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August 14, 2019

Via Email: sarnold@arnoldlawfirmllc.com
Shawn Arnold, Esq.
6279 Dupont Station Ct.
Jacksonville, FL 32217

Re: Settlement Agreement Violations

Dear Mr. Arnold:

We are writing you because we have serious concerns that Mason Classical Academy (MCA) is not acting in good faith with respect to the agreements it just made at mediation. This letter will allow you to address those concerns, before further actions and determination are made concerning the matters listed below.

These matters include but are not limited to the following: (1) Failure to properly post notice, agendas, and documents, (2) lack of professionalism, decorum, and good faith, (3) attempts to chill or violate the FERPA and First Amendment Rights of parents, (4) apparent attempts to stack the board before parents have even had an opportunity to apply for board position, (5) personnel deficiencies including the lack of 14 teachers, a qualified principal, and the placement of Mr. Hull back in the classroom, (6) the refusal to honor the existing contract with Hillsdale College, and (7) the lack of willingness to proactively address the audit findings, based on MCA's own documents, that MCA improperly awarded over $137,000 in Best and Brightest scholarships. The findings were based on documents MCA provided or could not provide.

Florida courts recognize that "[e]very contract includes not only its written provisions, but also the terms and matters which, though not actually expressed, are implied by law, and these are as binding as the terms which are actually written or spoken." *McCoy v. Durden*, 155 So. 3d 399, 403 (Fla. 1st DCA 2014) *quotoing First Nationwide Bank v. Florida Software Servs*., *Inc*., 770 F.Supp. 1537, 1542 (M.D.Fla.1991). One of the implied contract terms recognized in Florida law is the implied covenant of good faith, fair dealing, and commercial reasonableness. *Cox v. CSX Intermodal, Inc*., 732 So.2d 1092, 1097 (Fla. 1st DCA 1999*); see also Scheck v. Burger King Corp*., 798 F.Supp. 692, 700 (S.D.Fla.1992); *First Nationwide Bank*, 770 F.Supp. at 1542; *Green Companies, Inc. v. Kendall Racquetball Invs., Ltd*., 560 So.2d 1208, 1210 (Fla. 3d

DCA 1990); *Fernandez v. Vazquez*, 397 So.2d 1171, 1173–74 (Fla. 3d DCA 1981). This implied covenant arises because "[a] contract is an agreement whereby each party promises to perform their part of the bargain in good faith, and expects the other party to do the same." *First Nationwide Bank*, 770 F.Supp. at 1544. Thus, the implied covenant of good faith and fair dealing is designed to protect the contracting parties' reasonable expectations. *McCoy v. Durden*, 155 So. 3d at 403.

Sunshine Law and Agenda Violations

We agreed at mediation that MCA would upload, along with the agenda, all documents that will be reviewed and discussed at a given meeting for public review. Speakers would be given the opportunity to speak prior to action and non-action items being presented so that the board can consider public input prior to decision-making or informational item discussions. After agreeing at mediation on August 1st to this, at the very next meeting on August 5th MCA failed to post the mediation settlement agreement before the meeting. The chairwoman's justification for this failure to post in advance was: "The mediation settlement agreement has not been voted on." The whole point of posting documents in advance is to give the public a chance to review and comment on them *before they are voted on*. Will it be the practice of MCA to continue to not post items until after they are voted upon? We consider this practice a violation of the Settlement Agreement and a violation the spirit and the letter of the Sunshine Law. Further, it has been reported to us that meeting notice for MCA's August 8 meeting was incorrectly posted but that MCA proceed to hold the meeting anyway. Finally, what few documents have been posted in advance of meetings has not been posted on the meetings webpage but on the events webpage. The public should not have to search the website for meeting documents: they should be on the meetings page. Please let us know MCA's position with respect to these concerns.

Board and Staff Professionalism and Civility:
Adhering to the Pillars, Respect, and Good Faith

We agreed that Board and staff need to maintain high standards of civility and professionalism in dealing with MCA parents and the community at large, whether on social media, in newsletters, statements at meetings, and other forms of communication. Board Policy requires Board Members to commit to the Pillars of Character Development, including "Respect." Just days after the mediation and before the settlement was even inked, on August 5th at a parent meeting, the chairwoman accused Mason parents of "undermining the school." On August 6, 2019, at the very MCA Board meeting to vote on the settlement agreement the chairwoman accused Dr. Patton, Jon Fishbane, and parents, of "undermining" the school. Then on August 8, the chairwoman said, "What gets me to my core is that the very people who come to this school claim to love this school are working with Fishbane and the Superintendent and continue to undermine this school." She went on to reference a discussion at the Collier School Board meeting about the value of accreditation, and said, "Why is there this effort to continue undermining the school?"

Personal attacks such as these are not appropriate generally, are certainly not appropriate with respect to parents who have children at the school, are contrary the representations in the "cure document" you sent to us, and are directly in opposition to the Pilar of Respect. They

certainly are not paradigmatic examples of respect and tolerance for those with differing opinions on substantive issues. These comments of the chairwoman's are reminiscent of those she made on the Florida Citizens Alliance on Podcast #18, saying Hillsdale "lied" to her, and was "in bed" with "some of the most corrupt people in the State of Florida as far as school districts go." As you know, accusing persons of public corruption is slanderous. Guessing, especially wrongly, about peoples motives, and then casting aspersions about them in public is difficult to reconcile with the implied covenant of good faith in a contract. Did it ever occur to the chairwoman that perhaps parents, Collier County staff and School Board Members, might have the best interests of MCA as their goal? What is the possible justification of repudiating this part the Settlement Agreement so quickly?

Flawed Grievance Policy

The proposed MCA grievance policy appears to require parents to give up their fundamental rights under FERPA and the First Amendment's speech and petition clauses.

First, we would note that the proposed policy suffers from numerous other deficiencies. For example, there does not appear to be any role for the principal in the process, who as a matter of best practice should be the last step in the administrative process. Parents should be affirmatively informed of their ability to speak with the principal or appeal decisions by an assistant to the principal, before having to take the matter to an outside committee. This allows the principal to the opportunity to review the matter and take any appropriate action.

Second, and of greater concern is the attempt to force parents to relinquish their FERPA rights, Step III of the proposed policy expressly says, "the complainant agrees to waive all FERPA rights." This is contrary to the State Board of Education regulations. Section 6A1.0955(6)(e) (c) F.A.C, prohibits this. It says, "School districts may not require that adult students or the parent or guardian of students waive any of their rights under section 1002.22(2), F.S., and FERPA." Charter schools are public schools of the District operating under a contract with the District. We are not aware of any exemption the Charter schools enjoy to violate this provision of the Florida Administrative Code, or any justification to force parents under Federal Law to give up their rights. Indeed, as noted in AGO 2010-04, the protection of FERPA is not wholly incompatible with meetings in the Sunshine and MCA "should be sensitive to confidential student records that may be reviewed during such a meeting and protect these records to the extent that is possible to protect the privacy of the student involved in this matter." Id.

Likewise, MCA, a public school, makes it a violation of the Parent Contract, to bring a concern to the Collier County School Board. This provision appears to be a direct attempt to chill the Free Speech in advance, *Bd. of County Com'rs, Wabaunsee County, Kan. v. Umbehr,* 518 U.S. 668 (1996), and imposes a penalty on parents and students who do speak at public meetings of the Collier County School Board, which as you know has the constitutional duty to "operate, control, and supervise all free public schools within the District," Const. of Florida, Art. IX, sect. 4(b). Please clarify whether MCA intends to terminate the contract of MCA parents or otherwise penalize them for exercising their First Amendment rights to speak with the District staff and the District School Board or to seek redress of their grievances.

Finally, MCA appears to be attempting to institute a formal grievance process, at Step IV, at the Collier County School Board. Please be advised that MCA does not have the authority to impose, create, regulate or otherwise direct the Collier County School Board to either set up any such procedure, nor to dictate how and when that procedure will be activated, nor how the District must handle complaints from MCA, beyond those in the Charter.

Attempts to Stack the Governing Board

We agreed that the board would be expanded to five (5) Board Members. It was clearly contemplated that there would be an opportunity for all parents to submit their names for fair consideration for being on the board. Rather, it has been reported that the chairwoman held a lengthy telephone conference with a select group of parents and told them how important it is to "stack the board" with parents who agree with the present board members. Further, it appears that before this process was even allowed to begin the board interviewed Mr. Conrad Willkomm, a friend of the chairwoman's, for an open seat on the board. Please describe how this process is likely to instill confidence that the board in the future will be representative of all of the parents, or how such actions are in good faith to the explicit understandings regarding future board make-up that were crucial to the final settlement.

Finally, there does not appear to have been any effort, after three meetings, to implement as agreed the staggering of terms, who those would be, and or even discussion about how the policy will be implemented.

Lack of a Principal and Teaching Staff

MCA appears to have some 14 vacant teaching positions on the first day of school and no qualified principal in place. The chairwoman of MCA informed the community at a July board meeting that the summer was not a good time to search for a principal. However, that was the very best time to get a principal. In this regard, the Mediation Agreement provides that MCA will work expeditiously to find a principal. A review of MCA website shows that under career opportunity while teaching and non-teaching openings have been posted, there has been no posting for a principal's position. Your client has chosen to ignore a key provision of the mediation agreement and appears thus to be in breach of the Agreement. Most concerning is that Hillsdale College through its extensive network and pursuant to its contract with MCA could have been working with MCA and may have found a principal. Please let us know what is being done to address these serious deficiencies.

Rejecting its Contract with Hillsdale College

There is simply no doubt that the goal of mediation was to have MCA adhere to its application and charter, under which Hillsdale College was a vital "partner." However, immediately after Hillsdale agreed to continue with MCA, MCA refused to continue under its contract with Hillsdale, contrary to MCA's charter with the District. (See August 7, 2019 letter of Michael Coleman to Hillsdale College saying Mason considered the contract "terminated.") In other words, MCA ratified the Settlement Agreement and then immediately rejected a continual

contractual arrangement with Hillsdale. This is does not strike us as a sign of good faith. Both the Charter and MCA policies require an active presence of Hillsdale. Hillsdale's continued involvement is beneficial and necessary for the continued success of the school. Indeed, we had agreed that Hillsdale would use its search firm to obtain the name or names of a qualified person or persons to serve as MCA's new Principal. Hillsdale will also going to use its good offices to try to obtain additional administrators for MCA as needed and requested to fill out the schools administrative team. Further, the new Director of the Barney Charter Program will come to MCA to work with teachers and administrators on teaching strategies, including new and emerging strategies

Without the continued involvement of Hillsdale, alternative supports, accountability, and accreditation must seriously be discussed. Please let us know if it is MCA's intention to ignore its existing charter and policies that it just reiterated that it would follow. How long is this condition expected to last and what does the school intend to do to make up for no longer having a partner of the caliber of Hillsdale?

Best and Brightest

The State Auditor directed the School District to audit the best and brightest programs at the Districts charter schools. The District conducted that audit and determined that $137,000 in best and brightest funds were improperly awarded at MCA. To date MCA has not taken proactive steps to address this issue and now seeks mediation. MCA's response has been, "Well the state has not yet said we have to refund it, so we don't have to." This ignores the relationship that school districts have with the State with respect to the administration of the Best and Brightest program. What is concerning is that MCA has not sought to address the fact that if the District relied on the documents MCA provided and those they could not provide, where is there a problem with the finding?

Quite frankly that any of these issues should continue after the Settlement Agreement would raise a serious concern. Together, left unaddressed, we will be constrained to conclude -- without MCA's input -- whether MCA was bargaining in good faith, will honor the terms of the Agreement, or has any intention of the honoring the implicit and critical terms that made settlement possible.

Your considered response is appreciated.

Sincerely,

ROETZEL & ANDRESS, LPA

James D. Fox

JDF/mko
cc: Jon Fishbane, Esq. (via email)

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