 2016 to give the reader a sense of what was occurring to the benefit of the MCA Board and School community.

We begin with the Minutes from the December 8, 2014, FC meeting. The Minutes record the following:

> **Current Financials:**
> -Matt Mathias
> Reviewed November balance sheet. Went over each bank account. Susan explained naming on accounts. Mr. Mathias asked about money owed to MCA from landlord for building improvements. Mr. Marshall expects that landlord will owe about $40,000. Mr. Mathias inquired about this missing from balance sheet. Susan to add this amount as accounts receivable. Mrs. Wilson added that in order to submit paperwork for receiving the money from landlord, we're waiting on the completion of AC test ordered by Gates Construction.
> Reviewed Profit and Loss for November. Mr. Mathias asked about how actuals compare to budget on a monthly basis. Susan has report

from annual perspective.

ACTION ITEM: Susan to develop report to show budget performance on monthly basis.

As one can see, Mr. Mathias questioned the team on multiple subject areas including on understanding "about how actuals compare to budget on a monthly basis." There was not in place such a monthly comparative. This led to Ms. Turner developing a report to show such performance based comparative information.

If one fast-forwards to the October 12, 2015 FC meeting, one will find a continuing attention to cash flow, accounts, review of bank statements, seeking detail on purchases, "fund transfers for Board of Director's reserve" and so on.

The Minutes of the meeting record the following valuable information:

Team Reports

A. Reviewed September bank statements. Mr. Mathias, in reviewing the accounts tied to the school debit card, requested more detail on Amazon.com purchases. All present reviewed balance in Reserve account ending September 30, 2015 against Reserve account spreadsheet prepared by Susan. Reserve account includes fund transfers for Board of Director's reserve, Maintenance Reserve fund, and excess FEFP payment. ACTION ITEM: Mrs. Turner will work with Resource Room Director, Mrs. Gena Smith, to reconcile all Amazon.com text-book purchases.

B. Three Year Projected Cash Flow: All present looked at a projection of cash balance if school were to add section in K-3 and obtain new debt to complete building projects for 16-17. ACTION ITEM: Susan will run a projection based on building owner's current proposal.

This level of financial detail, scrutiny, questioning, and transparency continued into 2016. A review of the Minutes of the March 7, 2016, FC meeting is equally representative of the work undertaken. The Minutes record the following:

Team Reports

A. Cash flow plans reviewed by all. Susan went over recent disbursement of Best & Brightest Scholarship funds to thirteen of the current MCA teachers. Group looked at recent construction payments and related loan proceeds. Mrs. Turner will hold February 29 construction payment until work has been verified. Reserve account balances reviewed, including board requirement and maintenance reserve. Mr. Mathias inquired about the donations bank

account. Mrs. Turner has a spreadsheet that details which portion of those funds are restricted by the donors.

B. Committee looked at Profit and Loss and Balance Sheet for February. Susan also prepared a budget versus actual report For the fiscal year to date, February 29th. Susan will prepare The same report at a future date, and include principal loan Payments in the debt service line.

C. Mrs. Turner has reconciled February bank statements, which includes the final statements from CNL bank and new statements from Valley National Bank. So far, the transition to the new bank appears to be going well.

Unfinished Business

A. Construction Loan Status: covered in cash flow discussion.

B. Construction billing: reviewed in cash flow discussion.

Mr. Mathias reported detailed information from the Financial Committee meetings to the MCA Board at almost every MCA Board Meeting from the fall of 2014 into the spring of 2016. As a representative example, he reported the following to the MCA Board, as contained in its Minutes for the March 7, 2016 Meeting:

**Finance:**

-Matt Mathias: There was confusion regarding back filling enrollment and how budgeting is affected. MCA is trying to take over some maintenance responsibilities from the landlord. Cash Flow and Checking account balances look positive and solid. Construction draws are in order. Good news: 13 Mason Classical Academy teachers were awarded Best and Brightest Scholarships. In May or June, preparation will be made for early July cash flow needs, when desks, lab equipment, books, etc. will be purchased. The Board will be approached with regard to an approximately $430,000 draw on our reserve to cover costs which will be front end loaded and reimbursed to the reserve fund. These costs will not be recurring.

The MCA Board Treasurer during this time period, Mr. Lane, regularly provided Treasurer Reports identifying FEFP levels, balances in multiple accounts, payroll levels, donations and so on to keep the Board and the public apprised. As a representative example, the Minutes of the June 13, 2016 MCA Board Meeting record the following:

**Treasurer**

-Jason Lane: Found no irregularities in any of our banking accounts:
Ending Bank Balances for May, 2015:
FEFP: $30,279.67
Operations: $610,026.93
Reserve Account: $520,308.70 (Total Account Reserve) $230,000 (Actual)

Donations: $109,263.00 ($6,000 of this is pre-allotted for specific purposes)
Payroll: $187,768.72

At the April 11, 2016 Board Meeting, subsequent to Mr. Lane's Treasurer's Report and Mr. Mathias' Finance Committee Report, Mr. Lane replaced Mr. Mathias as Chairman of the Finance Committee through approved motion. (See, Minutes of the April 11, 2016 MCA Board Meeting). On July 11, 2016, the Finance Committee was dissolved through an approved motion with Mr. Donalds dissenting. The Minutes record the motion as "Motion To Dissolve The Existing Finance Committee in Anticipation of the Formation of a Newly Defined Financial Oversight Committee." Only Mr. Donalds dissented. (See, the July 11, 2016 Minutes of the MCA Board Meeting). Sometime after the July 11, 2016 MCA Board Meeting, Mr. Lane resigned from the Board and his position as Treasurer. Board Chair, Ms. Lichter, announced Mr. Lane's resignation at the August 2, 2016, Board Meeting. (See, the Minutes of the August 2, 2016, MCA Board Meeting). On August 8, 2016, at a Special Meeting of the MCA Board, Mr. Baird was appointed to the Board and became the new Treasurer by an approved motion.

After the July 11, 2016, dissolution, the only action taken relative to the FC was the approval at the October 4, 2016, MCA Board Meeting of a motion to create a Financial Oversight Committee ("Motion To Approve Creation of Financial Oversight Committee"). (See, the Minutes for the October 4, 2016, MCA Board Meeting). After October 4, 2016, nothing more was done. The Financial Oversight Committee ("FOC") was, in effect, functionally non-existent. In terms of financial review, advice and support, accountability, oversight and transparency, as a core standing committee it disappeared into MCA Board oblivion.

In this context, in the Minutes of the July 11, 2016, meeting, after the Motion to Dissolve is approved the following notation:

> *NOTE: Mrs. Lichter will email her notes from Hillsdale Board Training to Jason Lane to assist him in defining the new Financial Oversight Committee.*

It is not known whether the notes were emailed to him. But Mr. Lane was not only now gone from the Board, but also as Chairman of the Financial Committee, based on its dissolution, and as Board Treasurer. He was thus not in a position to actively help define the purpose of the new FOC.

The Minutes of the September 6, 2016, note, under Board comments, that "Board Members discussed the role of the Finance Oversight Committee and possible members." As the record shows, after this meeting, Mr. Baird received direction to notify parents that a new FOC would be formed and to see who might be interested in serving on it. With this in mind, the Board and Mr. Hull were originally of the opinion that an FOC should be set up in a manner that followed the training recommendations of Dr. Carpenter in order to protect the interests of MCA.

On September 20, 2016, as noted in the GC's Report (pp. 7-8), Mr. Baird notified the MCA community, through MCA's email system, that the Board was seeking volunteers to sit on

the FOC. He attached an application that he requested be returned prior to September 24, 2016. Mr. Baird noted that the purpose of the FOC included recommendations for improvement of the MCA Board. He noted that some of the duties and responsibilities of committee members would include the following areas:

(1) review of MCA's 403B Retirement Plan;
(2) assist with auditor selection;
(3) review of internal controls;
(4) review of financial policies;
(5) review of IRS 990 form;
(6) review of MCA's insurance policies;
(7) ensure compliance with state and federal regulations and
(8) review of MCA's financial statements.

These duties and responsibilities were consistent with the criteria for the FC identified on page 62 of the Application in which the duties and responsibilities of prospective committee members were presented.

On October 2, 2016, in advance of the October 4, 2016, Board Meeting, Mr. Baird uploaded the following two documents to MCA's Google Drive for the Board to review: (1) Finance Committee Purpose; and (2) Financial Committee Application list. He informed the Board collectively by email. Concerning prospective applicants wishing to serve on the FOC, Mr. Baird noted: "When discussing individual candidates, please refer to them by letter next to their name instead of by name." He also asked that Board Members "come prepared to discuss and vote on the proposed purpose of the Finance Committee." (See, the October 2, 2016, email from J. Baird to MCA Board Members and Mr. Hull).

In the uploaded Finance Committee Purpose document, Mr. Baird offered the following purpose statement for discussion on October 4, 2016:

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

This statement is consistent with his September 20, 2016, communication to the MCA community and the recommendations for careful financial oversight recommended by Dr. Carpenter as part of his training to MCA Board Members as well as Mr. Baird's review of Dr. Carpenter's extensive training materials. None of this was discussed or voted on at the October 4, 2016 meeting. This will be discussed further in the section pertaining to Dr. Carpenter's training work.

In addition, and quite significantly, on the Agenda for the October 4, 2016, Board meeting, is entry "C" under item 4 ("New Business"). Entry 4C contains the following language "Finance Oversight Committee Members". Under the vote column is for this item is "approve" and under "who" will bring this new business action item is the name "Lichter". The Agenda was approved by the Board at the beginning of the meeting.

However, the Agenda was not followed. Ms. Lichter and Ms. Miller claimed that the applicant pool needed to be broadened to include more than parents. Nothing was mentioned concerning the qualifications of the candidates. A review would show they were indeed qualified to serve on the new committee. That is why the Agenda shows under New Business they were to be approved. But they were never given a change to serve. Given the Agenda item, had Ms. Lichter or Ms. Miller really had the concern that the pool needed to be widened, they could have moved to defer the matter another month to try to get more candidates.

Yet, Ms. Lichter knew it would have resulted in additional discussion followed by a 2-2 vote which would have meant an end to the deferral possibility since the motion would have died and the Board would then have had to proceed. This would have led to the real motion which would have meant going through the candidates list, which included Erika Donalds, who had applied to serve on the Committee, and who gave many hours of her time as a CPA assisting the Finance Committee and the Board as the Minutes of several Finance Committee meetings show.

It reflects once again Ms. Lichter's double-dealing. At the time she was touting Ms. Donalds' credentials as a CPA at the District School Board Meetings, she was also making sure that Ms. Donalds would not get the chance to use her financial knowledge as a member of the FOC. Ms. Lichter was not about to let Ms. Donalds be in a position to scrutinize her or Miller's actions. Moreover, there is no rhyme or reasons why other capable applicants were swept aside under the dubious claim of wanting a broader pool. Mr. Campbell, Mr. Ayres, Ms. Magee, and Mr. Wilkomen certainly had the credentials and the ability to serve on the FOC.

Ms. Lichter tactically could have brought the matter to a vote to elicit a 2-2 stalemate but she avoided the problem by allowing Mr. Baird to move to create a Financial Oversight Committee (which ironically was also not on the Agenda) which passed. There was no discussion concerning the purpose for the Committee despite Mr. Baird notifying the Board of his proposal on September 20 and October 2, 2016 which no one found objectionable. Hence, one was left with a committee with no members or defined purpose. Neither Ms. Lichter nor Ms. Miller (and thereafter Mr. Longenecker who did not have their history or experience with the matter) ever did what they promised to do and had to do contractually under the terms of the Application.

What was the response to all this by the preparers of the Coleman Report? Not an issue: "The MCA Board chose to serve as the Financial Oversight Committee and successfully provided the necessary financial and auditing oversight function." The word "chose," under the circumstances denotes that the Board Members made a decision at a publicly noticed meeting to motion, discuss and vote on serving as the Financial Oversight Committee. A review of MCA Board Meeting Minutes would show that never happened. The claim is not factual and is misleading. It is equally untenable given that the proposition reduces to: "MCA will police

itself in the area of financial oversight, management, and accountability and will make recommendations to itself for improvement based on its finding," which never happened.

In the context of the foregoing, the reader's attention is directed to Section 18 of the Application entitled: "Financial Management and Oversight," in addition to a rigorous subsection on internal control policy, the section provides the following pertinent language:

> Detailed financial statements will be prepared on a monthly basis for analysis by the Charter School Board. These financial statements will be reviewed by the Charter School Board at monthly meetings and will be submitted to the Sponsoring District for monitoring/review.

(See, Application, at p. 121). This provision, like the provisions pertaining to the Standing Committees set forth in Section 9 of the Application, in the Charter Contract's terms and conditions.

A review of the Minutes of MCA Board Meeting from October 4, 2016 – April 18, 2019, shows that the review and discussion of financial statements by the Board at monthly meetings never occurred. On April 18, 2019, it is recorded that Ms. Turner provided a "Budget vs. Actual Report, July-March". This is the first time one sees anything akin to the above-referenced requirement, nor does one see reference to it through the August 6, 2019 when the Board approved the Mediation Settlement Agreement. A review of the Minutes of MCA Board Meetings from November 10, 2014 – June 13, 2016, while the Financial Committee was a functioning entity, would show on-going financial reporting to and with the Board consistent with the above and the requirements for the Finance Committee set forth in Section 42 and Section 18 respectively of the Application.

Many of the financial actions taken by the Board were perfunctory in nature and did not involve discussion or analysis. For example, the June 29, 2017 Board Meeting, which was called to approve the FY 2018 budget, began at 9:15 a.m. and was over at 9:37 a.m. (18 minutes) and only lasted that long because Ms. Miller was late to the Meeting and included Motions to Adopt the Agenda and the Consent Agenda. Similarly, June 30, 2018 Board Meeting, which was called to approve the FY 2019 Budget, began at 5:03 p.m. and ended at 5:12 p.m.; a nine minute meeting to review and discuss a school's annual budget which included motions to adopt the Agenda and the Consent Agenda! The only Board member present was Ms. Miller, Ms. Lichter appeared by phone, and Mr. Longenecker was absent. Further, the August 23, 2018, Board Meeting, which was called to approve the FY 2017 Audit, began at 8:30 a.m. and ended at 8:50 a.m.; which included Motions to Adopt the Agenda and Consent Agenda and Board Comments from Ms. Lichter, a 20 minute meeting on a financial report. All that is noted is that Ms. Turner informed the Board that the report was excellent. This came after the vote to establish an Audit Committee on December 18, 2017, that was never staffed nor ever met to advise and assist the Board as required by contract. This is hardly evidence of taking over the functions of the Finance Committee (and the Audit Committee) and demonstrating that the MCA Board had ensured oversight, accountability, and transparency.

In addition, Board Minutes contain contradictory representations about whether certain financial actions were actually undertaken. For example, at the January 26, 2018, Board Meeting, discussion was noted to have been held concerning "current debt obligations and 5 year projection of future obligation." What happened next is anyone's guess as the following shows:

**Motion to Approve Loan Payoff**
No Vote.

Moved:
Second:
Vote: Unanimous

(Minutes of January 26, 2018, MCA Board Meeting). So, no vote is noted, then no names are noted for a motion and a second, then presto, the no vote miraculously becomes a unanimous approval. Perhaps that is the preparers' idea of appropriate Board financial oversight. It demonstrates anything but transparency for the purpose of the public's understanding as to what was going on at one of its public schools.

Other financial related items fell on the shoulders of Ms. Turner. For example, (a) on November 1, 2016, she introduced for motion a request to amend the budget "to extend offers to select a group of staff," (See, the Minutes to the November 1, 2016 MCA Board Meeting); (b) her introduction for motions to approve corporate resolutions to approve corporate resolutions relative to the School's 403(b) plan, the land lease (See, Minutes of the October 19, 2017, Board Meeting); and (c) her reporting efforts at the September 13, 2018 Meeting (See, Minutes of September 13, 2018 meeting).

As similar pattern obtains when one looks at the level of reporting by MCA Board Member Treasurers from Mr. Baird to Mr. Bolduc. Prior to Mr. Baird, there were regular Treasurer reports to the Board and the public. The following chart is instructive as established the meeting minutes of the MCA Board:

| Board Meeting Date | Name of Treasurer (Beginning With The First Meeting After Named to the Board) | Report Provided |
|---|---|---|
| August 27, 2016 | J. Baird (voted in as Board Member August 8, 2016) | No |
| September 6, 2016 | J. Baird | Yes |
| October 4, 2016 | J. Baird | Yes |
| October 14, 2016 | J. Baird had resigned on October 6, 2016 | No |
| November 1, 2016 | J. Longenecker (voted in as Board Member that date) | No |
| December 14, 2016 | J. Longenecker, approved as Board Treasurer | No |
| January 12, 2017 (Special Board Meeting) | J. Longenecker | No |
| January 25, 2017 | J. Longenecker | No |

| | | |
|---|---|---|
| March 24, 2017 | J. Longenecker | No |
| March 31, 2017 | J. Longenecker | No |
| June 29, 2017 | J. Longenecker | No |
| August 25, 2017 | J. Longenecker | No |
| October 6, 2017 | J. Longenecker | No |
| October 19, 2017 (Special Board Meeting) | J. Longenecker | No |
| November 8, 2017 (Special Board Meeting) | J. Longenecker | No |
| January 26, 2018 | J. Longenecker | No |
| April 20, 2018 | J. Longenecker | Yes |
| April 26, 2018 | J. Longenecker | No |
| May 29, 2018 | J. Longenecker | No |
| June 30, 2018 | J. Longenecker | No |
| July 16, 2018 | J. Longenecker | Yes |
| September 13, 2018 | J. Longenecker | No |
| October 22, 2018 | J. Longenecker | No |
| November 22, 2018 | J. Longenecker | Yes |
| November 16, 2018 (Special Board Meeting) | J. Longenecker | No |
| November 30, 2018 | J. Longenecker | No |
| December 14, 2018 | J. Longenecker (D. Bolduc voted in as a Board Member without a quorum) | No |
| January 23, 2019 | D. Bolduc, appointed the new Treasurer (Mr. Longenecker has departed from the Board) | No |
| February 21, 2019 | D. Bolduc | No |
| March 21, 2019 | Dr. Bolduc | No |
| April 18, 2019 | D. Bolduc | No |
| May 16, 2019 | D. Bolduc | No |
| May 31, 2019 | D. Bolduc | No |
| June 8, 2019 | D. Bolduc | No |
| July 2, 2019 | D. Bolduc | No |
| July 8, 2019 | D. Bolduc | No |
| July 11, 2019 | D. Bolduc | No |
| August 6, 2019 | D. Bolduc | No |
| August 15, 2019 | D. Bolduc | No |
| September 6, 2019 | D. Bolduc | No |
| September 16, 2019 | D. Bolduc | No |
| September 26, 2019 | D. Bolduc | No |
| September 27, 2019 | D. Bolduc | No |
| October 15, 2019 | D. Bolduc | No |
| October 21, 2019 | D. Bolduc | No |

| | | |
|---|---|---|
| | | (but Mr. Bolduc discussed work of the Audit Committee) |
| October 25, 2019 | D. Bolduc | No |

The paucity of Treasurer Reports speaks for itself and further illustrates the substantive and factual weakness of the claims set forth in the CR. Only four reports were provided in over a three year period (October 4, 2016 – October 25, 2019 – the apparent date of the distribution of the corrected Coleman Report as noted in the Minutes of the October 25, 2019, MCA Board Meeting). During that time, but for Ms. Turner's presenting a Budget vs. Actual report on April 18, 2019, there is no evidence of monthly financial statements being reviewed and discussed by the Board. While in the CR, it references that Mr. Bolduc presented a few Treasurer's Reports orally, the Minutes disclose something different. A Board speaks through its Minutes.

In the CR, it is noted that "Ms. Lichter believes that Mr. Baird did not understand his role as Treasurer". (CR, at 18). In light of the fact that Mr. Longenecker provided only three reports over 22 Board Meetings and Mr. Bolduc apparently provided none over the above noted 18 Board Meetings during which he served as Treasurer, it appears that they did not know their role as Treasurer either. None of the evidence noted above on these issues was ever addressed or even noted in the CR; treating the evidence as if it did not exist for obvious reasons.

Accordingly, the claim the MCA Board took over the functions of the Finance Committee and did not really breach its obligations under the Application's requirements set forth in Sections 9 and Section 18 respectively is simply without merit and has no foundation in either evidence or the provisions of the Contract. This is bolstered by the fact that the Board collectively acknowledged it had a Financial Committee problem at the July 2, 2019, Board Meeting when the issues in the General Counsel's Report were extensively reviewed with legal counsel, Mr. Arnold, who forwarded the Cure Document on behalf of the Board the next day (July 3, 2019) to the undersigned. In the Cure Document, it is expressly stated with respect to the Finance Committee that as a cure "the Board will reinstate the Committee immediately." (See, Cure Document, at p. 1, emphasis added).

Further, the creation of a Finance Committee and an Audit Committee was a constituent part of the Corrective Action Plan set forth in the August 1, 2019, Mediation Settlement Agreement. Whether it was referred to as a cure or corrective action plan, everyone knew, including MCA Board Members, that the problems were real, that they were serious, and that something had to be done to correct them. Such problems cannot be wished away or made to vanish just because someone cries out "exonerated". The expression of such magical thinking fools no one and does not work.

As a final note, the record shows that Mr. Hull was quite worried about the filing of Mr. Baird's complaint; so much so, in fact, that on August1, 2018, he contacted MCA's key lender and took it upon himself to try to blame him for the financial strain MCA was experiencing and anticipated to continue in the future. He emailed him as follows:

Since there is an accusation of financial mismanagement, initiated by the former board member (the treasurer from almost two years ago who lasted just two months on the board), I feel compelled to share with you how I feel about your financial status.

Our financial status is strong. That being said, we are certainly not financially free. We could have been financially free if you had allowed us to purchase the building as we were always led to believe. Bond financing or owner financing would have easily set MCA up for financial independence indefinitely. As the board explained to you in that meeting where they offered to purchase everything from you, our annual lease increase causes us to continue to pinch pennies. In the long run, we are in a bad spot. There is no way we can afford to spend any money on a gym, soccer field, or anything. The land lease alone costs us over $200,000 per year, and that does not include upkeep or improvements. Can we afford this? Yes. Does it strain our finances? Yes. Would I rather give that money to teachers and students? Yes. Would that look bad in a news report? Yes.
We are headed into the new school year with no ability for students to use that land. I just signed a check for $10,500 to have it mowed, but that was a tough pill to swallow. We will make it work like we do everything else, but it places a severe burden on what I can do for the school. I explained to you before that I would always make it work and keep this school successful at all costs. To do that, we added over 100 students to the school this year. I don't know how our parking lot playground will work for that many more kids, so we will have to see what comes of it.

The main problem with adding students is the pressure it puts on all aspects of the school-culture, space, class size, student and teacher morale, parent morale, etc. For example, beefing up the high school comes with unintended costs. Adding high school students often means adding students who had poor education for at least 9 years. Think about that in terms of test scores and teacher work load. It also means many of them think the school is a reform school. Often, such reform type students have younger siblings who also struggle. In order to accept the high school student, we must allow the younger siblings into the school as well. And that often means adding struggling students to the elementary school. We now have elementary classrooms with 30+ students. This is what it takes to pay the bills and remain financially stable. Money in the bank could counteract any news report about financial mismanagement, I hope-if facts and truth matter.
(August, 2019, email from D. Hull to D. Shuman)

This remarkably revealing email speaks for itself. Mr. Hull knew there were multiple problems: financial, academic, enrollment and so on. Preparers of the CR focus on the fact that in the GC's report it was found that the unaudited financials and the McCrady & Associates financial statements received were considered acceptable by the District's Financial Department. No one disputes that. But there is more to an entity's financial health and oversight than such documents. Mr. Hull's email demonstrates that all was not well financially and academically in

MCA paradise. And the way he sought to deal with this was to find fault with MCA's lender. His acknowledgement of some very serious and unresolved issues is precisely why the Financial Oversight Committee and the State Advisory Committee were so necessary to help oversee and monitor what was actually going on and recommend corrective courses of action when needed.

3. The Representations Concerning Dr. Carpenter

In the Coleman Report, the preparers note that Mr. Baird had access to Dr. Carpenter's training materials and claim that he had "a number of conversations with Mr. Carpenter regarding his duties." (CR, at 16). They then allege the following:

> Mr. Baird was not stopped by Mr. Hull from receiving additional training from Dr. Carpenter. Instead, Mr. Carpenter informed Mrs. 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. It was decided that the Board should not incur that expense as Mr. Baird would be able to attend Dr. Carpenter's annual governance training the following summer. (Id., at .17).

Their representations are not only factually inaccurate, but also deeply misleading. To appreciate that, let's look at the record.

In 2016, Dr. Carpenter provided two training seminars in June and November respectively at Hillsdale College. Ms. Licther and Ms. Miller attended the June meeting. Both spoke with Dr. Carpenter. And Dr. Carpenter recalled that at the dinner after the first day, Ms. Miller had approached him about being very interested in the possibility of him providing training to MCA. He also recalled that Ms. Miller had noted to him that Ms. Lichter wanted her to approach him on the matter as well. Dr. Carpenter further recalled that he advised her that while he was interested, it was his practice to have a Board (in this case MCA), through vote, request from him a letter of engagement. Neither Ms. Lichter or Ms. Miller ever followed up with him nor ever brought the matter before the Board for discussion, motion, and vote.

The record shows that MCA Board Members were deeply impressed with Dr. Carpenter's work, and had been for some time. Subsequent to Dr. Carpenter's training in June, for example, on August 15, 2016, Ms. Lichter emailed Board Members Miller, Donalds, and Baird from her Mason Academy email address (and cc'd Mr. Hull, Mr. Marshall and Ms. Turner). In it, she noted that she had "discussed Dr. Carpenter's book 'The Seven Outs' at the last regular board meeting. I said that I will put together an outline for all of you regarding effective strategic planning for charter schools. I have attached my outline." She added that "Dr. Carpenter is someone who has in depth experience at running charter schools from multiple perspectives and was a fabulous trainer for the Hillsdale Governance Training seminar. I trust in his advice to make our school even better." (August 15, 2015 email communication from Ms. Lichter sent at 10:52 a.m. the subject line was "Dr. Carpenter". Ms. Lichter requested Board Members not to respond to her email).

On August 25, 2016, Mr. Kilgore, the Director of the Barney Charter School Initiative at Hillsdale College, informed previous Board attendees that he had scheduled another session with Dr. Carpenter for November 10 – 12, 2016, at Hillsdale College. The June 2016 training he noted had "focused on board governance principles and the attendees at the session provided enthusiastic feedback to us about the excellent content and quality of the training." (August 25, 2016, email from P. Kilgore sent at 12:28 p.m.). Lodging and meals would be provided by Hillsdale. Attendees would be responsible for their own transportation. Upon receipt, Ms. Lichter immediately forwarded it to Mr. Baird. She noted: "This is an amazing opportunity. Let me know your thoughts." (Email communication from K. Lichter to J. Baird sent August 25, 2016 at 12:30 p.m.).

During this period, and thereafter, Mr. Baird was engaged in reading and working through Dr. Carpenter's training materials. On September 7, 2016, Ms. Lichter emailed Mr. Baird sending him Dr. Carpenter's email address. (See, email communication from K. Lichter to J. Baird sent September 7, 206 at 5:08 a.m.). Ms. Lichter was thus clearly encouraging Mr. Baird to contact Dr. Carpenter for advice and with any questions he might have. And Mr. Baird did email Dr. Carpenter for advice. Contrary to representations in the CR, Mr. Baird never spoke with Dr. Carpenter and thus had no conversations with him.

On September 12, 2016, Mr. Baird wrote to Dr. Carpenter the following:

> I am reaching out to you at the suggestion of Kelly Lichter of Mason Classical Academy in Naples, FL. She thought I should seek your advice regarding the establishment of a Financial Oversight Committee at MCA. I recently joined the MCA board of directors as the treasurer, and establishing this committee is one of my first responsibilities. During our last board meeting, there was agreement that we need to seek guidance from Hillsdale as we define the role of this committee, but there was debate about whether we should wait to define the role until after I have attended the Hillsdale training in November. On the one hand, it would be ideal to attend the training before moving forward, but on the other hand some felt that November is too long to wait. Our prior finance committee was dissolved in July (before I became treasurer), so it we wait until November, we will be without a finance committee for nearly 6 months – maybe more by the time we appoint members. That seems to be quite a long time to be without any financial oversight.

He then added: "My question to you is this: Would you advise waiting until the November Hillsdale training before having serious discussions about the role of our new committee?" (Email communication from J. Baird to Dr. Carpenter sent September 12, 2016, at 5:45 p.m.). Dr. Carpenter replied promptly. He congratulated Mr. Baird on joining the Board and then noted unequivocally: "In answer to your question, I would encourage to launch the committee NOW. (My logic: Financial oversight can *never* wait.)." (Email from Dr. Carpenter to Mr. Baird sent September 12, 2016, at 6:22 p.m.).

On September 26, 2016, Mr. Baird sent a lengthy follow up email to Dr. Carpenter arising out of his intensive engagement with Dr. Carpenter's on-line training materials. He began by noting the following:

> Thank you for the advice you gave me earlier. I have listened to your podcasts and am working my way through your videos. I have read through the workbook you gave to Kelly in June, the Charter and the pertinent areas of our policy manual. I have also obtained applications from 8 candidates to staff our new Finance Committee, and we will be reviewing and hopefully voting on a few of them in our next board meeting.

Mr. Baird then discussed, in considerable detail, what his concerns were in moving forward in setting up and implementing a Financial Oversight Committee, what its role should be, how the committee's purpose should be defined, what materials committee members should be provided, what they should focus on initially, and so on. He sought Dr. Carpenter's feedback and advice on all of this. (Email communication from J. Baird to Dr. Carpenter sent September 26, 2016, at 5:15 p.m.).

Given the extensive nature of Mr. Baird's inquiries, and consistent with his representations to Ms. Miller and Ms. Lichter at the June 2016 meeting at Hillsdale College, Dr. Carpenter replied that the time commitment involved in responding would have to be handled through a consultancy agreement. He wrote to Mr. Baird as follows:

> You're on the right track with everything I browsed below.
>
> As a consultant, I charge clients for my time when in-depth advising is desired. If you'd like to schedule such a conversation (or would prefer a thought through detailed email response), I would need to invoice you or the school for my time.
>
> At present, for past clients such as MCA that are not in a year-long coaching agreement with me (i.e. 40 hours prepaid in full at the rate of $150/hr = $6,000), I charge $275/hr with a two-hour minimum.
>
> Alternatively, the board could, if it desired, enter into a year-long coaching agreement with me via a majority vote. (Actually, Kelly and others mentioned a desire to do so, in passing when we were at Hillsdale.) Perhaps you'd like to introduce a motion at the next meeting, formally putting it out there.
>
> With no intention of being rude or unhelpful, I simple have to do business this way. Given the professionalism of your emails, I'm certain you appreciate this.
>
> Let me know how you'd like to proceed.

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

argument is a sham argument. After Mr. Longenecker joined the Board, there were only three Board Members and often only two (Ms. Lichter and Ms. Miller) given Mr. Longenecker's considerable absenteeism and appearance by phone. To say a three (often only two) person Board also functioned as both a Finance Oversight Committee, and a Student Advisory Council is simply not credible.

Under the provisions of the Application, the SAC's "membership shall reflect an equitable balance between school employees, parents, and community members. At least one community member shall represent the business community if possible." (Application at 63). The Board showed no interest in having a Board based committee of stakeholders advising the Principal on policies and curriculum, encouraging community participation in school affairs, hear parental grievances, and so on. It would mean, just like the FOC, outside persons would have oversight of significant areas of the Board and Mr. Hull's operational activity which they all clearly did not want stakeholders to be involved in. Mr. Hull hardly would have been amenable to having employees advising him on "school rules, policies relating to instructional issues and curricula and on the school's budgets." (Id., at 63). To claim this was simply not following the formalities of the Application, which was and is a component part of the Charter Agreement, is to say that the Board did not have honor "the formalities" of its own contract.[7] The preparers of the CR understood and acknowledged that violations had occurred but have used whitewashing language such as the Board "did not follow the formalities of the Application." They then concluded that under the provisions of the Mediation Agreement's corrective action plan, an SAC would be created; certainly an admission that the Board had not followed its own mandates and thus once again an acknowledgment of the findings in the GC's Report of June 3, 2019.

D. Board Membership and the Policy Pertaining to First and Second Readings

1. Board Membership: The Election Process

The preparers of the CR note that (1) "the Board acknowledges that there was never a formal vote to reelect the remaining Board Members each year;" and (2) The MCA Policies Manual is silent on how the Board Members will be elected. They then turn to Robert's Rules of Order that "in the absence of establishing a method of voting the rule that is established by custom, if any, should be followed." This is followed by the incredible statement that "the Board created the custom that it would elect new Board Members as there became a vacancy." After this claim that the Board created an election custom comes the following remarkable admission and self-justifying conclusion: "It is true that Board Members, Ms. Lichter, and Ms. Miller have remained continually in place as President and Secretary. However, this is not in spite of the MCA policies but because of its own policies." (CR, at 28). If that is not enough to make one's head spin, the next assertion will show the vacuity of the logic. "As no new president or secretary has been elected, Ms. Lichter and Ms. Miller have properly remained in their elected posts", as if they ever considered, having, or were willing to have, anyone else replace them.

[7]In the CR, it was also acknowledged by Ms. Lichter that the Board also did not set up an Employment Committee, even though it was a policy requirement. The preparers play it down by stating it wasn't in the Application, so not a big deal. But the Board itself makes policies and Policy B 17.0 was one of them. To blithely minimize the non-creation of Policy Committee is to make a mockery of the Board's rules.

Time and again, Ms. Lichter has told the world she will not leave her post until she decides to do so. And Ms. Miller has been fine with that. Even today with a mediated settlement involving staggered terms, there has been no Board discussion how that will work in connection with individual members. And certainly, Ms. Lichter has not taken the lead in doing so.

With this in mind, using Robert's Rules of Order concerning voting, which could apply to motions and other procedural actions, the preparers efforts to manufacture a procedural fiction that the Board created its own custom is incredible. There was no custom created. Ms. Lichter made it clear that she controlled the Board, period. That was the custom and the practice. And to say there is nothing in the policies on voting method, blithely overlooks the bylaw provision entitled "voting" in Policy 3.0. (See, Policies Manual, at p.13).

Moreover, under "meetings", one finds the holding of "an annual organizational meeting" as well as a separate "Annual Meeting" section. (Id., at pp. 10-11). And most importantly, under "Election Process", the "the Directors of Mason Classical Academy shall be elected annually by the Board of Directors at the annual meeting of the Board." In this case, the Directors were intended to mean officers, as the very next sentence provides, and which was ignored by the preparers and, Ms. Lichter and Ms. Miller: "If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as is convenient." (Policy 1.0 – Board Membership, at p.3 of the Policies Manual). The attempt to skirt the policy provision by creating a procedure fiction through Robert's Rules is disingenuous to say the least.

Finally, the preparers ignored the discussion held at the Board's Workshop on October 3, 2015, and referenced in the GC's Report at page 26. In the Meeting Minutes it is noted that the Board intended year-to-year terms without a term limit. That meant elections each year, which included as noted above, officer elections at the annual organizational meeting or "as soon thereafter as convenient." The hard truth is that, once again, neither Ms. Lichter nor Ms. Miller cared about following Board rules; especially when it could mean choosing a new chairperson or secretary. It was neither in their interest nor was it "convenient" for them to do so. It also discloses the weakness of the claim that they effectively carried out the work of Board committees which involved Board Policy oversight.

2. First and Second Readings

In the CR, the preparers have again ignored the content of the Board's bylaws and policies relative to the adoption of policies for itself and the school. The preparers argue that the "neither the Charter Application, the Contract, nor the Bylaws contain any requirement regarding the adoption of new MCA policies." It appears they have not read the documents. In Section 9: Governance, in the 2012 Application, under the category "Governing Board," one finds the following provision: "The Governing Board shall be responsible for adopting policy, overseeing management of the school and ensuring financial compliance and responsibility." (Application at 60). It also provides under subsection D of Section 9 the following: "The Governing Board meets at least once each month (except during the summer and/or school holidays as deem appropriate) to hear reports, to consider and adopt policies, to act on committee recommendations and to consider requests and concerns from parents, students, teachers, and the public." (Id., at 64).[8] And as part of the Board's powers, duties, and responsibilities it is further

noted that "the Governing Board will operate in compliance with its bylaw, policies adopted by it, and federal and state laws applicable to public charter schools…"

In the Charter, under Section 9 Governance, the following is provided: "the Governing Board's primary role will be to set policy, provide financial oversight…" (Charter, at 38). In the Foundation/Mission section of the Bylaws within the Policies Manual, it is also provided under the category "Decision-Making, the following: The Board of Directors is responsible for setting the budget, establishing organization wide policies and overseeing the general operation of Mason Classical Academy." (Policies Manual, at p. 1). The evidence shows that the preparers' claim that there was no board policy adoption requirement in the documents they reference is simply wrong as a matter of fact and rule.

In the CR, it is noted that in her interview, Ms. Lichter stated that "the Board would have a first reading and having discussions at that time regarding the proposed policy. At the next meeting the policy would generally be placed on the consent agenda. She stated that she believed placing the policy on the consent agenda constituted the Second Reading." (CR, at 29). The preparers try to give her statements some cover by stating that the statute does not require MCA to have a first and second reading; which is beside the point. The point is, Ms. Lichter did not follow the language of Board policy when she set the agenda, no doubt along with Mr. Hull in this area. So what does the policy actually provide?

> Policies shall be read two times before adoption. A vote to move a policy forward to the next reading is interpreted as a vote in favor of the policy, amendment, change, etc. A director may at any time change his/her mind, however, an explanation should be given to justify the decision in order that all directors can consider the information when making a decision. This affords all members of Mason Classical Academy an opportunity to participate in the decision making process and to understand the position of the directors related to the decision. Comments on policies may be written or may come from attendees during the BOD meeting following the guidelines set forth in the BOD meeting Procedure Policies. (Policy 20, Policies Manual, at p. 9).

In addition, the policy acknowledges that "two (2) readings are not required by statute, but the Board prefers two (2) readings so that the adoption schedule must be planned to provide for two readings" (Id., at 9). With respect to the Second Reading, the policy provides that each policy designated as a Second Reading, must be entered as a separate agenda item and designated as an action item. And at the Board Meeting for the adoption of the policy after a Second Reading, "the Principal or designee should be prepared to make a brief presentation at the Board Meeting." (Id., at item 7, on p. 10).

[8]This provision also shows, once again, the weakness of the claim that the Board not setting up standing committees was just a technical issue and the Board effectively carried out the duties of the committees. The Board was to act on the recommendations of committees, not eliminate the committees.

The policy clearly contemplates a presentation to the Board and the public concerning the Second Reading of a policy up for adoption. The second reading is not something to be placed on the Consent Agenda. Once again, Ms. Lichter decided how the Board policy was to be interpreted and followed in disregard of what the policy language actually provided. She did not believe she had to follow the rules she voted to pass. If this continual disregard of following rules, because Ms. Lichter wanted to follow them her way, is an example of her and Ms. Miller's way to "create a custom," then having Board Policies for all to follow are rendered meaningless. They give way to the whim of the moment by a strong-arming Chairman and her cadre of followers. They preach rules, truth and American democratic values, but they will always jettison their preaching should it stand in the way of doing and getting what they want.

The preparers may again want to cavalierly dismiss all this simply as a technical problem (CR, at 30). But it is much more than that. If continual violations of an institution's policies and procedures are seen only as technical ones, then rules and their normative value no longer matter and the institution's foundational value of living in accordance with the virtues collapses under the weight of cynical actions and decisions.

## V. Board Governance and Oversight: Supplemental Findings

Subsequent to the issuance of the General Counsel's June 3, 2019, Report, the undersigned became aware of an Agreement between MCA and Hillsdale College dated, what appears to be December 13, 2017. It was signed on behalf of MCA by "Kelly Lichter, President", and had a six (6) year duration period.

A review of MCA's Meetings, Agendas and Minutes, show that there was no MCA Board Meeting in December 2017. Moreover, a review of these records show there was no agenda item, reference, discussion, delegation of authority, and so on concerning this Agreement in 2017 in 2018. Ms. Lichter thus wrongfully entered into the Agreement without Board authorization, knowledge, and approval and certainly without public notification and knowledge.

Item 9 of the bylaw captioned "Board Duties and Responsibilities", provides the following: "A Board member who learns of a problem should bring the problem to the attention of the Board. A Board Member should not attempt to deal with such a situation on an individual basis". (Policies Manual, at 5). In the bylaw captioned "Board Principles for Policy", it is provided: "The Board will operate in openness and keep communications frequent and clear."

In addition, in the bylaw under the category "Meetings," the section addressing Board action establish the importance of action occurring at a noticed public meeting. It provides in pertinent part in paragraph three thereto, the following: "...no resolution, rule, policy, regulation or formal action shall be considered binding except as taken or made at such a meeting." (Policies Manual, at p. 11).

Further, in the 2012 Application, incorporated into the Charter as a matter of contract, in Section 9 on Governance, there is an entire category on "Individual Members." It provides the following: "No board member shall have the authority to speak on behalf of, take any action, or

otherwise attempt to bind the Governing Board or MCA, unless expressly authorized to do so by the Governing Board by a majority vote."

Ms. Lichter knowingly acted on her own, outside the scope of her authority, and, once again, in complete disregard of MCA Board bylaws, norms, and the Application that she signed on August 1, 2012. In essence, Ms. Lichter tried to enter into an Agreement with Hillsdale on her own, and never informed Hillsdale that she had signed without Board (and public) knowledge, review, and approval. The bylaws thus show she entered knowingly into a non-binding agreement. Accordingly, it is concluded that the Agreement was void ab initio. It is of serious concern that Ms. Lichter hid, from the public and the Board, a non-binding Agreement for so long and then have the Board vote to sue Mr. Baird for tortious interference with a non-binding agreement because of her resentment and refusal to take responsibility for her actions. She thus engaged in deceptive activity toward Hillsdale College, the public, her fellow Board Members, her attorneys, and sadly toward herself.

## VI. The Valerie Parker Matter and the Actions and Behaviors of Mr. Hull, Mr. Whitehead, Ms. Lichter, and Ms. Miller

### A. The Parker Child Expulsion Matter: September – November 2015

The claims and representations contained in the CR concerning the Valerie Parker matter and the actions and behaviors of Mr. Hull, Mr. Whitehead, Ms.Lichter, and Ms. Miller connected to it, are filled with tactics of evasion, partial presentment and exclusion of evidence, misreading of email evidence and accompanying factual mistakes, arguments that are confusing, contradictory, and conflicting as well as ignoring applicable policies and procedures. The conclusions seek to minimize and downplay unprofessional, wrongful, and abusive behaviors and the multiple policy and procedures violations by MCA's leadership. Yet, at the end, the conclusions turn out to support the findings in the GC's Report with respect to these matters. Let's look at their claims and representations.

In the CR, it is noted that "the events surrounding these incidents are laid out in Fishbane's Report. This firm has chosen not to address the specific factual allegations in order to protect the privacy of the student involved." (CR, at 30). The preparers' have claimed that their interview of Mr. Hull and Mr. Whitehead and the records reviewed "do not support Mrs. Parker's perception of the events." They found that subsequent to the September 15, 2015, event involving Mrs. Parker's child the following occurred:

> Mr. Hull informed Mrs. Parker of the school policy concerning accidents and informed her that her child could not meet the Hygiene Policy and could no longer attend MCA. Mr. Whitehead was present for this discussion and confirms that Mr. Hull provided this information in a professional manner. Mr. Whitehead walked Mrs. Parker and her child out of school. (Id., at 30).

The preparers then move quickly to the email exchange between Mrs. Parker and Mr. Whitehead on September 23, 2015. They thus ignored key evidence of what occurred prior to September

15, 2015, under the guise of protecting the child's privacy. (They later ignore the publishing and circling of Mrs. Parker's children by Ms. Lichter in April 2019 which certainly impeded their privacy). And they ignored what happened between September 15 – 23, 2015. The ignoring of such key facts, information, and MCA policies permitted the preparers to conclude that both Mr. Hull and Mr. Whitehead acted in a professional manner. But the facts and policies show that they (and the teacher) behaved unprofessionally and disregarded several MCA polices because they wanted the child gone without undertaking an inquiry or review into his unique situation.

The documents show that on September 8 and September 9, 2015, Ms. Parker emailed Mrs. Huck, the child's teacher, that her son was quite ill and was receiving certain treatments and she hoped that he would be able to return to school on September 10. On September 11, 2015, when the child had an accident in which he soiled himself, Mrs. Huck emailed Mrs. Parker and scolded her for her child's inability to handle his toilet needs and then told her how "gross" it was and something she should not have to handle and that it was "very unsanitary to us all." (See, the September 11, 2015, email communications between E. Huck and V. Parker). The child was taken to a bathroom and told to remain there in his soiled clothes until his mother came to clean him up. One can hardly call such treatment of parent by a teacher professional or demonstrating concern for a kindergarten child who was obviously embarrassed and traumatized by what had happened. Not once did Ms. Huck, Mr. Hull, or Mrs. Whitehead inquire whether his illness may have been a contributing factor in what happened. They didn't care. It didn't fit the image of the perfect child. Ms. Parker reiterated that he had been ill in a September 14, 2015. In her email to Ms. Huck on which she copied Mr. Whitehead. (See, September 14, 2015, email to E. Huck and J. Whitehead sent at 2:10 p.m.).

Mrs. Parker's email was in response to Mrs. Huck's email to her at 10:15 a.m. in which Mrs. Huck had informed her that she and Mr. Whitehead wanted to meet with her that day or the next day. She did not say why. Mrs. Parker replied to Mrs. Huck that she and her husband "would be more than happy to meet with you," but he was out of town and she requested that they meet Monday, September 21, 2015. She later inquired as to why an expedited meeting was needed. Mrs. Huck coldly responded to her as follows (and copied Mr. Whitehead accordingly):

> Dear Mr. and Mrs. Parker:
> It is entirely up to both of you if you want to meet on Monday morning with Mr. Whitehead and myself. The reason for our scheduled meeting is to inform you of the enclosed policy and if there is another occurrence this week, _____ will be unenrolled at Mason Classical Academy.
> If you have any questions about this policy, you can contact Mr. Whitehead, our assistant principal.
>
> Let us know if you still want to meet on Monday. (Email from E. Huck to V. Parker, September 14, 2015 at 3:36 p.m.)

Mrs. Huck then identified Policy SE 1.0 for Ms. Parker to review. The message in the email was threatening. One more accident and her son "will be unenrolled", i.e. expelled from school. It is astonishing that a teacher could threaten a parent with expulsion and have the support of Mr.

Whitehead to do so. None of this is mentioned by the preparers of the CR. Clearly, context did not matter to them.

When the final incident occurred the next day, Mrs. Parker was called to come to school, to clean her child up. Mr. Hull, in his infinite professionalism, told her when she came to the school that he expected her to clean it up. When she did, and she and her child were in the hallway, he coldly handed her Policy SE 1.0 and told her that her child was done at MCA. (The preparers acknowledge that Mr. Hull told her that her child could no longer attend MCA). Mr. Whitehead then escorted them out of the building.

Nothing in the MCA policies gave Mr. Hull or Mr. Whitehead (even through the artful word of "unenrolled") the right to unilaterally expel Mrs. Parker's child. Significantly, Mr. Hull never informed the District that he had expelled the child which MCA policy requires him to do. Let's look at the relevant policies to get a sense of the scope of the violations involved; policies the preparers ignored reviewing and discussing. Policy Se 1.0, Hygiene provides the following:

> All students of Mason Classical Academy must be independent in toileting. On occasion students may have "accidents". When an "accident" occurs, it is the responsibility of the parent to assist the child and to provide clean clothing.
>
> If there are repeated "accidents", a meeting with the parents, assistant principal, and school nurse will be held to evaluation the situation. Appropriate action will be taken based on what is in the best interest of all students and the school.
>
> Exceptions to this policy may be granted for students with disabilities on a case by case basis under the direction of the Principal and ESE Manager. (Policies Manual at 27).

It provides that if repeated accidents occur "a meeting with the parents, assistant principal, and school nurse will be held to evaluate the situation." The teacher and Mr. Whitehead wanted an expedited meeting with Mrs. Parker without the school nurse participating in the evaluation process, despite having been informed that the child had been ill. Mrs. Parker requested that she and her husband meet with them on September 21 since he was out of town. She was then threatened with "unenrollment." There is nothing in this policy or any policy that uses the term "unenrolled." Moreover, the language in the policy that "appropriate action will be taken" meant the course of action would be decided after the meeting had occurred. Mr. Hull kicked the child out of school without ever offering or holding such a meeting. Even after the child's departure on September 15, 2016, he could have arranged for a meeting on September 21, 2015, as requested by Mrs. Parker. Or he could have directed Mr. Whitehead to do so. But that never happened. Indeed, with a school nurse present, the child's medical issues could have been reviewed and discussed along with discussing whether preparing a medical plan would be appropriate. That never happened.

Let's suppose for the sake of argument that by unenrolled what was really meant was suspension. Policy SE 8.0 – Suspension provides that the "principal or designee has the authority to suspend students as appropriate." Let's suppose too, that Mr. Hull's actions constituted suspending the child. The policy nevertheless provides that "all suspension will require a parent-principal conference" (emphasis added). That never happened. Mr. Hull did not follow the requirements of the policies he was mandated to follow. This was anything but professional. His contempt for Mrs. Parker and her child impelled him to act in an arbitrary, dictatorial, and capricious manner.

On September 23, 2015, Mrs. Parker wrote a lengthy email to Mr. Whitehead, which included mentioning a bathroom incident on September 16, 2016, for which the child was not suspended or disciplined as Mr. Whitehead informed her in response. She expressed her concern that there was something uneven, unfair, and inequitable about the process. She expressed her desire to see the school succeed despite the decision by Mr. Hull. In his response, Mr. Whitehead advised her that he would send her email along to the appropriate person. According to the CR, he informed the preparers that he did so. The undersigned will take him at his word. Assuming he sent the email to Mr. Hull and/or MCA Board Members, there was still available a meeting option to pursue with Mr. and Mrs. Parker. Mr. Hull never opened the door to them. In his resignation letter to the MCA Community, he told them that it was his practice to respond to parent concerns within 12 hours of an inquiry. With respect to the Parkers, this was not a truthful representation.

In the preparers' review of the September 23, 2015, email, they mentioned how Mrs. Parker heard from another student about how Mrs. Hummel limited usage of the bathroom in her class, "Mrs. Parker's email then returned to the issue pertaining other own child…" (CR, at 31). The preparers did not carefully read the email. Mrs. Parker was referring to the experiences of her older child, who was also enrolled at MCA, not some other child. Their representation is factually inaccurate.

As noted in the CR, Mrs. Parker emailed both Mr. Donalds and Mr. Mathias on September 25, 2015. It is noted in the CR, that Mr. Donalds' passed it along to Mr. Hull and other Board Member a week later, on October 2, 2015. (CR, at 32). No one at MCA ever responded to Mrs. Parker and nothing was ever done. In their interviews with the preparers, Ms. Lichter and Ms. Miller claimed that they reached the conclusion that because the second Parker child had been withdrawn, the matter was moot and they did not have to do anything. This is an astonishing admission that the multiple communications could be swept under the carpet and not be investigated. They owed it to the Parkers to investigate what happened and see if MCA policies had been followed. But they didn't. The last thing they were about to do was to call Mr. Hull and Mr. Whitehead on the carpet for their actions. Their failure to do anything was a breach of their duty of responsibility to their own stakeholders.

It is equally of concern, that in her post supporting Joe Whitehead's rants concerning removing an upset parent's lease on life (and he was pointing to Mrs. Parker. Who else would it be under the circumstances?), Ms. Miller asked why the complaining parent did not come forward to file a grievance. She was clearly pointing to Mrs. Parker who, she wrongfully had assumed (and never followed up on), had filed a complaint with DCF. But Mrs. Parker had sent

grievance email to Mr. Whitehead, Mr. Donalds, and Mr. Mathias. Ms. Miller received Mr. Donalds' email. Ms. Miller's posting is disingenuous. She was fully aware of Mrs. Parker's concerns either through Mr. Donalds' email or through Mr. Hull and Mr. Whitehead. The theatrics of disavowal in this case is nothing short of astonishing.

In this context, the preparers try to minimize the destructive impact of Mr. Whitehead's Facebook comments. They claim that Mr. Whitehead likes to engage in exaggeration and hyperbole and does so as part of his radio show. And the fact that he does these things on his own time outside of work makes it acceptable. They also suggest that his comments toward Mrs. Parker, and impliedly to other parents he deemed to be cowards and rumor mongerers, that he "would have no problem facing anyone like that and terminating their lease on life" did not "demonstrate an actual threat against Mrs. Parker or any specific person." (CR, at 35). They claim too, incredibly enough, that this is "an objective interpretation." This is a pandering to the worse sort of destructive impulse and actions to justify a predetermined exonerating outcome. True, Mrs. Parker is not named. But following the chain of Facebook responses one lands with Ms. Lichter writing "Thank you for your support! Perhaps you and others should personally let Ms. Parker know how you feel." This comes after Ms. Glidden Beall's post: "I stood up for the school on the NBC post. I am so irate over that I could spit nails." And everyone knows that the NBC-2 post involved Mrs. Parker's experiences. Mr. Whitehead thus incited a mob mentality and used social media as an attention-getting forum to go after Mrs. Parker; the very person who came to him and others for help and nothing was done. He was supported in this incitement by MCA Board Members. There does not have to be an actual threat. A veiled one can be every bit terrifying to the person receiving it.

The preparers' argument that Mr. Whitehead likes to indulge in exaggeration and hyperbole as an appropriate defense to his posts (including "urine media") is really over the top. Webster's dictionary defines exaggerate to mean "to distort through overstatement" or "to enlarge to an abnormal degree." It defines hyperbole as "an exaggeration or extravagant overstatement". The bottom line is that Mr. Whitehead enjoys distorting reality to gain the effect he wants and increase his audience level so that he can be the center of attention. A man who enjoys or participates in the distortion of reality is not interested in either truth or reality. He is interested in the power to manipulate both in order to have control over others in the process. Should this be the appropriate ethical behavior of an AP of classical school committed to classical virtues and the pillars? Hardly, but the preparers and MCA leadership have turned a blind eye to it and, by doing so, have encouraged it?[9]

Indeed, a year later, NBC News called MCA concerning another Facebook post by Joe Whitehead. Ms. Lichter, emailed Board Members about it on August 22, 2016. She informed them that "this post was not in his capacity as AP. Mr. Hull is giving the reporter a statement.

[9]In the CR, it is noted how Ms. Miller agreed not to participate in such a manner in the Cure Document and as part of the Mediation Agreement. Her word and promises cannot be taken seriously given her recent postings and participation in the Hostile Takeover under married name of Mrs. Mlinarich, and her comments at post mediation Board Meetings.

Thanks." (August 22, 2016, email from K. Lichter to J. Baird, L. Miller, and B. Donalds, sent at 11:15 a.m.). Ms. Lichter's immediate reaction is to claim Mr. Whitehead posted the message in his personal capacity (as if MCA's social media and civility policies did not matter). A week later, Mr. Bartlett, the editor of the Naples Daily News, emailed Mr. Hull, Ms. Lichter, and Mr. Donalds about Mr. Whitehead's post which was truly crude and offensive. His email addresses the problem completely. He wrote:

> Last year, Collier County School Board members raised concerns about whether employees on public supported property were conducting political activity in violation of law or policy. An investigation ensued. So I have a few questions related to the Aug. 4 (6:13p.m.) post by your assistant principal, Joe Whitehead, that referred to candidates for election as "human fecal matter" and public school bathrooms as "molester havens" and suggesting some are supporting "child rapists."
> Is your charter school investigating this in any way?
> Was there or will there be disciplinary action taken?
> Is this construed to be within your definitions in your "civility policy?"
> The policy mentioned that uncivil behavior could be reported to the superintendent. Was this done?
> Please respond in writing as this is a public record. Thank you for your time and attention.

(August 29, 2016, email from A. Bartlett, sent at 3:06 p.m.).

Ms. Lichter replied on her own to Mr. Bartlett that evening at 6:03 p.m. as follows:

> Allen,
> An investigation is being conducted. We will not discuss the details until it is completed. All further questions should be referred to our Counsel, Sean Arnold. Thank you!

Mr. Bartlett responded the next day (August 30, 2016) at 2:18 pm., in the afternoon, "understood thank you." Ms. Lichter forwarded the communications on to Mr. Hull, Mr. Baird, Ms. Miller and Mr. Donalds at 2:19 p.m., stating "FYI. Please do not respond." There is no evidence the post, or the results of the alleged investigation, were reviewed or discussed at a subsequent MCA board meeting or that Mr. Whitehead was found to have violated MCA policy. The matter appears to have been swept away as of no consequence. His comments are hardly befitting a professional educator who is responsible for student oversight, appropriate conduct, and discipline.

It is clear that Mr. Whitehead's (and Ms. Lichter's and Ms. Miller's) actions violated MCA policy. Within Policy SE 25, there is an entire section on social media as it pertains to Board Members, faculty, and staff. The policy notes that in using social media and participating in online social activities, "it is important to create an atmosphere of trust and individual

accountability." (Policies Manual at 56). The Policy establishes the importance of personal responsibility. It provides that:

> - Board members and organizational employees are personally responsible for the content they publish online. Be mindful that what you publish will be public for a long time—protect your privacy.
> - Your online behavior should reflect the same standards of honesty, respect, and consideration that you use face-to-face.

(Id.). The social media policy was not followed by Mr. Whitehead, Ms. Lichter, and Ms. Miller. Mr. Whitehead also did not follow MCA's Civility Policy (SE 48.0) which provides, in pertinent part, the following:

> All employees of Mason Classical Academy shall behave with civility, fairness and respect in dealing with fellow employees, students, parents, patrons, visitors, and anyone else having business with the school. Uncivil behaviors are prohibited. Uncivil behaviors shall be defined as any behavior that is physically or verbally threatening, either overtly or implicitly, as well as behaviors that are coercive, intimidating, violent or harassing.

Thus, the argument that Mr. Whitehead and Board Members can do what they want after school hours cannot be sustained. They violated MCA policies and norms and are accountable for their decisions and actions. As a professional educator and administrator, Mr. Whitehead disregarded his obligations under FAC 6A-10.081 (formerly FAC 6B-1.006), the Principles of Professional Conduct for the Education Profession in Florida.

As a final note to this section, when the news reports of the Parker matter broke in November 2015, Mr. Hull wrote to the MCA community that the uproar was a function of halting school choice in America. This kind of distorted thinking reflected a serious evasion of responsibility by Mr. Hull. Nowhere does he mention or acknowledge that his actions may have contributed to the crisis. Rather, he finds others to blame; hardly a shining example of honesty, transparency, and integrity; and this from a man who wrote an article in November 2018, to the MCA community entitled "Context and Truth Matters".

None of this is discussed in the Coleman Report. The preparers acknowledge at the end, the importance of Mr. Whitehead and Board Members being mindful of their action on social media and this is acknowledged at the July 2, 2019, Board Meeting (which gave rise to the Cure document). Thus, they confirm, in their own way, the findings in the GC's Report.

B. The 2015 Parker Incident and Ms. Lichter's Actions in April 2019

The preparers' discussion of Ms. Lichter's emails to District School Board Members in April 2019 concerning Mrs. Parker, not only once again ignored important evidence, but also got the facts wrong, and reached conclusions in support of Ms. Lichter that are beyond untenable.

They begin with the factually wrong statement that "as of April 2019 MCA had become aware that Mr. Fishbane was conducting an investigation." (CR, at 36). Their own documents show otherwise. On March 1, 2019, Ms. Lichter emailed the undersigned the following: "...I would like to know how long this investigation will continue? It's been months yet we have never been involved in these investigations." (March 1, 2019, email from K. Lichter to J. Fishbane, sent at 12:02 p.m.). The Naples Daily News article about the Baird Complaint occurred in October 2018 and the investigative inquiry was noted by the Report. On September 4, 2018, a little less than three month after the filing of Mr. Baird's Complaint, Ms. Lichter emailed the undersigned the following:

> I just spoke to our attorney, Shawn Arnold, and he was told by JB that she had an hour long conversation with you pertaining to Mason Classical Academy. She claims that you spoke at length about her "second-hand" concerns. Is this true? Are you taking complaints from MCA parents both former and existing? Thank you!

(September 4, 2018, email from K. Lichter to J. Fishbane sent at 2:17 p.m.). Her email parallels a similar inquiry on the same date from Mr. Hull to Dr. Rogers inquiring about persons associated with MCA speaking with District personnel. The fact that Ms. Lichter and Mr. Hull contacted the undersigned and Dr. Rogers on the same day about the same matter indicated they were already discussing this with one another. Thus, the leadership at MCA knew early on that persons were coming forward in the aftermath of the Baird Complaint. The claim that MCA did not know until April 2019 is factually wrong.

In the CR, the preparers noted that "MCA became aware that the Parker incident was part of the investigation by reading an article in the Naples Daily News." There was no article in the Naples Daily News about the investigation until after the investigation report was issued in June 2019. The NDN did not know anything about the contents of the investigative report until after June 3, 2019. Their claim is once again factually wrong and no article date was referenced. The last article pertaining to the Parker matter when Ms. Lichter sent her venomous emails to District Board Members was in November 2015, almost three and a half years before. The preparers then dramatically claimed how Ms. Lichter felt frustrated that she could not meet with the undersigned and asserted the following:

> Mrs. Lichter felt that Mrs. Parker's statemens to the media were inaccurate. Mrs. Lichter, being a founder of MCA, felt that Mrs. Parker's statements were "criminal" based on the inaccuracies when compared to the prior emails between Mrs. Parker and the school. Mrs. Lichter perceives herself as a staunch defender of MCA and has grown weary of the numerous "attacks" on the school

> since 2015. Mrs. Lichter, when asked, admitted to sending these emails and confirmed that she did so in an effort to allow the truth of the situation to be communicated to the Board. (CR, at 36).

Ms. Parker's statements to the press were in November 2015. The preparers ignore Ms. Lichter's concocted report to the School Board in which she attached a copy of the November 2015 article. The preparers attempted to justify Ms. Lichter's behavior by claiming that she felt Ms. Parker's statements of three and a half years earlier were criminal, warranting an attack in April 2019, is risible. The preparers knowingly and disingenuously ignore the content of the email to reach the result they wanted. The email does not mention Ms. Parker's statements from November 2015. It is a photograph of Ms. Parker with Ms. Lucarelli during the latter's campaign to join the School Board. They also ignore Ms. Lichter circling not only Ms. Parker's face but also those of her two children. Why are they included in this and included the comment "criminal-no need for me to comment further." Ms. Lichter found a way to release her deep seated anger at Ms. Parker having associated with Ms. Lucarelli, whom she attacked while she was a School Member. It is utterly inappropriate for Ms. Lichter, as the Board Chair of a school whose application and policies support American democratic values to condemn another's First Amendment Right to political association.

Moreover, two days before she emailed the picture on April 5 to Board Members, noting, in pertinent part, the following:

> As you likely read in the paper, the MCA Board of Directors hired a law firm months ago to address a potential defamation lawsuit. We have an extensive paper trail and impeccable documentation. One of the people that would have been slapped with a defamation suit is Valerie Parker. Unfortunately due to statute of limitations, she will get away with it. I know she was on Ms. Lucarelli's campaign materials.

The preparers ignored this email in their narrative. They also ignored the April 5, 2019, email to the Board sent three and a half hours later in which she attacked Ms. Parker and noted how "she got involved in the Lucarelli campaign."

And they ignored her concocted report sent to the Board on April 4, 2019, as well as Ms. Lichter's vindictive April 10, 2019, email sent to Ms. Lucarelli personally (she did not include Board Members on this one). In it, she attacked Ms. Parker again for being part of Ms. Lucarelli's campaign. "Valerie was featured on your campaign materials." She concluded her email with "How do people trust people like you and Valerie Parker??? I am onto all of you and what you are trying to do. It's criminal and despicable." It demonstrates that Ms. Lichter's commitment to democratic values and MCA's Pillars will take a back seat to whomever she might hate at the moment.

Incredibly, the preparers state Ms. Lichter sent the emails "to allow the truth of the situation to be communicated to the Board." (CR, at 37). They knew fully well that was not true. Ms. Lichter was not interested in communicating the truth. Her emails were emails of obsession and intimidation. They do not show a person that cared at all about the truth. In sum,

in order to craft their narrative of exoneration, the preparers decided to take the appalling step of turning the abuser into the victim.

Finally, and quite tellingly, the preparers do not address the potentially defamatory nature of her activity as discussed in the GC's Report. Rather, they imply wrongdoing and Ms. Lichter's multiple policy violations by noting:

> As stated above, in the future, the Board and Staff of MCA should be mindful of their communication in any public or semi-public setting and make stronger efforts to refrain from saying things that can be misconstrued or interpreted in ways that would not reflect positively on MCA (Id., at 37).

This is anything but exonerating.

## VII. The Zuluaga Matter

Ms. Zuluaga, a senior at MCA during the 2017-2018 school year, emailed Mr. Hull on February 27, 2018, on behalf of her senior class, apologizing for a senior skip day idea that was intended as a joke, but understood how teachers might find it disrespectful. She then went on, as the CR correctly notes, to express the frustration and pressures the senior class was experiencing. (CR, at 37). This included curricular pressure, and their feelings of anxiety, apathy, and fear. The letter is presented in detail in the GC's Report on pages 34-35 if the reader wants to review it. Mr. Hull's immediate response was to call a meeting and have Mr. Whitehead and Ms. Smith attend it with him. Mrs. Zuluaga, who filed a grievance on May 31, 2018, claimed that Mr. Hull yelled at the class and read the letter out loud, mocking sections of it, and demeaning students including her daughter.

Mr. Hull stated to the undersigned and to the preparers, in their respective interviews, that he did not yell. But the intensity and demeaning nature of his review and comments is agreed to by all. "Mr. Whitehead and Ms. Smith stated that Mr. Hull read the letter out loud to the class and would stop on occasion to discuss different sections. It was clear that Mr. Hull was upset and was speaking sternly." (CR, at 37). In his meeting with the undersigned, as noted in the GC's Report at 36, Mr. Hull acknowledged that he went through the letter line-by-line (why would a principal do that other than to intimidate students?). He informed the undersigned that he did not remember whether he publicly questioned Ms. Zuluaga's character and her National Honor Society status.

In the CR, it is noted that according to Mrs. Smith "the Zuluaga child was outed based on the child's specific response." How would a student be "outed" through specific responses if the principal had not specifically questioned her in front of her peers and called her to task? The assertion by Ms. Smith that Mr. Hull did not single out any student is contradicted by her own statement that Ms. Zuluaga was, in fact, outed. In addition, in the CR, it is admitted that in the email where it is noted that students did not have any time with all the pressures they were under that Mr. Hull publicly remarked that Ms. Zuluaga certainly "had sufficient time to talk on the phone late at night with the Hull child." (CR, at 38). Incredibly, the preparers then noted: "But

this was not stated maliciously to target the Zuluaga child, rather was stated to contradict the claims in the email." (Id., at 38). First we are told that Mr. Hull never singled Ms. Zuluaga out. That was false. Now we find a second time in which he had done so. If he did not intend to cause her embarrassment, he could have found other ways to contradict the claim by simply saying, for example, "I don't agree this this". Instead, by calling her out, he singled her out. Thus, she was indeed a target for his mockery. And to state this was not done maliciously by writers who were not there, discounts and devalues what the student went through. How could a teenage young woman not feel demeaned and targeted when the principal of a school, in front of the entire senior class, brings up her past nighttime phone calls with her friend who happens to be the principal's son? The rendition of the events presented by the preparers actually supports the concerns by Mrs. Zuluaga in her grievance and the findings in the GC's Report.

While Mrs. Zuluaga responded at length to Ms. Lichter's requests for written answers to multiple questions, (see, the May 31, 2018 email from L. Zuluaga to K. Lichter, sent at 10:54 p.m.), it should come as no surprise that she would support Mr. Hull over her and her daughter. And despite the above admission, it should come as no surprise, given what we have seen in the CR, that the preparer's would conclude in support of Ms. Lichter and Mr. Hull "that Mrs. Zuluaga's complaint was unfounded". (CR, at 40).

Further, the preparers have claimed that the communications between Mr. Hull and the Zuluagas, with the active support given by Mr. Whitehead to Mr. Hull were not relevant to the General Counsel's investigation. (CR, at 41). This would be like saying a District High School Principal and his Assistant Principal, who were friends and worked together after hours to intimidate stakeholder parents of students in their school, would not be relevant to the interests of the District. Such a claim does not even come close to passing muster.

Despite the nice sounding words about how the Hulls cared about their son, how they decided as parents who they wanted him to date and communicate with, the rules of the family and so on, Mr. Hull made no effort to call the Zuluagas and meet with them to try to clear the air. But once Ms. Lichter had dismissed the grievance, and school was out, Mr. Hull felt he was now free to do what he wanted to do. So instead of calling, he decided he would immediately engage in intimidation tactics via email to both the parents and their daughter. He wrote the Zuluagas as follows (and the full text is hereby being provided):

> Zuluaga Family:
>
> Please consider this your final notice about contact with my son. As his parents and legal guardians, we are forbidding any contact whatsoever between any member of your family and any member of my family, including D. Such contact includes phone calls, text messages, emails, face-to-face communication, meetings at his place of employment, friends' houses, your house, or any other place, internet communications, through Snapchat, Instagram, Messenger, and the like, or any other form of communication.
>
> D is 17 and his well-being is still legally our responsibility. If you or

> any member of your family contacts him or accepts communication from him again, I will notify the Collier County Sheriff's Office and the State Attorney's Office immediately and without hesitation.
>
> Please confirm that you have received this email, or we will call you to ensure you have received this notice.
>
> David and Sabine Hull

(June 12, 2018, email from D. Hull to the Zuluagas).

Mr. Hull's close friend, Mr. Whitehead, decided to get involved, support Mr. Hull, and assist in the pattern of intimidation. So he took off his AP hat and put on his after hours former police detective hat and showed just how well-connected he was with the authorities. Apparently, he felt it would be fine to stir the pot and put a stakeholder family in fear. On June 12, 2018, late in the afternoon, he emailed Mr. Hull as follows:

> David, Thank you for advising me of this. Parents of children under the age of 18 yoa have the right of governance over all of their affairs. I have contacted the SOA and CCSO regarding this situation as you mentioned below regarding previous info and I will advise you asap as we move forward. False complaints to Public Safety Agencies and DCF are a 3rd degree felony in Florida. 18 yoa person are adults in Florida and subject to prosecution as adults. I will keep you posted on my interaction with the relevant entities.
>
> Joe Whitehead

The next evening, Mr. Whitehead decided to add fuel to the flames emailing Mr. Hull as follows:

> I spoke with a State Attorney today, who I have a long term professional relationship with, I was advised that you should save and forward all communications between D, V, and all members of that family to me. I will be the collection point that compiles these documentations for evidence as we move forward.
>
> D seems to have been the target of some outside the family influences that are damaging to his development as a responsible member of society.
>
> JW

In between these communications, Mr. Hull decided as well that he would email Ms. Zuluaga directly, without ever notifying her parents. That the preparers can whitewash this is incredible. Mr. Hull, who claimed he would never single out Ms. Zuluaga or target her, now

tried to use the email system, when no one was looking, to try to single her out and intimidate her. To make it look good, he signed the email as if from him and his wife. The email is hereby being produced in its entirety.

> Hello V,
>
> We wanted to make sure you are aware of this serious situation and write to ensure you have a full understanding of it. Under no circumstances are you to contact D in any way face-to-face, digitally, on the phone, through online media, or otherwise. Additionally, D is not to contact you in any way. If he does, you may and should email us immediately in order to alleviate yourself from any responsibility of his violation.
>
> You are 18 and legally and adult. D is 17 and legally a minor. As his parents, we have the right and duty to make this determination about the well being of our son. Enough damage has been done, and it is time for you both to recover from the devastating effects of your secretive and destructive actions. Too many people have been hurt for too long, and it is time for everyone to move on in their pursuits of happiness. We do wish you the best in your journey to college and beyond.
>
> We are willing to leave things as they are now, unless you or D decide to violate the mandate of this message. Otherwise, as D's parents, we will take appropriate and swift legal action. At this point, we consider this matter closed and will not communicate with you or your family anymore unless our demand is violated by any party involved.
>
> Please deeply consider the seriousness of this message, and refrain from contacting D in any way.
>
> -David and Sabine Hull

(Email sent June 12, 2018, at 8:19 in the evening).

At 8:00 p.m. on June 13, 2018, Mr. Hull tried again to intimidate Mr. and Mrs. Zuluaga. He wrote to them that "the reason for this response is to address the advice offered by the State Attorney and to let you know that I already have a substantial amount of such communications…I will continue to collect." Mr. Zuluaga did not take the bait. He wrote back at 9:21 that night (June 13, 2018), quite directly as follows:

> Please move forward with any actions that you consider appropriate on this matter, but you need to cease and desist the harassment and intimidation you are inflicting on our family or we will pursue our own legal actions.
>
> Thank you and have a great night.

The bully backed down and never contacted the Zuluagas again. Mr. Hull knew better. But with the assistance of his friend, Mr. Whitehead, he let his obsessions get the better of him. He gambled in his efforts to intimidate the Zuluagas and lost.

Incredibly, the preparers claim that because Mr. Hull and Mr. Whitehead were friends, and used their personal email addressess to carry out their actions against school parents, their actions did not violate MCA policies, and thus were acceptable. Aside from obviously not having read the Principles of Professional Conduct for the Education Profession of Florida, they have not carefully reviewed MCA policies. As previously noted, the Social Media policy (within Policy SE 25.0 Computers and Internet Vise Policy) provides that board members and organizational employees "are personally responsible for the content they publish on line". And "your online behavior should reflect the same standards of honesty, respect, and consideration that you use face-to-face." Then comes the following provision ignored by the preparers:

> The lines between public and private, personal and professional are blurred in the digital world. By virtue of identifying yourself as a organizational employee online, you are now connected to colleagues, students, parents and the school community. You should ensure that content associated with you is consistent with your work at Mason Classical Academy.

(Policies Manual, at 57).

Under MCA's Civility Policy (SE 48.0), previously noted, which pertains to staff, it is expressly provided that:

> All employees of Mason Classical Academy shall behave with civility, fairness and respect in dealing with fellow employees, students, parents, patrons, visitors, and anyone else having business with the school. Uncivil behaviors are prohibited. Uncivil behaviors shall be defined as any behavior that is physically or verbally threatening, either overtly or implicitly, as well as behaviors that are coercive, intimidating, violent, or harassing. (Id., at 79).

Finally, the policy provides: "Board Members, faculty and staff of Mason Classical Academy may not communicate with students on any social net working site including but not limited to...personal email..." Mr. Hull wrongfully contacted Ms. Zuluaga in violation of MCA policy and were he to try to say, for example, that she had just graduated and, therefore, was fair game, would make a mockery of the policy. (Id., at 60).

Mr. Hull and Mr. Whitehead violated multiple MCA policies, the Principles of Professional Conduct for the Education Profession in Florida, and MCA's Pillars by their actions. Their cruel and secretive behavior and actions were unbecoming professional educators and warranted discipline.

## VIII. FERPA Violations and Related Issues

In the CR, the preparers have written that "the Fishbane Report alleged that Mr. Hull violated FERPA on five separate occasions when he sent confidential information without parental permission to persons who were not in the zone of interests of person who would otherwise have a legal access to the student's information." (CR, at 42). The preparers later examined the assertions in the GC's Report that involved not granting Mrs. Donalds the opportunity to review records pertaining to her children unless she paid for them first as if they were public records requests instead of FERPA requests. Accordingly, in the interest of completeness, the seven asserted violations will be addressed individually and in chronological order:

1. As noted in the GC's Report, on December 1, 2017, Mr. Hull emailed Dr. Sheryl Rogers, the District's Director of Charter Schools, about an MCA student. He identified the child's name, what grade he was then in, and his then current grades. He identified academic services he was receiving and his conflict with the parent over all of this. But then he sought to use Dr. Rogers for his own ends to assist him in his feud with the parent. He wrote to her as follows:

> The other reason I write is to request that you look into Jerome's situation at this prior school, Veteran's Memorial. I am not concerned about his behavior or academics, per say...What I am concerned about is his mother's behavior. Did she bully VME's personnel in the past? Did the VME principal have any issues with her? Is there something I should know about that family background situation that can help with our current situation? (December 1, 2017, email from D. Hull to S. Rogers sent at 1:20 p.m.).

To expect Dr. Rogers to gather personal and relationship information on the parent for him was inappropriate. This was ignored by the preparers.

2. Mr. Hull wrote to Dr. Rogers on January 10, 2018, to describe his view of the Donalds as parents and provided examples of the disciplinary record of the children. He tried to disguise who the parents were by not actually naming them but by describing them. As noted in the GC's Report, anyone could easily figure out who the parents were by reading the following: "One parenting issue I see is that of not being home very often. For example, the dad could be out of town for months at a time, only to come home on some weekends. He happens to be a Florida State legislator. The mom is also gone a lot as she is not only a member of a certain school board, but other boards and organizations." Referring to one of the children, Mr. Hull then proceeded to identify the child's disciplinary history with specificity. He also passed the following judgment on the parents: "Based on my knowledge and experience with this family, his poor behavior is due to the style of parenting his parents elect to enforce." He then added the following judgment: "I guess the child will be left home with a babysitter, which I do not feel is the proper consequences for a child misbehaving due to an absence of proper parenting and training." Mr. Hull then tried to use Dr. Rogers again when he notes that the father had called him from Tallahassee that morning: "Before I get back to him, I wanted to reach out and hear

your thoughts on the matter;" thoughts of course he planned to use for his own ends in his struggles with Mr. Donalds. All of this is also ignored by CR's preparers.

3. As noted in the GC's Report, on February 7 and 8, 2018, one of the Donalds' children was alleged to have been involved in incidents that Mr. Hull claimed warranted disciplinary suspension. Mr. Hull informed Mrs. Donalds on February 8, 2018, that there was a video that proved their child had engaged in wrongful conduct. At 9:33 a.m., Mrs. Donalds emailed Mr. Hull with the following request:

> I would like to request the videos you referred to this morning surrounding the incidents yesterday and today, from the time when students were allowed into the hallway through the incidents in question. You can show to me when I get to the school today or provide electronically.

Mr. Hull replied at 9:53 a.m. acknowledging receipt of the email, adding "this will take some time. Today will not work. I will let you know as soon as the next steps for your public records request have been determined." Her request as will be discussed, was not a public records request, but a request to see video that was alleged to be the foundation for suspension. It was thus a matter related to the child's academic file, governed by FERPA, and which the parent had a right to view.

Mrs. Donalds wrote back at 9:54 a.m. that she was actually at the school waiting in the front lobby and "would like to view the video before suspension is carried out." Mr. Hull kept her waiting in the lobby for some two and a half hours until he responded. He then wrote her at 12:27 p.m., both wrongfully under FERPA, and arrogantly, as follows:

> I write to confirm that you do not have an expectation of our staff processing your public records request for video footage of bathroom actions today and yesterday. You and I met at the school and discussed the issues in person today along with Mr. Whitehead, and that meeting satisfies your questions about the video footage and consequence rendered. Please confirm.

Mrs. Donalds disagreed and replied at 1:01 p.m. informing Mr. Hull that "unfortunately, due to the severity of the consequence, we still want to review the video with _____! Thank you for taking the time to process this request."

Mr. Hull replied at 1:53 p.m. informing Mrs. Donalds that it would not be ready until the following week and how much it would cost, and that she would have to pay the cost as if it were a public request, before she could see it. He then took it upon himself to lecture her that because he believed her child changed his stories, he should not be allowed to see it with his mother! The complete email reads as follows:

> I understand. It will be sometime next week when you can come in to watch the video. I will be in touch shortly about how much it will cost. Once you make payment, we will begin processing your request.

> On this note, I do feel the need to express my concern about you watching the video with _____. As you witnessed during our meeting today, _____'s stories changed multiple times for multiple people, including yourself. Showing him the video would not be positive or productive in holding him accountable for his actions.

At 4:18 p.m. that day, February 8, 2018, Mr. Hull sent Mrs. Donalds a cost breakdown sheet. At the top, instead of coding it an academic record, it was coded as "Donalds PRR." The cost was $294.62. Thus, Ms. Donalds would have to pay $294.62 before being allowed to see a video that she had right to see pursuant to the disciplinary suspension of her child.

4. On February 26, 2018, Mrs. Donalds and Ms. Van Vlyman, who oversaw MCA's ESE program, spoke and emailed each other about a recommendation for evaluation of one of her sons. They spoke about tracking charts, behaviors, and the evaluation. The next day, Mrs. Donalds emailed her requesting the tracking documents. Ms. Van Vlyman informed her that she would have to pay fees for their preparation.

Given her previous experience, on March 1, 2018, at 9:02 p.m,. Mrs. Donalds emailed Ms. Van Vlyman the following:

> To be clear, I am not making a public records request. I am asking to view copies of my own child's academic records file, including the behavior tracking sheets which you stated were part of the school's preparation for the evaluation. I have also been advised that teacher names are not to be redacted from these documents. Please send electronic copies or let me know when I can pick up paper copies from the school. Thank you.

Earlier in the day, Ms. Van Vlyman had emailed Mrs. Donalds that she was unable to provide advice as to her legal rights pertaining to the receipt of academic records and would have to get guidance from Mr. Hull (who was copied on the email accordingly). Mrs. Donalds never received a reply. Sometime thereafter, she withdrew her children from MCA.

5. On Wednesday, February 28, 2018, at 6:15 p.m., Mr. Hull forwarded Dr. Rogers a detailed set of emails between Mr. and Mrs. Donalds, one of their son's teachers, and Mr. Hull. Mr. Hull informed Dr. Rogers that his goal was to apprise her of an on-going behavior issue "we have been dealing with at MCA." In the exchange, Mr. Hull lectured (and judged) Mr. and Mrs. Donalds not only about their parenting, but also their child, their failure to pursue the truth, and their having deep hostility toward him personally which has had negative consequences for all. Mr. Hull wrote that their son had never apologized nor admitted his actions. He then continued in the following demeaning manner:

> That he has not speaks to your actions, or lack thereof, and to what you wrote below. He will never learn his lesson because you are so undermining towards the school. We are not asking for you to do anything harsh in terms of punishment. If you have been doing that, then it has obviously not

> worked. Something new should be tried. We are asking you to pursue truth, just like we ask everyone to do. Unfortunately, like [ ] you also continue to deny what he did in those bathrooms, admit truth, and apologize. That is where moving on begins. The ball, as I said, is in your court.
>
> You have many, many people telling you that something is seriously wrong in the behaviors of both your children, and that something desperately needs to change. Why would I even say that? Do you even stop to think how much easier it would be on me to ignore this whole thing? That you have such animosity over me and put so much blame on my back speaks volumes about your true desire to help that needed change happen.

6. Student of Virtue Award: As noted in the GC's Report, on May 11, 2018, subsequent to a faculty committee review and vote to present a twelfth grader the Student of Virtue award, Mr. Hull then questioned their decision-making by emailing them that they should have given the award to his son who he determined was a better more deserving student to receive it. He informed them that he really was not acting in the role of a father but as a Principal. He noted that "being the Principal requires me to honor my duty as such" by speaking up for his son.

But even more problematic, Mr. Hull included in the email a comparison of the awarded student's and his son's demerits, tardies, GPA, and so on and attached screen shots of their respective disciplinary histories involving demerits; and naming them by name. He then accused the faculty of the way they made their decision noting sarcastically: "I must have missed something about how you objectively measured the 12th grade Student of Virtue." (May 11, 2018, email from D. Hull to eleven faculty members, sent at 4:56 p.m.). He also sent this out again at 9:23 p.m., from his personal gmail account, including the screen shot, which the CR preparers did not mention

7. On August 30, 2018, Mr. Hull emailed District School Board Members scolding them for their involvement in an MCA parent-student matter. In it, he named the parent, the student and the academic issues involving the student. The parent had contacted District Board Members about concerns the parent had with an alleged response by "at least one of you," which gave the parent "false encouragement and perpetuates the anger at the situation." He then proceed to lecture the Board as follows:

> It is unfortunate that any CCPS board member would advise a parent in such a way without knowing any details beyond what that parent said. Do you know this student's class ranking? Days absent? Numbers of tardies? Behavior issues? Academic situation? Accommodations and modifications given? Prior year's performance? Did that parent tell you anything about the other side of the story that the school could have given?

Mr. Hull proceeded to tell the Board Members what he expected them to do in the future and how they should handle MCA matters that come to their attention. The condescending, arrogant,

and unprofessional nature of the communication is clear enough. One can only imaging the reaction of MCA Board Members if a District Principal or Curriculum and Instruction Administrator wrote to them in such a manner.

All of these seven items involved confidential student information. As we move into the application of the law to the facts, let's begin with Board Policy which was not included in the preparers' discussion of these issues in the CR. In Policy SE 25.0, the following is provided: "When contributing on line, do not post confidential student information." Accordingly, as a threshold matter, before even getting to FERPA, it is submitted that Mr. Hull once again violated MCA Policy.

The provisions of the Family Educational and Privacy Act (FERPA) are set forth in 20 USC 1232g and its regulations set forth in 34 CFR §99.1, et seq. The provisions of FERPA are also incorporated into Florida Law FS §1002.22 and 1002.221 and FAC 6A-1.0955. 20 USC 1232(g)(1) provides that an educational agency or institution is proscribed from releasing students' educational records or personally identifiable information ("PII") contained is such records "without the written consent of their parents to any individual, agency, or organization" other than the following:

> (A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required...

Under its Guidelines for Parents, the USDOE, through its Family Policy Compliance Office, has noted that a school official has such an interest only if the given official "needs to review an education record in order to fulfill his or her professional responsibility."

The requirement of parental (or an eligible student 18 years or older) written consent is also set forth in the statute's implanting regulations at 34 CFR §99.30(a). Such written consent must (1) specify the records that must be disclosed; (2) state the purpose of the disclosure; and (3) identify the party to whom the disclosure may be made to those school officials who the institution has determined to have a legitimate educational interest in such records (34 CFR §99.30(b)). The disclosure of a student's educational record must be to school officials who the institution has determined to have legitimate education interest in such records.

Records of disciplinary actions with respect to an infraction, or violation of internal rules, applicable to students of the agency or institution, are included within the ambit of educational records. Educational records are deemed to be those that are (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. (See, 34 CFR §99.3). Pursuant to 34 CFR §99.10, "a parent or eligible student must be given the opportunity to inspect and review the student's educational records." In addition, the school or institution must not only make arrangements for a parent who requests his/her child's educational records to inspect and review such records, it must also "respond to reasonable requests for explanations and investigations of the records."

With these provisions of law in mind, the preparers of the CR claim that Mr. Hull's actions with respect to items 1, 2, 5, 6, and 7 above were based on legitimate educational interests. Their claim cannot be sustained. While the preparers included the definition of legitimate educational interests in the CR, they nowhere apply it to the individual factual contexts under review. It is important to recall that the term is applicable "if the official needs to review an education record in order to fulfill his or her professional responsibility." Let's apply the definition to the specific items referenced above.

(a) The December 1, 2017, email from Mr. Hull to Dr. Rogers: In this email, Mr. Hull informed Dr. Rogers of the student's name, grade, course grades, problematic behavior, and his conflict with the parent. He also asked her to gather information from a District School Principal about the parent for his personal dispute (why was he afraid to do it on his own?). Thus, Mr. Hull used academic background information as a strategic ploy to use Dr. Rogers for his own ends. The child's academic record was not being used to help the child. And, as a third party, Dr. Rogers had no need of it. Mr. Hull knew he would never receive written authorization from the parent to release the information. It would mean, as noted in the 34 CFR §99.30, that it would include the disclosure of the purpose for the release. The only discernable purpose operative in this email is Mr. Hull's need to try to gain an advantage over the parent. There is nothing in the content of the email that Mr. Hull, as a school official, wanted or needed to review the child's educational record to fulfill his professional responsibility. Mr. Hull sought to use Dr. Rogers to get dirt on the parent in pursuit of his own ends.

(b) The January 10, 2018 email from Mr. Hull to Dr. Rogers: Mr. Hull used this email as an opportunity to denigrate the Donalds and their children, and use Dr. Rogers as a sounding board and an ally in his dispute with them. There was no legitimate educational interest in all of this, and certainly not one to fulfill his professional responsibility to help the children or the parents. Quite the contrary, he disclosed the disciplinary record of the Donalds' children as means to undermine Mr. and Mrs. Donalds as parents, and making gratuitous negative judgments about their parenting and why their children were misbehaving at school. Mr. Hull tried to use Dr. Rogers again to get her thoughts on the information he fed her before he called Mr. Donalds back. He knew that he would never receive written authorization from the Donalds to share all this with Dr. Rogers! There is simply nothing whatsoever in the email that demonstrated a concern by Mr. Hull with fulfilling his professional responsibility. Like the previous email, what is disclosed is his irresponsibility. There was nothing professional or responsible about his actions.

(c) The February 28, 2018, email from Mr. Hull to Dr. Rogers: This email is of piece with the just reviewed email of January 10, 2018. In it, Mr. Hull took it upon himself to forward a series of email communication between Mr. and Mrs. Donalds, Mr. Hull and one of their son's teachers. He informed Dr. Rogers that he wanted to apprise her of the son's on-going behavior problems at the school. The emails continued on from his judgments about the Donalds' parenting to his actual lecturing the Donalds about (a) their parenting; (b) their failure to pursue the truth; (c) their hostility toward him; and (d) the child's never having apologized to him for his actions and so on. This was not information that Mr. Hull needed to provide to carry out his job responsibilities, nor was it information that was appropriate to share with Dr. Rogers. The bottom line is Mr. Hull's purpose was to continue to keep her informed of his feud with the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## IX. Final Areas Considered in the Coleman Report

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

A. Former Faculty Member Issue

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

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

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

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

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

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

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

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

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

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

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

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

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

B. CCMG – The Issue of Potential Conflict of Interest

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

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

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

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

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

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

(2) Hillsdale College

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## X. CONCLUSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> (26) STANDARDS OF CONDUCT AND FINANCIAL DISCLOSURE.

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

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

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

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

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

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

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

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

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

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

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

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