

INVESTIGATIVE REPORT

FOR

MASON CLASSICAL ACADEMY

Submitted to:

The District School Board of Collier County, Florida

By: Jon Fishbane, District General Counsel

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## **I. Introduction:**

On or about June 7, 2018, Joseph Baird, a former Mason Classical Academy (“MCA” or the “School”) Board Member, Treasurer, and parent of students previously enrolled at the School, filed a detailed Complaint with the Florida Department of Education’s Office of the Inspector General (“OIG”). In it, he alleged multiple areas of wrongdoing involving especially MCA Board Members Lichter and Miller and the School’s Principal Mr. Hull. His allegations and concerns will be more specifically addressed beginning in Section IV of this report. On June 8, 2018, Mr. Baird supplemented his Complaint by submitting the OIG additional information, including a link to the State’s Department of Corporations Sunbiz site, concerning a corporate entity, the Classical Charter Management Group, LLC, which identified Mrs. Lichter and Mr. Hull as business partners along with an MCA employee, Mrs. Smith, who was MCA’s Curriculum Coordinator.

On June 13, 2018, Edward G. Rawls, Jr., Director of Investigation at the OIG wrote to Mr. Baird acknowledging receipt of the Complaint “regarding various concerns with the Mason Classical Academy School Board of Directors and Administration.” (See, letter from E. Rawls, Jr., to J. Baird, June 13, 2018). Mr. Rawls informed Mr. Baird that based upon his office’s review and analysis, the OIG had concluded that the concerns raised in the Complaint, “do not fall within our jurisdictional purview.” It was determined that on the basis of statutory and Florida Constitutional review, the matter more appropriately fell within the authority and jurisdiction of the local school board (in this case the District School Board of Collier County). Mr. Rawls added that to assist him in finding resolution to his concerns he was referring Mr. Baird’s Complaint to those parties that have the authority over the matters he raised. Mr. Rawls concluded his letter as follows:

By way of this letter, we are forwarding your complaint information to the Director of Independent Education and Parental Choice, to the District Superintendent in Collier County, and the School Board Chair, for their review and action deemed appropriate.

He copied Mr. Miller, Dr. Patton, Mr. Terry accordingly. Dr. Patton and Mr. Terry brought the Complaint to the attention of the undersigned and, given the scope of the issues raised, as well as the multiple parental calls, complaints, and student departures from MCA, that had come into the District over several years, which were not being addressed by MCA, to carefully review and look into the matter.

Sometime in early August 2018 inquiries were being made by concerned parents whose children had attended MCA and former faculty members, to express their interest in coming forward to discuss the matter. Mr. Hull became aware of people coming forward. It led to him to email Dr. Rogers, the District’s then Director of Charter Schools, in order to express his concerns. In his communication, he noted the following:

We take complaints seriously because that is a great way to self-reflect and become a stronger institution for students and their families. However, there has only been one official complaint in over 4 years of operation.

This could very well be a result of CCPS interference, or MCA is just that good at pleasing our parent base. There are other issues along these same lines that do not paint the CCPS governance in a good light, but I will refrain from pointing those issues out at this time. (See, September 4, 2018, email from D. Hull to S. Rogers sent at 1:59 p.m.

The tone of his email, both defense and aggressive in nature, with respect to people coming forward in the early stages of review and investigation, was of some concern.

Many people did indeed come forward. Many of these parents and faculty members expressed being fearful of retaliation (for themselves and their children) by Mr. Hull. Over the next several months, in discussions with District staff who received calls from MCA parents seeking educational advice from them, it was learned that such fearfulness had been communicated to them as well.

As a consequence of these conversations, a very considerable amount of email communications were received from multiple sources and providers (including those received from Mr. Hull in November 2018 who wanted the undersigned aware of them as part of the investigation). Many issues surfaced that needed follow up, review, and investigation. Some were linked directly or tangentially to Mr. Baird's Complaint some were not. This led to a widening of the scope of the investigation, the time needed to complete it, and bring it to closure.

## **II. The Evidence Received and Reviewed**

The evidence received, reviewed, and considered has been extensive. In addition to the information received from MCA parents and faculty members and District staff along with extensive email communications as previously noted, MCA Board Meeting Minutes and Agendas going back to 2013 were reviewed as well as Finance Committee Meeting Minutes from 2014 – 2016, Mr. Baird's October 4, 2016, Treasurer's Report and resumes of persons seeking to be part of the proposed revised Financial Audit Committee at that time. In addition, the undersigned reviewed MCA principal reports, documentation linked to meetings, MCA Policy Binders (dated April 26, 2018, and its updated version dated January 23, 2019).

Moreover, the following other important documents were reviewed: MCA's 2013 Application and the charter documents between MCA and the District School Board of Collier County, MCA's 2018-2019 Progression Plan, Unaudited Financial Statement, McCreedy and Associates documentation, MCA Charter School financial condition reporting documents, and MCA's May 29, 2018, salary planning document.

Further, the undersigned reviewed corporate organization documents pertaining to Classical Charter Management Group, LLC ("CCMG") and charter school application documents involving the American Classical Charter Academy from multiple school districts which CCMG was apparently providing consulting services, multiple letters to MCA parents from Mr. Hull from 2015 and 2018, multiple social media postings from 2105 and 2018, District



records of transfers from MCA to the District, home education, and private schools, and 2017-2018 Best and Brightest program documentation involving MCA.

Finally, as part of the legal analysis, the undersigned reviewed Florida case law and statutes pertaining to issues under review, including FS 1002.33, Federal Statutes implementing regulations, USDOE Office of Management letter rulings, and FAQ's pertaining to FERPA, Florida Attorney General Opinions, and several cases and statutes cited therein, Sunshine Law materials, MCA policies, Roberts Rules of Order, ESE procedural safeguards, Florida Commission on Ethics Opinions, and FAC 6A-10.081 (Principals of Professional Conduct for the Education Profession in Florida).

The above pretty much covers all of the materials reviewed and considered.

### III. **Methodology:**

As previously noted, the documentation reviewed in this investigation was extensive. In order to be able to meaningfully organize and interpret the evidence, the undersigned, in consultation with District staff, looked for commonalities in the multiple documents and interviews to determine if certain patterns of observation and experience could be ascertained. For example, where multiple reporters of information expressed observing or being the recipient of the same or similar patterns of action and behavior with respect to MCA Board Members and administrative staff, whether as to given events or over time, credence was given to such information. Thus, such same or similar patterns of action and behavior demonstrated a regularity of conduct over time that had to be taken seriously into account for the purposes of careful review and interpretation.

This principle of observation and experience was also applied if reporters of information related the same or similar statements, actions, behaviors, usage of language, including body language and gestures, as well as linguistic responses and voice tonalities. Moreover, credence was given to same or similar linguistic expressions, and expressions of emotion articulated by reporters with respect to Board Member and Administrator actions, behaviors, or experience of similar events. Such sameness and similarity evidenced a commonality and regularity of actions and behavior over time that had to be taken into account.

In this context, reporter statements and observations that wandered away from the issues under review or involved extraneous information, were given lesser weight. The same held true where statements and observations were found to be unclear and confusing. The credibility of a given reporter's statements and observations were also examined in connection with documentation received, where applicable.

The undersigned also took seriously the statements expressed by Mr. Hull, Ms. Turner, and Mr. Marshall at the meeting with them on April 29, 2019, at MCA. Finally, and perhaps most importantly, in reviewing the extensive email communications, Board Meeting Minutes, Policies, and so on, the central priority analytically was to let the documents speak for themselves.

#### **IV. The Financial Oversight Committee:**

In his Complaint, Mr. Baird has identified two core issues pertaining to the Financial Oversight Committee (a) its formation and membership; and (b) his inability to properly undertake his role as Board Treasurer and receive financial and accounting information. These will be addressed sequentially.

##### **A. (1) Overview of the Central Allegations Pertaining to Formation and Membership on the Committee**

In this Complaint, Mr. Baird has alleged that MCA Board Members Lichter and Miller, along with Mr. Hull and Mr. Marshall, knowingly created an environment where fraud could occur by preventing the formation of a Financial Oversight Committee. He contended that Mr. Hull took a leading role in halting his efforts to help form it. Mr. Baird alleged that at the September 6, 2016, Board Meeting, the Board agreed that he should (a) notify all school parents that a committee was being formed; (b) solicit resumes of persons interested in serving on a Financial Oversight Committee ("FOC" or "Committee"); and (c) individually interview interested candidates, discuss the interviews, then vote on the most suitable applicants to serve on the Committee. Mrs. Lichter advised that in anticipation of the October 4, 2016, Board Meeting, Mr. Baird should get training from Dr. Carpenter who consults with Hillsdale College and provides training for charter school board members.

Mr. Baird has also alleged that in a phone conversation with Mr. Hull prior to the October 4, 2016, Board meeting, he had informed him that Dr. Carpenter believed the Board should move forward immediately with the formation of an FOC. Mr. Baird alleged that Mr. Hull called him to request that the formation of the Committee not go forward at that time. Mr. Baird allegedly responded that Dr. Carpenter was quite clear that the Board should not delay forming an FOC and that he intended to follow Dr. Carpenter's advice. Moreover, Mr. Baird has alleged that at the October 4, 2016, Board Meeting, Board Member Miller wanted to halt the determination and vote on who would serve as Committee members and was allegedly supported in her efforts by Board Member Lichter and Mr. Hull and the matter never proceeded to a consideration of membership and vote.

##### **A. (2) The Factual Record Pertaining to Formation and Membership of the FOC**

According to the July 11, 2016, Board Meeting Minutes, the Board approved a "Motion to dissolve the existing Finance Committee in anticipation of the formation of a newly defined Financial Oversight Committee". It was noted that Board President Mrs. Lichter "will email her notes from Hillsdale Board Training to Jason Lane to assist him in defining the new Financial Oversight Committee." Mr. Lane was the then Board Treasurer. The vote was 3-1. Board Member Mr. Donalds opposed dissolving the Finance Committee. There is nothing in the Minutes setting forth any discussion on the matter or the reasons why there was a need to dissolve the Finance Committee at that time.



A review of MCA's records shows that the Finance Committee met almost monthly from at least to January 26, 2015, through May 9, 2016, as a Board delegated Committee with well-developed Minutes describing the work of its membership and contributors. The Finance Committee reviewed and discussed the following: cash flow, profit and loss reports, balance sheets, reserved accounts, the proposed fiscal year budgets, including explanations of fund balance and risk management, as well as school insurance, construction loans, payroll, bank statements, CAM costs, Board policies pertaining to financial matters, donations, commercial loans, GoFundMe proceeds, loan repayments, and so on. The work of the Committee and related financial issues was regularly brought to the Board for review and discussion; often by Mr. Mathias with contribution from Ms. Turner. Hence, there was a regular and continuous flow of financial information reporting to MCA's Board.

The Minutes of the August 2, 2016, Board Meeting reflect that Board President Lichter reported that Mr. Lane had resigned from the Board and had presented his letter of resignation accordingly. It was announced thereafter that the Board hold a Special Meeting on August 8, 2016, to discuss replacing Mr. Lane as Board Treasurer.

At the August 8, 2016, Special Meeting, Mr. Baird was approved through motion and vote to serve as a Board Member and the new Board Treasurer. During Board comments at the end of the September 6, 2016, Board Meeting, the Minutes provide the following: "The Board Members discussed the role of the Financial Oversight Committee and possible members". What the work of the FOC would involve is not presented in the Minutes nor are there any documents attached to give any reviewer a reasonable sense of its function. The Board apparently agreed that a new Financial Oversight Committee should be formed and that Mr. Baird proceed to notify MCA parents to see who might be interested in serving on it. In this regard, Board Members and Mr. Hull believed it was important to follow the training recommendations of Dr. Carpenter that a school such as MCA should have a committee such as an FOC in place to protect its interests.

On September 20, 2016, Mr. Baird sent an information notice to the MCA Committee from the schools email system ([info@masonacademy.com](mailto:info@masonacademy.com), subject: **Financial Oversight Committee**). He noted that the MCA Board was seeking "volunteers to help run the Financial Oversight Committee." He requested that all interested persons complete the application attached prior to September 24, 2016. Mr. Baird then noted that the purpose of the FOC was to "provide financial oversight for the school by providing recommendations for improvement to the Board of Directors." He then noted that some of the duties and responsibilities of committee members would include the following: (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. It was anticipated that the FOC would meet on a quarterly basis. (See, the September 20, 2016, email sent from MCA to the MCA community concerning joining the FOC).

On September 23, 2016, in the early evening, after the close of business, Mr. Baird sent all Board Members and Mr. Hull an email that he had uploaded to the school's google drive for their review all the applications that he had received to date for the FOC. He noted: "Please

review and interview applicants as you see fit. Come prepared to the next meeting to discuss and vote on the candidates.” He then added the following: “Please check with David Hull for his perspectives on any candidate you may be considering.” He promised to send along any additional information he might receive. As a precautionary note to Board Members and Mr. Hull, Mr. Baird noted “Do not reply to this email.” (See, September 23, 2016, email from J. Baird to MCA Board Members and Mr. Hull sent at 6:41 p.m.). Thus, Mr. Baird had provided the applications of persons interested in serving on the FOC to Board Members and Mr. Hull for review well in advance of the October 4, 2016, Board Meeting.

In the morning of September 26, 2016, Mr. Baird sent Mr. Hull an email noting that he thought it might be helpful to obtain feedback from the teachers of students whose parents have applied for a position on the Financial Oversight Committee. He felt that since teachers interacted with parents, “some of our teachers could provide some insights regarding potential candidates.” He asked Mr. Hull if he had any suggestions as to how the Board could obtain this information recognizing that he doubted that Mr. Hull “would want all Board Members interviewing teachers.” Mr. Hull responded that “we should probably not involve the teachers if that’s okay.” He added that he would serve as the go between if necessary. He wrote: “If you feel strongly about it through, give me the name of the candidate, and I will speak with the teachers to see if he/she has any information.” Mr. Baird replied that he would trust Mr. Hull’s judgment. He asked Mr. Hull if he could speak with him by phone, “if you have some time today to voice some concerns.” He felt speaking by phone would be easier than emailing back and forth and asked if Mr. Hull had some time that day. Mr. Hull wrote back “can it be another day? I’m swamped.” (See, September 26, 2016, email chain between J. Baird and D. Hull).

On October 2, 2016, two days before the Board Meeting, Mr. Baird wrote to the Board Members and Mr. Hull. He informed them that he had uploaded two documents to the School’s google drive for them to review before the meeting: (a) Finance Committee Purpose; and (b) Finance Committee Application list. He then noted “when discussing individual candidates, please refer to them by the letter next to their name instead of by name.” He also requested that they all “come prepared to discuss and vote on proposed purpose of the Finance Committee.” He informed them as well not to reply to the email. (See, October 2, 2016, email from J. Baird to MCA Board Members and Mr. Hull).

Moreover, in the Finance Oversight Committee purpose document that he had attached, he recommended the following to assist the Board and Mr. Hull as part of the review at the Board Meeting:

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.



On the Agenda for the October 4, 2016, Board Meeting, four items are identified as action items under New Business. The third action item identified was "C. Finance Oversight Committee Members." The action recommended was to approve and the Agenda identifies Ms. Lichter as the Board Member who would bring the matter forward.

However the Board Meeting Minutes provide that there was a "Motion to Approve Creation of Financial Oversight Committee" which was voted on and passed unanimously. This was not listed on the Agenda as an action item; nor do the Minutes have anything concerning any discussion about the FOC, its goals, purpose, composition of membership, and so on. In fact, a review of the Minutes show no action was taken on Members serving on the Committee including no effort to move to table or defer the matter to the next meeting. The investigative record reveals that eight applications were received. All applicants were parents. The applications were not attached to the Agenda for public review. Moreover, the applications and the qualifications of the applicants were not discussed at the Meeting.

During the undersigned's meeting with Mr. Hull, Mr. Marshall, Ms. Turner, and MCA's counsel on April 29, 2019, at MCA, Mr. Hull and Mr. Marshall stated that they did not review the applications and resumes of the candidates. However, Mr. Hull noted that he remembered that the applications included those of Board Member spouses. He could not recall how he knew that. He did remember speaking with Board Member Miller that the applicant pool should include more than parents.

At the Meeting itself, Ms. Miller expressed her concern that the Board needed to see if other members of the community with expertise were willing to serve in order to broaden the pool of applicants who had already applied. Ms. Lichter concurred. Mr. Donalds did not concur nor did Mr. Baird who expressed concern that the recommendation of Dr. Carpenter was not being followed. Mr. Donalds recalled that not to follow Dr. Carpenter, who all Members respected, was a matter of concern for him. No applicants were either identified or discussed as capable and competent to serve on the Committee. While an FOC was formed, it was an empty shell. No one ever reached out to the community again to reopen the application process. The existing applicant pool was shelved, and the FOC died on the vine.

In the Minutes of the December 14, 2016, Board Meeting there is noted a "Motion to Establish Audit Committee Consisting of Chuck Marshall, Josh Longenecker, and Laura Miller." Mr. Marshall was the Compliance Officer of MCA at the time. Mr. Longenecker, who had been approved to serve was the Board's Treasurer. Ms. Miller made the Motion, Mr. Longenecker seconded it, and the Motion passed unanimously.

Missing from all this was a discussion or documentation as to (a) why such a Committee was called for then; (b) what was its purpose; (c) what was the nature of its oversight; (d) why it included only three Board Members and a Compliance Officer; (e) why there were no efforts to seek applicants from the MCA (and general community) to be part of it; (f) when the Committee would meet; (g) how an essentially Board Member Committee would report to itself, and so on. In this context, MCA Meetings records show that this Committee never met nor ever presented any report. Like the FOC, the Audit Committee died on the vine. No other FOC, Audit Committee, or their equivalent has been constituted by the Board.

**B. (1) Overview of Central Allegations Pertaining to Mr. Baird's Claims that He Was Blocked in his Ability to Carry Out his Role as Board Treasurer**

Mr. Baird has alleged that not only did Board Members Lichter and Miller, along with Mr. Hull and Mr. Marshall, seek to halt the setting up a functioning Financial Oversight Committee, they also worked to prevent him from carrying out his duties and responsibilities as Board Treasurer.

In this regard, based on his understanding of Dr. Carpenter's work, Mr. Baird has alleged that it was appropriate for him to be able to ask for and look into financial records, funding from the District, including whether or not too much had been received, monthly lists, MCA student enrollments and withdrawals from the school, employee expense reports, and so on. He expressed his concern that unless he could carry out appropriate due diligence, as Treasurer, into MCA's finances, both he and MCA could be at risk. In his view, based on his reading of Dr. Carpenter's work, he contended that not to be able to undertake such a review, he would be negligent in his undertakings, risked breaching his fiduciary responsibilities as Treasurer which could expose him to personal liability. Accordingly, Mr. Baird has alleged that when he expressed these concerns, he was treated in a condescending fashion by Mr. Hull and Mr. Marshall and essentially informed by Board Members Lichter and Miller that he should back off and not try to scrutinize or manage Mr. Hull's and Ms. Turner's work. (See, Baird Complaint, at pp. 4-6).

**B. (2) The Factual Record Pertaining to Whether Mr. Baird was Blocked in his Ability to Carry Out his Duties as Board Treasurer**

Sometime in late August or early September 2016, Mr. Baird met with Susan Turner, MCA's Business Manager, to go over his role as Treasurer. She spent several hours with him going through the school's finances and reports; providing him with documents and showing him how to access the school's google drive. Mr. Baird found her assistance helpful.

To help him with the preparation of his first Treasurer's Report (the August 27, 2016, Minutes shows that he had not yet submitted any report) on Thursday morning, September 29, 2016, Mr. Baird emailed Ms. Turner concerning questions he had in follow up to his review of MCA's August financials. He noted, in connection with the fourteen questions he provided to her for review, that it would be helpful if she could respond by Monday evening, October 3, 2016, if possible. He added: "If this puts an undue reporting burden on you, please let me know."

Mr. Baird asked Ms. Turner, for example, "what is the employee reimbursement policy? Who approves? Can I see expense report for July and August?" He wanted an explanation of Amazon gift card purchases and how to understand certain purchases. He asked, "on 8/31, we transferred \$20k from FEFP into the Donations account. Why?" He also asked for explanations on several transactions such as "who is Curran Taylor and what is check #2345 in the amount of \$11,685 for?" And "what is the \$469k deposit from Doug Schuman on 8/5 for?" (See, the September 29, 2016, email communications between J. Baird and S. Turner).

Ms. Turner expressed her concern with the scope of Mr. Baird's request to Mr. Hull. Shortly after 10:00 a.m. that morning she emailed Mr. Hull whether it was acceptable to provide Mr. Baird the Amazon gift card documentation so that he would see that "we're tracking it and not open to theft?" Mr. Hull promptly replied "of course." (See, the September 29, 2016 email between S. Turner and D. Hull).

Shortly, thereafter, Mr. Hull contacted Board Member Lichter that Mr. Baird's requests were extensive and impacting his staff's time. Subsequent to their conversation, Mrs. Lichter emailed Mr. Baird at 10:58 a.m. with the subject line reading "Treasurer's Role." In her email, she essentially informed Mr. Baird that he needed to back off and inferred that as a new treasurer his actions were probably a function of not really understanding what his role was. She wrote: "I spoke with Mr. Hull this morning about some questions you had for Ms. Turner. I understand that you are still in the on-boarding process and learning, but I think those questions should be asked during an oversight committee meeting."

According to Ms. Lichter, Dr. Carpenter had advised that the board should "keep any eye on things and looking for anything irregular, not questioning every single expense." She then informed her fellow Board Member as follows: "Ms. Turner has a big job and I do not want to add anymore to her plate." In essence, she would make herself available at finance oversight meetings "to answer any questions or concerns...If you have any questions, please let me know." (See, September 29, 2016, email from K. Lichter to J. Baird sent at 10:58 a.m.). At 12:55 p.m., a surprised Mr. Baird responded to Ms. Lichter as follows:

I didn't think any of the questions I had were inappropriate, and I certainly wasn't questioning every single expense. I'm not sure that a committee meeting is the right forum to ask some of those questions in any case. Regardless, I have a treasurer's report to prepare for Tuesday, and that report needs to include a statement that says "I found no irregularities". There may be some disagreement about what questions are appropriate and which are not, but at the end of the day I feel that I need answers to a lot (not all) of those questions before I can legitimately say "I have examined the bank statements and the financial reports and found no irregularities."

(See, September 29, 2016, email from J. Baird to K. Lichter, sent at 12:55 p.m.).

Mr. Baird added that he thought he had acted appropriately and had received Mr. Hull's permission to engage Ms. Turner and was mindful of her time commitments. He felt giving her a list of questions at one time rather than calling her when questions arose was the most efficient way to minimize the time to complete the work involved. It should be noted that about an hour prior to writing Ms. Lichter, Ms. Turner sent Mr. Baird the supporting documents concerning the Amazon gift cards with accompanying explanatory information.

Mr. Baird received no further documents from Ms. Turner and Mr. Hull until after the October 4, 2016, Board Meeting. As a consequence, on October 3, 2016, Mr. Baird uploaded to

the google drive his Treasurer's Report for October 4, 2016, that he considered incomplete and informed the Board accordingly. His Report listed those account balances as of August 31, 2016, that he received and verified. He then noted:

I have been prevented from completing my examination of the financial and bank statements for August 2016 due to management's failure to provide pertinent information I have requested. I will complete my investigation upon receipt of this information.

(See, October 4, 2016, Treasurer's Report to the MCA Board signed by Mr. Baird).

At the October 4, 2016, Board Meeting, Mr. Baird expressed his concern with not being provided the necessary documentation to complete his work. Mr. Hull countered that Mr. Baird was adding undue burden to his staff. Ms. Miller supported Mr. Hull's concerns. Mr. Donald's questioned why Mr. Baird was not being appropriately assisted. He noted that such requests were not unfounded and that the time needed to help him with his work would not affect instructional time. Ms. Lichter also supported Mr. Hull's concerns about adding to Ms. Turner's workload. She did not publicly disclose her September 29, 2016, email to Mr. Baird acknowledging that she had spoken with Mr. Hull and had informed Mr. Baird to back away and to bring his concerns to the Financial Oversight Committee when Ms. Turner could be available to respond to questions. No one at the meeting discussed when the Committee would commence its meetings. And no one at the meeting discussed what the role of the Treasurer would be and what would constitute reasonable requests for information. Instead, Ms. Lichter asked Mr. Baird and Mr. Hull to meet together to resolve the issues in moving forward. In the Minutes of the October 4, 2016, Board Meeting, under the report of the Treasurer, it was noted that "issues with regard to contacting staff were discussed and resolved." This representation was not accurate.

After the Board Meeting, Mr. Baird emailed Mr. Hull at 9:17 p.m. (October 4, 2016). He informed him that "the last thing I want to do is increase Ms. Turner's workload. I know you both work very hard and put in many more hours than most of us realize." He added that as requested, he will schedule a meeting with Ms. Turner to go over the questions. Mr. Baird concluded with the following request of his own:

Before I do so, I wonder if you would mind sending me the information she already has on hand. You mentioned in tonight's meeting that she has already put three hours into answering my questions. I would like you to explain to me why all of the work she has completed so far was not sent to me. In the spirit of not taking up any more of her time than is absolutely necessary, it would be beneficial to have that at the very least. In this way, our meeting at the school should be short and sweet.

(See, September 29, 2016, email from J. Baird to D. Hull).

On October 5, 2016, at 7:07 a.m., Mr. Hull responded to Mr. Baird's email stating: "After giving it some thought, I agree with you that this request for information should be done by email. Your idea of having it in a written record is a good one." He advised that Ms. Turner



will make the request a top priority of hers and will “email the answers by the end of the this week...” Mr. Hull then stated the following:

There is no explanation for 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.

Mr. Baird replied to Mr. Hull's email at 8:32 a.m. thanking him for his assistance. He noted that he would be “happy to prioritize those questions for you in order to minimize the disruption to your daily operations... I will look for a response from Mrs. Turner later this week.” At 10:37 a.m., Mrs. Turner emailed Mr. Baird with the responses to his questions. (See, September 26, 2016, email exchange between J. Baird and D. Hull).

Shortly, after Ms. Turner sent him the responses, Mr. Baird emailed Mr. Hull at 10:42 a.m. noting the following: “I'm afraid we've gotten off on the wrong foot. I would like to meet with you in person to talk things over. Can you let me know your next availability?”

Mr. Hull replied shortly thereafter (at 10:49 a.m.). He stated that he thought that they “were going to do that this week, but last night and this morning should have resolved many of your concerns.” He informed Mr. Baird how time consuming it all has been for him adding “we have done our best to get you the information you requested.” (See, October 5, 2016, email from D. Hull to J. Baird). Mr. Hull did not provide any dates or times he was available to meet. No meeting between the two men ever took place.

At the end of the day on October 5, 2016, (at 5:41 p.m.), Mr. Baird emailed Mr. Lichter attaching pages from Dr. Carpenter's Manual and specifically identifying those pages that addressed oversight policies that he thought Mr. Lichter might be interested in reading. (See, October 5, 2016, email from J. Baird to N. Lichter). The next day, at 9:48 a.m., in a lengthy email, Mr. Baird informed Mrs. Lichter that he was resigning from the Board. Mr. Baird informed her that he was concerned that Mr. Hull was “fighting every type of oversight. He does not want to be held accountable to the Board.” In Mr. Baird's view, “Dr. Carpenter stands for everything David does not want.” (See, October 6, 2016, email from J. Baird to K. Lichter. See, too, J. Baird's October 6, 2016, resignation letter).

That afternoon (at 2:03 p.m.), an upset Mr. Lichter emailed MCA Board Members and Mr. Hull. His concerns and observations are worth quoting:

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.*).

On Friday morning, October 7, 2016, Mr. Baird sent the Lichters a long email at their respective personal email addresses. He expressed his frustration with working with Mr. Hull; including his concern with the incomplete nature of the responses he received. He wrote:

I am sure that David will say he provided me with everything I asked for and gave me his full cooperation. Please review the attached pdf files which show some of the information he sent to me. The scanning job is sloppy and much important information is obscured from view. When I saw the way this information was presented to me, I was frustrated because I realized that I would have to go yet again to Susan and ask her to re-do some of the work. This would have only re-ignited the fire and made the situation worse. I also realized that I was going to have to go through this ridiculous exercise every month. This was a major contributing factor in my resignation.

In support of his claims, he attached some seven (7) pdf receipt areas for their review. (*See*, October 7, 2016, email from Mr. Baird to K. and N. Lichter and attachments).

Mrs. Lichter responded to Mr. Baird in the early afternoon as follows: “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.” She sent her response from her personal gmail account.

At the November 1, 2016, Board Meeting, Ms. Lichter recommended Mr. Longenecker as a new member of the Board to replace Mr. Baird. The Motion to Approve her recommendation passed. Mr. Longenecker also became the new Board Treasurer. (*See*, the

Minutes of the December 14, 2016 Board Meeting). Mr. Longenecker did not present his first Treasurer's Report until March 24, 2017, reflecting a more than five month hiatus between Treasurer's Reports being submitted. However, a review of the record shows two different sets of March 24, 2017, Minutes with different information on it; although in both Mr. Longenecker's report is noted. In this context, between March 24, 2017 – January 26, 2018, the record of Board Minutes show, no Treasurer's report was submitted. The next time one was submitted was at the April 20, 2018, Board Meeting. Thus, from Mr. Baird's resignation on October 6, 2016 – April 20, 2018, only two (2) Treasurer Reports had been submitted to the Board for review. In fact, one does not find one through the October 22, 2018 Board Meeting. Thus, only two Treasurer Reports to the Board were provided over a two year period. Treasurer Reports were submitted to the Board only for review and these were done via the google drive and not attached to either the respective meeting agendas or the respective approved Minutes during this period for public access and review in spite of references to them being attached to the Minutes. After the April 20, 2018, submission, MCA Meeting Minutes show that no further Treasurer Reports were submitted to the time of Mr. Baird's Complaint to inform the Board of financial matters.

### **C. Discussion and Applicable Law, Policy, and Charter Documents**

On July 11, 2016, the Board approved the dissolution of the Finance Committee over the objection of Board Member Donalds. While there was apparent discussion at the September 6, 2016, Board Meeting as to who would serve on a new Financial Oversight Committee, and the need to form such a Committee, what the duties and responsibilities of the Committee would be, beyond apparent quarterly meetings, was not presented. The previous Financial Committee met almost monthly and the Business Manager Ms. Turner, regularly attended and provided financial information to support it.

At the end of the day, the FOC never had members appointed to it nor did it ever meet. Rather than discussing whether the eight applicants were qualified to serve, and vote to approve qualified candidates so that FOC could at least commence its work, Board Members Miller and Lichter decided to stymie the process by claiming they needed to broaden the applicant pool to include non-parents. While the item was noted as an action item warranting a motion and vote, Board Member Lichter decided she would not bring it forward nor did she seek a motion to defer or table it until the next meeting. No effort was ever made thereafter to seek a broader applicant pool. Board Members Lichter and Miller did nothing to support it as a functioning committee; nor did Mr. Hull, Ms. Turner, or Ms. Marshall ever advise that an FOC was important to the school.

Board Members all admired the training, advice, and support of Dr. Carpenter. Dr. Carpenter had strongly recommended the need for a finance committee or financial oversight committee. In his Complaint, Mr. Baird discussed the critical importance of following Dr. Carpenter's advice. In a recent communication, Dr. Carpenter noted that except for the fact that he did not personally provide Mr. Baird with training, "Mr. Baird's representations of my remarks are substantially accurate." Dr. Carpenter's ideas were discussed by Mr. Baird at the October 4, 2016, meeting and affirmed by Mr. Donalds, but they were neither followed nor implemented.

In Ms. Lichter's September 26, 2016, email to Mr. Baird, after speaking with Mr. Hull, she directed him not to burden Ms. Turner further and stated that the information could be provided at a Financial Oversight Committee. But despite that assertion she never allowed it to reach fruition.

Equally significant, in MCA's 2012 Application to enter into a Charter Contract with the District, it set forth a detailed Organizational Plan under which is the section on governance (Section 9). The Application is incorporated by reference into the 2013-2017 Charter Contract with the District School Board and reincorporated by reference into the renewed 2017 Charter Contract.

In the Organizational Plan of the Application ( See, p. 60), there is to be constituted a Finance Committee and an Audit Committee under the authority of the Board. The duties and responsibilities of the Finance Committee are to include the following:

**Finance Committee:**

The Finance Committee shall assist the Governing Board in carrying out its budget and finance duties. At least one member of the Governing Board shall serve on the Finance Committee. The Business Manager shall be required to attend all Finance Committee meetings. Specifically, the Finance Committee shall:

- (1) Make recommendations to the Governing Board in the following areas:
  - (a) Financial planning, including reviews of the charter school's revenue and expenditure Projections
  - (b) Review of financial statements and periodic monitoring of revenues and expenses
  - (c) Annual budget preparation and oversight
  - (d) Procurement
- (2) Serve as an external monitoring committee on budget and other financial matters.

This work was undertaken until the Finance Committee was dissolved. As a side note, the claim by Board Member Lichter that Mr. Baird's request was burdensome to Ms. Turner, is inherently problematic. Ms. Turner had regularly assisted and met with the Finance Committee. Mr. Hull had informed Mr. Baird that Ms. Turner had put in three hours of time in gathering information prior to October 5, 2016. Nevertheless, it is reasonable to assume that she had previously provided a minimum of three hours monthly to work with the committee and sit in on the meetings. At the October 4, 2016, Board Meeting, both Mr. Baird and Mr. Donalds' questioned how the requests were unreasonable and excessively burdensome on her time.

Similarly, under the Application (and the Charter), an Audit Committee was to be formed. In Section 9 of the Application, the duties, responsibilities, and membership were to include the following:

**Audit Committee:**

The Audit Committee shall consist of two Governing Board members, one volunteer member who is a parent of a student attending the charter school, and one volunteer member who has



experience in accounting or financial matters. The Principal and Business Manager shall serve as ex-officio, non-voting members of the committee. The Audit Committee shall:

- (1) Evaluate the request for proposal for annual financial audit services
- (2) Recommend the selection of the financial auditor
- (3) Attend the entrance and exit conferences for annual and special audits
- (4) Meet with external financial auditors at least monthly after audit field work begins until the conclusion of the audit
- (5) Be accessible to the external financial auditors as requested to facilitate communication with the Governing Board and the Principal
- (6) Track and report progress on the status of the most recent audit findings and advise the governing on policy changes needed to address audit findings
- (7) Provide other advice and assistance as requested by the Governing Board; and
- (8) Be subject to the same requirements regarding the confidentiality of audit information as those imposed upon the local school board by the Audit Act and rules of the state auditor.

At the December 14, 2016, Board Meeting, the Board approved the creations of an Audit Committee. The Board did not follow the membership criteria set forth above. Mr. Marshall was not a volunteer parent of student attending MCA. He was one of the school's executive employees. There was no volunteer member, who had experience in accounting or financial matters, who was asked to serve. The Audit Committee never met. Like the FOC, it was an empty shell.

Accordingly, given the dissolution of the original Finance Committee, and the fact that the Financial Oversight and Audit Committees were shell committees that never met or oversaw anything, the Board breached the terms of its own Application and thus has been in continual breach of the Charter Contract since the dissolution of the Finance Committee in July 2016. In sum, the Board has breached its financial and auditing oversight obligations under the Contract.

Moreover, it was not appropriate for Ms. Lichter to write to Mr. Baird on September 26, 2016, subsequent to listening to Mr. Hull's complaint. In essence, she told him he needed more training, needed to back away from requesting the information he felt appropriate to submit a Treasurer's Report because she "did not want to add anymore to her plate," and his requested information could be taken up by a yet to be formed Financial Oversight Committee. She thus, undermined a fellow Board Member. Mr. Baird responded to her incredulously trying to understand what was inappropriate about what he was doing and trying to understand why she was directing him in the manner that she did.

Of equal concern was the fact that Board Member Lichter never informed the Board and the public at the October 4, 2016, Board Meeting nor any time thereafter, of the email to Mr. Baird, its contents, the response her email invited or Mr. Hull's complaining to her that led to her emailing Mr. Baird. The email exchange involved both Board and operational matters for which it was foreseeable that they would come before the Board for review, discussion, and action. She also had the opportunity to bring the exchange forward to inform the public of it and cure the problem publicly. In this context, at the May 9, 2016, Board Meeting, for example, Board Member Lane properly read an email aloud in an effort to cure a Sunshine Law violation. (See,

the May 9, 2016, Board Meeting Minutes). Yet, Board Member Lichter chose not to follow Mr. Lane's example and publicly disclose the communication. As a consequence, it is submitted that Ms. Lichter's actions created a meeting outside of the Sunshine in violation of the Florida's Sunshine Law, drawing Mr. Baird into the web of her actions by inviting his response. As the Florida Supreme Court noted in Woods v. Marsden, 442 So.2d 934, 938 (Fla. 1983), "the Sunshine Law was enacted in the public interest to protect the public from closed door politics..." See, too, Town of Palm Beach v. Grandison, 296 So.2d 474 (Fla. 1974), Sarasota Citizens v. Responsible Government v. City of Sarasota, 48 So.3d 755 (Fla. 2010), and Tolar v. School Board of Liberty County, 398 So.2d 427 (Fla. 1981).

With the foregoing in mind, in MCA's Policies Manual (See, the volume dated April 26, 2018, and its updated version dated January 23, 2019), there is a specific section identified as "Board Duties and Responsibilities." Item 3 provides that "an individual Board member should never....become involved in specific management issues unless directed by the board." (See, p.5 in both volumes) Item 9 provides that "a Board member who learns of a problem should bring that attention to the Board. A Board member should not attempt to deal with such a situation on an individual basis." (Id., at 5) When Mr. Hull complained to Board Member Ms. Lichter about the burdensomeness of Mr. Baird's requests, she should have brought it to the Board to discuss and not have written to Mr. Baird to tell him how she felt he should handle his duties as a Board Treasurer.

When Ms. Lichter learned from Mr. Baird about his concerns with the way Mr. Hull had handled the provision of financial information, it was not appropriate for Ms. Lichter to inform him that she would meet with Mr. Hull and Ms. Turner "since it looks like I will take over these responsibilities." Whether or not Ms. Lichter ever, in fact, took over such responsibilities is not the issue. She had a duty to discuss the matter publicly with the Board and had no authority to intervene and act unilaterally on management business. (If she did take them over, she exceeded her authority). Her actions violated items 3 and 9 of the Board's policy pertaining to its duties and responsibilities. Finally, in the Governance section of the Application, it is provided that "the Governing Board will not be involved in the daily operations of the school...." (See, p. 60) Board Member Ms. Lichter apparently believed this did not apply to her when she sent her September 29 and October 7, 2016, emails to Mr. Baird.

The concerns raised by Mr. Baird in his Complaint are well-founded.

## **V. Board Governance and Oversight:**

### **A)(1) Overview of Central Allegations and Concerns Pertaining to Board Governance**

In his Complaint, Mr. Baird alleged that he was concerned that there may have been multiple Sunshine violations by the Board. He alleged that often Board Members Lichter and Ms. Miller came to Board meetings knowing how the other would vote. He expressed his concern that given the close personal relationship Mr. Hull had with these Board Members, in all likelihood, he had served as a liaison between them. He detailed a conversation he had with Mr. Hull in which Mr. Hull allegedly wanted to keep as much information from the public as possible so that MCA's management practices and Board activities would not be presented.

Mr. Baird contended that under Mr. Hull's influence, Board President Ms. Lichter changed the format of the meetings. Reports were not included in the Minutes. Minutes contained very little information and there were multiple inaccuracies in the Minutes themselves. In his view, such changes could be traced to the September 6, 2016, Meeting. Prior to then, reports to and by the Board, along with the content of meeting Minutes, were far more extensive and complete.

A)(2) Factual Record Concerning Board Governance and Oversight

a. Board Meetings, Minutes, and Agendas

While the Board met on a fairly regular basis, including the calling of multiple Special Meetings, on multiple occasions, meetings were held and, business transacted, without a quorum. These may be tracked as follows:

1. January 26, 2018, the only person present was Board Member Ms. Lichter. Board Members Miller and Longenecker called in and appeared by phone.
2. April 26, 2018, Board Members Lichter and Miller called in and appeared by phone. Board Member Longenecker was absent. Staff members Marshall and Turner were at the meeting.
3. June 30, 2018, Board Member Miller was present, Board Member Lichter called in and appeared by phone, and Board Member Longenecker was absent.
4. December 14, 2018, Board Member Miller was present, Board Member Lichter called in and appeared by phone, and Board Member Longenecker was absent.

In the Minutes of each of these meetings, it is noted: "A quorum being present, the meeting was called to order" and business was conducted. In this regard, during these meetings, business matters discussed and approved included the following: (a) approval of the allocation of Local Capital Improvement Revenue (LCIR); (b) approval of paying off long obligations; (c) approvals of multiple policies; (d) the Fiscal Year 2019 budget; (e) approval of a new Board Member (Mr. Bolduc); (f) approval of fence permit costs; (g) consent agenda adoptions; and (h) discussion of security issues.

Moreover, from January 2014 to July 2016, the record shows that Minutes for Board and Finance Committee Meeting contained descriptive narratives of the different portions of the meetings to enable the public to understand the proceedings, including Board discussion during the Board Comments portion of a given meeting. After August 2016, this changed dramatically. There is very limited, often with no descriptive narrative to apprise a reader of what transpired at a given meeting. In fact, unlike the pre-July 2016 time period, in the post July 2016 time period one sees, for example, under Board Comments, frequently no comments or limited ones such as "The Board members had a brief discussion regarding reports and oversight" (see, the October 4,

2016 meeting), which would not inform the public about the nature and content of the discussion. Thus, no one would know what Board Member comments were on this issue.

When the decision was made to alter the presentation of Minutes is not known. One finds no Board Meeting discussion about reducing Board Meeting Minutes descriptions concerning what had transpired at any given meeting. It appears that this decision was made internally. Moreover, one does not find access to documents in either the Agendas or the Minutes. There is no link, for example, that a member of the public could click on for review.

On October 6, 2017, a concerned member of the MCA community wrote to Board Member Miller seeking clarification of the following:

There are several minutes form meetings this year that make a note to attachments to minutes. For example, several meeting notes state that the president's report or principal's report is "attached" and I cannot find any further links or attachments for these notes/reports. Where would one find these reports? Are they not part of the public record?

Ms. Miller sent the email to Ms. Turner. Ms. Turner then forward the email to Mr. Marshall. Mr. Marshall responded that the documents used at the meetings were part of the public record. He added that "we do not upload the entire public record." Mr. Marshall then further clarified that while Agendas and Minutes are posted on the website, "we do not post attachments because the effort to process them would add too much extra work for staff taking away their time to deal with student issues." (See, the chain of email communications commencing on October 6, 2017, at 9:13 a.m. from H. Jenkins to L. Miller, to S. Turner, to C. Marshall). He noted that Minutes do not include attachments. Yet, he does not explain why in several of the Meeting Minutes one sees reference to, for example, "Report Attached" (See, for example, the Minutes to the August 2, 2016, and March 24, 2017, Board Meetings). Such references continued after Mr. Marshall's email. (See, the Minutes to the April 20, 2018, September 13, 2018, and the October 22, 2018, Board Meetings). These multiple attachments cannot be retrieved from either the Agendas or the Minutes.

Mr. Marshall concluded his email by noting that under the Sunshine Manual, an extract from which he attached, Minutes are defined as "a brief summary" and do not include attachments. In the extract he attached, the Manual provides, in pertinent part the following: "The term "Minutes" as used in s. 286.011, F.S., contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting; accordingly a verbatim transcript is not required." (Id.) He did not address the fact that a review of the Minutes from the post July 2016 time period show that they often lacked summaries, notes, or memorandum of the multiple events that typically occur during a Board Meeting.

In his email, Mr. Marshall denotes MCA's practice of not attaching and uploading documents to the multiple Meeting Agendas and/or Minutes. Thus, for example, one sees the Consent Agenda routinely passed without one knowing what documents pertaining to MCA business are being consented to. In addition, one sees on multiple occasions that policies are



placed and approved on the Consent Agenda without them being attached or indicating that the consent involves the first or second reading of the given policy. As will later be seen, often second readings of policies are approved on the Consent Agenda, where, by definition, there is no public second reading.

In several instances, the Minutes themselves are contradictory and confusing to the reader. For example, one finds two sets of Minutes for the August 2, 2016, Board Meeting. The first set shows Board Members Lichter, Donalds, and Miller present and adopting Minutes for the July 11, 2016, Board Meeting on the consent agenda. The second set has Board Members Lichter, Longenecker, and Miller present. Mr. Longenecker was, of course, not on the Board at that time. The August 2, 2016, meeting was set for 5:30 p.m. but the call to order of second notes 9:00 a.m. The second set shows motion and approval of the November 11, 2016, and December 9, 2016, Board Meeting Minutes along with Policy 5.0. It notes that Mr. Longenecker submitted no report but met with MCA's Business Manager Ms. Turner. There were three motions identified (all moved by Board Member Longenecker and seconded by Board Member Lichter): (a) Approve IRS form 5500; (2) Approve school recognition funds; and (3) Approve the 2017-2018 performance salary schedule.

Given the approval of the December 9, 2016, Meeting Minutes, one assumes these matters were addressed in 2017. If one reviews the January 12, 2017, Minutes, there is no reference to the November and December Minutes or Policy 5.0 under the Consent Agenda. Policy 5.0 is noted under New Business as a First Read Policy Update. There is no reference to the above-noted three other motions; nor are the motion, Minutes, or Policy 5.0 found at the Special Meeting on January 25, 2017. One cannot find reference to them in the Minutes of the March 24, 2017, Meeting as well. One finds reference to forms 5500-8955SSAA voted on at the October 6, 2017, meeting. This item was moved by Ms. Miller and seconded by Mr. Longenecker.

In the Minutes, for the March 24, 2017, meeting, the March 24, 2017, Minutes are approved on the Consent Agenda (which would not be possible). Policy S.E. 4.0 (Attendance) is also voted on and approved on Consent. Yet, the Minutes also show a Board Member had brought it up under New Business without any indication that it was moved to New Business for discussion, and there is no indication that it was then voted on.

And, at the August 25, 2017, Meeting, one sees "Motion To Adopt Agenda" moved by Board Member Miller and seconded by Board Member Lichter. But if one turns the page, one sees at that meeting under Policy Updates, "Motion To Adopt Agenda", moved by Board Member Longenecker and seconded by Board Member Miller. If there were to be policy updates, and/or discussion related to them, they are not referenced nor can one find links to them either on the Agenda or the Minutes.

One more will be referenced to help one see the extent of the confusion. The Minutes attached to the April 26, 2018, Agenda are dated January 26, 2018. A comparison of the first set of Minutes for the January 26, 2018, meeting and the second set linked to the April 26, 2018, Agenda. The items listed in the first are not contained with the second including who made the respective motions. Both note the Meeting was set for 10:00 a.m., but the Call to Order for the

second set is 8:30 a.m. The Policy items on the April 26, 2018, Agenda that are to be placed on the Consent Agenda do not appear in the Minutes. While there is reference to Policy Updates on the Agenda, in the Minutes, the notation is “none”. The only possible linkage between the Agenda and the Minutes is that the Minutes reference amending the Agenda to include an action item under New Business with respect to the Collier Marshall Program. This item was taken up and approved by vote. The Minutes show a summary description of this meeting event.

#### School Advisory Council

In MCA’s 2012 Application, which, as previously noted, is incorporated by reference into its Charter Agreements with the District School Board of Collier County, a School Advisory Council (“the Council”) was specifically designated to be constituted “to assist the School Principal with school-based decision-making and to involve parents in their children’s education.” To this end, membership on the council was to “reflect an equitable balance between school employees and parents and community members” with the hope that one community member would come from the business community. The duties and responsibilities of the Council were to be as follows:

- (1) Work with the school Principal and give advice, consistent with state and charter school rules and policies, on policies relating to instructional issues and curricula and on the school’s budgets.
- (2) Where appropriate, coordinate with any existing work force development boards or vocational education advisory councils to connect students and school academic programs to business resources and opportunities.
- (3) Serve as the champion for students in building community support for schools and encouraging greater community participation in the public schools.
- (4) Hear grievances from parents according to the Parent Grievance Policy.
- (5) Assist the Governing Board in filling Board vacancies. (See, 2012 Application at 63).

A review of the record shows that from early 2014 – April 2016, there was a Parent/Teacher Committee association that met regularly and frequently reported to the board through its leadership its work and activities. It is referred to in the Board Meeting Minutes as the “PTCA”. Its work primarily involved fundraising for MCA. However, at the July 25, 2015, Board Meeting its role was discussed with an indication that its duties and responsibilities would approximate those of a School Advisory Council. During discussion, it was expressed the PTCA was frustrated with the Board’s lack of communication of its own goals to PTCA. Board Member Donalds expressed his view that the Board needed to better identify and define its goals to assist PTCA in its fundraising objectives. He advised that moving forward there was a need for a professional development officer who would be responsible for overseeing MCA fundraising plans. (See, Minutes to the July 27, 2015, Board Meeting).

Board Member Lichter noted that it was Hillsdale College's recommendation that all communication go through the MCA's Governing Board. To this end, she expressed her belief that "PTCA is to support Principal Hull and teachers." She added that the Board "should have fundraising committee to formulate strategic fundraising goals which will incorporate the principal. Ms. Lichter's comments were consistent with the goal of establishing standing committees as set forth in the 2012 Application. It is provided therein that "the Governing Board is also contemplating creating other standing committees...It is anticipated that committees for fundraising, policy development, principal evaluations and an outreach committee will be created in addition to other standing or ad hoc committees." (See, 2012 Application, at 63).

In this context, the Minutes note that Mr. Lichter advised that the "PTCA reports to the principal." Ms. Wilson, one of the leaders of the PTCA, had added that the PTCA had "received non-profit status to be able to help the principal for daily operational expenses." (See, Minutes to the July 27, 2015, Board Meeting).

Nevertheless, at the April 11, 2016, Board Meeting, Board Member Donalds informed the Board that he had learned that the PTCA had decided to dissolve its 501C3 status effective at the end of the school year (2015 – 2016). At the May 9, 2016, Board Meeting, under the "Community Comments" section, the Board was also informed that "PTCA funds raised in the name of Mason Classical Academy will be donated to the school."

Subsequent to May 9, 2016, one does not hear about or hear from PTCA or any equivalent organization again. Moreover, one does not see in any of the Board Meeting Minutes subsequent to the PTCA's dissolution, whether under Reports or Officers and Standing Committees, Unfinished and New Minutes, or Board Comments any discussion or information pertaining to the creation of a School Advisory Council standing committee, membership on that committee, or the need for such a committee, (or its equivalent) to undertake the multiple duties and responsibilities as set forth in MCA's Application.

Finally, at the November 2, 2018, Board Meeting there is a unanimous vote to approve "Third Option for Contracts Review, Five Year Extension of Contract, and Third Option for Salary Review Effective November 16, 2018. (See, November 2, 2018, Board Meeting Minutes). Previously at the May 29, 2018, Board Meeting, a Salary Schedule and bonus options were unanimously approved by the Board. (See, May 29, 2018, Board Meeting Minutes). And, at what is apparently the March 31, 2017, Board Meeting (apparently because the Minutes denoting the issue are dated March 24, 2017), there is unanimous approval for the "Salary Increase and Bonus as Part of the Principal's Contract." One could provide additional examples.

What is the point of this? On April 13, 2014, the Board approved Policy B 17.0 Management Compensation Review Policy. The Policy provides that before any compensation approval, the issues must be reviewed by "the Employment Committee." Its duties and responsibilities involve obtaining research and information "to make a recommendation to the full board for the compensation (salary and benefits) of the Principal (and other highly compensated employees or consultants) based on a review of comparability data." The Policy lays out what should be included in the data and other matters. It concludes with "no member of the Employment Committee will be a staff member, the relative of a staff member, or have any

relationship with staff that could create a conflict of interest.” There is no evidence in the record that an Employment Committee was ever set up, members chosen, data gathered, and so on. The Board seems to have ignored its own policy.

B. Discussion and Applicable Law and Policies

The Florida Attorney General has defined the term “quorum” as

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

(See, AGO 2010-340).

In AGO 2010-34, the Attorney General addressed the issue of whether a City Commission Board could adopt an ordinance that stated that the requirements of creating a quorum could be met if members appeared via electronic means. The Attorney General answered the question in the negative. He opined that Commission Board Members who appeared by electronic means could not be counted in establishing a quorum.

Similarly, Attorney General Opinion 2003-41, addressed the issue of whether only one could participate in meeting by phone. Participation was permissible under extraordinary circumstance and only “when a quorum of the board members is physically present.” The Attorney General whether a scheduling conflict rose to the level of an extraordinary circumstance was a determination left to the “good judgment of the board.” (See, too, AGO 2002-82, in which the Attorney General concluded that physically disabled members of a public board/ committee who could not attend the meeting in person could attend by electronic means “as long as a quorum of the members of the board is physically present at the meeting site”). The Attorney General reemphasized the physical presence requirement a public meeting in her Informal Legal Opinion of July 20, 2016.

If a quorum is not physically present, official business and official action (through vote, for example) cannot be undertaken. Indeed, a quorum must be physically present “to legally transact business.” (See, AGO 2009-56). This is also noted in Robert’s Rules of Order, 11<sup>th</sup> edition 2013, at §40, p. 347).

The renewed 2017 Charter between MCA and the District provides in Section 9: Governance, the following: “A majority of the voting members of the Governing Board shall constitute a quorum. A majority of those members of the Governing Board present shall be necessary to act.” In Board Policy 3.0 (“Board Meetings”), it is specifically noted that “all motions shall require for adoption a majority vote of those present and voting...” (See, subsection on “Voting” Policies Manual 26, April 2018, at 13, and the January 23, 2019 updated Manual at 13). Moreover, consistent with the above-referenced Attorney General Opinions, in



the section on Voting By Proxy, the following is provided: “Members who are participating electronically may not be considered in the count to determine whether a quorum has been met.” (Emphasis added). (Id., both editions of the policies manuals, at 14).

At four separate meetings, MCA’s Governing Board held and conducted business at which there was no quorum physically present at the school. Such meetings were thus held wrongfully and impermissibly in violation of law, MCA policy, and the 2017 Charter which was in effect when such actions were illegally undertaken.

Accordingly, it is submitted that all official actions and business undertaken at the January 26, 2018, April 26, 2018, June 30, 2018, and December 14, 2018, Board Meetings are null and void. The June 30, 2018, Meeting is of considerable concern. This meeting was called to approve MCA’s annual budget for fiscal year 2019. The meeting was held at 5:00 p.m. on a Saturday and undertaken without a quorum. (Board Member Longenecker was absent, Board Member Lichter appeared by phone, and Board Member Miller was physically present). The meeting was called to order at 5:03 p.m. and ended nine minutes later at 5:12 p.m. During the nine minutes, Ms. Turner introduced the budget and Board Members Miller and Lichter moved and voted to approve it; hardly time to review and discuss something as important as a school’s annual budget. There is no discussion noted in the Meeting Minutes.

Perhaps sensing or knowing something was wrong, at the November 30, 2018, Board Meeting, the Board moved and voted to ratify the FY 2019 budget. (See, Minutes of the November 30, 2018, Board Meeting). Both Board Members Lichter and Miller were physically present at the meeting. Mr. Longenecker was again absent. Thus, at both meetings involving the budget, the Treasurer was absent. There is no discussion as to why ratification of the budget was determined to be needed. There was certainly no effort to take up and move to cure the June 30, 2018, meeting events. Accordingly, the Board in essence voted in November to ratify an illegal vote taken in June which is anything but a cure.

Equally of concern is that two weeks later at the December 14, 2018, the Board wrongfully voted to approve Mr. Bolduc as a new Board Member. It is submitted that Mr. Bolduc’s appointment was null and void ab initio. He has thus wrongfully served on the Board since his first meeting on January 23, 2019. Accordingly, all his votes from that day forward, and until such time as a cure is effectuated, must also be deemed null and void.

Given the Board’s wrongful action to approve of Mr. Bolduc (which approval is certainly not his fault), the Board in essence has operated, since December 2018, as a two person Board in material violation of MCA’s Charter with the District which provides that the “management of the affairs of the school shall be vested in the Governing Board with a minimum of 3 members.”

#### Board Membership

In the Board’s bylaws, under the heading “Election Process”, the following is provided: “The Directors of Mason Classical Academy shall be elected annually by the Board of Directors at an annual meeting of the Board”. (See, both Policy Manuals, noted above, at p. 3 respectively). In Policy B 3.0, under “Annual Meetings”, it is provided that “the annual meeting

of the Board of Directors shall be held in July of each year. At the annual meeting new Board Members will be elected.” (Id., at 10).

In this connection, at the Board’s October 3, 2015, Workshop, which was devoted to MCA’s Strategic Plan, the Minutes note that the current term of a Board Member is one year with no term limit. A review of the Board’s Meeting Minutes for the months of July or August, during the 2015-2018 time period disclose no annual/organizational meeting to elect Board Member and/or officers. New members were approved when there was a resignation from the Board. Thus, for example, Mr. Baird replaced Mr. Lane as Treasurer and Mr. Longenecker replaced Mr. Baird as Treasurer and later Mr. Bolduc was approved to replace Mr. Longenecker as Treasurer. However, when Mr. Donalds left after the November 1, 2016, Board Meeting, no motion was made to fill his seat with an appropriate candidate thereby reducing the number of Board Members from 4 to 3. (In fact, there is evidence that there was a period of time the Board had 5 members). Board Members Lichter and Miller have remained continually in place to the present as President and Secretary, respectively. The Board has thus disregarded its own By-laws and Policy in connection with the Board Member election/selection process.

#### Minutes and Agendas

In Attorney General Opinion 82-47 meeting minutes are defined to mean “a brief summary or series of brief notes or memoranda of a proceeding or transaction.” They are not expected to be a verbatim record of a board meeting. In essence, they are to serve as a record of the proceedings for the public to review and understand what has transpired. Robert’s Rules of Order, (11<sup>th</sup> edition, 2011) provide that the minutes should be a record of what was done at the meeting. The body of the Minutes should describe all main motions and the issues taken up, and the substance of committee and other significant reports. (Roberts, supra, at 468 – 471).

A review of the Meeting Minutes from July 2016 – 2019 show that except for a few Meetings such as the September 13, 2018 Board Meeting, the reporting of what was done at such meeting was either minimal or often not presented. The writing and approval of such Minutes reflects an unfortunate lack of concern for transparency for the public. Moreover, a review of MCA’s policy concerning Agendas, show a concern with the Board’s access to documents “accompanied by descriptive materials from the Principal or designee...” (See, Policy B 3.0, under Agendas at pp. 11-12 in both manuals noted above). Such documents and descriptive materials are not made accessible to the public for review.

With the foregoing in mind, the concerns raised by Mr. Baird in his Complaint are well-founded. In this context, one item connected to his Complaint needs to be addressed. There is no evidence found to substantiate the claim or belief that Mr. Hull has ever acted as a liaison between Board Members alleged in violation of Florida’s Sunshine Law. In the meeting with him, he acknowledged that as part of his work, he meets with individual Board Members as might be necessary. However, he has never brought to the attention of, nor shared with any given board member, information he has learned from another, nor has any Board Member ever asked to do so. One has found no evidence to dispute his statement. Thus, he will indeed be taken at his word.

## Governing Board Oversight of Policies

Board Policy B 2.0 provides that while “two (2) readings are not required by statute, the Board prefers two (2) readings so the adoption schedule must be planned to provide for two (2) readings. (Policy Manual, both editions, at 9). Both readings must be placed on the agenda for the appropriate Board Meeting or workshop.

Item 4 under First Reading in the Policy specifically provides the following: “All policies must be included as attachments to the Agenda item. Revised policies must be in the strike out, underlined (or bolded) version to indicate changes. Attachment will be uploaded to the MCA server for Board review”.

After the first reading, the Principal is responsible for placing the second reading policy items on the agenda for the next Board Meeting. Changes recommended by the Board during the first reading must be incorporated into the proposed policy, Item 5 of the Second Reading section, mirror images item 4 of the First Reading section.

While policy items are to be included as attachments to the agenda, they are only uploaded to the MCA server for Board review. They are not attached to the agenda for the public to review nor is there a link that would enable a person from the public to have access to the MCA server to read the proposed policy (whether at the first or second reading level).

A review of the record shows that many MCA policies never go through a second reading for the public to review or open discussion held by Board Members about such rule making for the school. Many are placed on the Consent Agenda and approved without Board review or discussion. Moreover, where there are multiple policies for second reading, they are, by definition, never individually identified when placed on Consent for vote. They are simply passed through collectively. Sometimes one simply finds as well a First Reading without any second reading identified thereafter. There are multiple examples of this practice as the following will show. For example, at the August 2, 2016, Board Meeting, Policies SE 20.1, SE 19.0, and SE 53.0 were present by Mr. Marshall for a First Reading. At the August 8, 2016, Special Meeting, all were placed on the Consent Agenda without a Second Reading with an individualized review and discussion followed by vote.

On January 12, 2017, Policy SE 19.0 which was passed on Consent at the August 8, 2016, Special Meeting, was brought forward and placed on Consent at the January 12, 2017, Meeting then moved to unfinished business so it could be modified which would have created a new First Reading. Nevertheless, the Board voted on it treating it as if it were Second Reading.

This pattern of placing First Reading policy items on the Consent Agenda can be found as well at the March 25, 2017, Board Meeting, as well as at the April 26, 2018, Board Meeting where policies are identified on the Agenda, but not in the Minutes of the Consent Agenda for that meeting which was wrongly dated January 26, 2018, as previously noted.

Further, two policies were taken up as a First Reading (AP 9.0 and SE 4.0), and a vote on Policy SE 57.0, which would indicate a Second Reading was undertaken, at the December 14,

2018, meeting when there was no quorum. Since the action are null and void, it would mean the First Readings presented later as voted on as a Second Reading would have to be withdrawn and SE 57.0 would have to be brought back again at meeting where a quorum is physically present and, therefore, like the others cannot constitute approved policy of MCA until these matters are cured.

It is clear that the Governing Board has used the Consent Agenda as a means to push policies through as a substitute for Second Readings. There is simply no way the public (including the MCA community) could comment under such circumstance. While the Board bears ultimate responsibility for such actions, one does not see Mr. Marshall or Mr. Hull as persons who are responsible for bringing proposed MCA policies forward to the Board, properly advising the Board procedurally and substantively in this area of review. In sum, the Board and the Administration suffer from a transparency problem. And as noted above, it has faulted in its duty to set up standing several committees as required under the Application; including the setting up of an Employment Committee as required under Board Policy. It has equally faulted in its oversight obligations including appropriate and careful policy review.

#### **VI. MCA Board and Administration Oversight: Grievances, and Parental and Student Concerns:**

A. The record shows a school with a strong instructional model valued and appreciated by most parents whose children attend MCA; including those parents who have taken their children out of the school to attend other schools. Parental concerns and criticism have been a function of actions (and non-actions) taken by the Administration and the Governing Board that they believe have shown a serious insensitivity to questions and concerns they have raised. These include criticism of parents as stakeholders, criticism of their children, uneven implementation of policy, arbitrariness in decision-making, discipline, and the experience that if they question the Administration in any way, by filing grievances or express disagreement, whether verbally or in writing they are seen and treated as being against the school, fringe-types who are really outsiders who do not belong at MCA.<sup>1</sup>

This does not overlook the reality of many other parents who have experienced the administration in positive ways and have expressed their support for it. And indeed, it does not overlook the positive efforts made by Mr. Hull and Mr. Whitehead in addressing parent questions, concerns, and conflict. As will be seen, this has created an unaddressed polarizing effect, which will be seen, has affected MCA's faculty who have been men and women of good will who have wanted to educate students to the best of their abilities in accordance with high academic standards.

<sup>1</sup>Several parents have expressed concern with the rather draconian nature of the pink slip disciplinary policy. Parents of students who were suspended for a certain number of pink slips must spend a day at the school with student. Student may not return if the parent does not attend. Parents have expressed concern that if they cannot give up work, the child is penalized and cannot return to school. This creates an anomalous situation of students losing instructional time because their parents cannot leave work and give up a whole day. Most recently, Dr. Thornburg has written extensively to administration and the Board about this issue in light of his child's discipline. Mr. Hull advised the undersigned he was trying now to address these issues on a case by case basis. He did not address the deeper question as to why a child must pay instructionally if the parent cannot meet the terms of the policy.



## B. Review of Specific Factual Issues

While there were parental concerns raised and expressed during the 2014-2015, school year, a serious set of events occurred at the beginning of the 2015-2016 school year that unfortunately continue to resonate to this day in their own way.

On September 15, 2015, Valerie Parker, an MCA parent with two children enrolled in the school, was informed that her kindergarten child was being unenrolled from school because of his alleged failure to comply with Policy SE 1.0 Personal Hygiene in which students must be “independent in toileting.” This arose out of some three accidents that occurred during the course of an approximate month period (August 17 – September 15, 2015).

On or about August 17, 2015, the child had apparently wet his pants in the bathroom. Ms. Parker wrote to the teacher, Mrs. Huck on August 18, 2015, thanking her for helping her child. She noted that she had “washed and sent the spare set of shorts, and had placed them in the child’s backpack.” Mrs. Huck responded with “no problem.” And she proceeded to inform her of the three reasons why she thought Ms. Parker’s child had the accident including “there was a line waiting before him; and he couldn’t manage to get his belt off.” She asked that he work on practicing taking his belt on and off. During the week of August 24, 2015, the child was out for several days for medical reasons. He was out again September 8 and 9 for similar reasons and for which he was on a medication regimen. Ms. Huck was informed of this in the email. Mrs. Parker emailed Ms. Huck accordingly on September 8 and 9, 2015. On September, she also emailed Ms. Barreto of her son’s illness and absence from school when Ms. Barreto informed her he was missing too much school and would need a doctor’s note. At 3:02 p.m. on September 9, 2015, in furtherance of Ms. Barreto’s request, Mrs. Parker emailed her stating “please note the dr faxed a letter for your records. This was done about an hour ago.”

On Friday, September 11, 2015, an accident occurred in which he soiled himself while in class. Traumatized, he touched himself in the lower back area to feel what it was and then removing his then soiled hand from his pants. He was taken to the bathroom and left there with another person until Mrs. Parker was called to come to school to clean him up. After cleaning her child up, recognizing how difficult the experience must have been for all, a distraught Mrs. Parker apologized to the teacher, and made a \$50 donation to the school for the cost of any cleaning supplies that were used in the clean-up process. (See, September 11, 2015, email communications to Ms. Huck and to the school). Mrs. Huck responded quite critically lecturing Mrs. Parker that her son should have known how to handle his toileting needs. She added that that for it was “not one gross and something a kindergarten teacher should rarely hand, but very unsanitary for us all...”

At 10:15 a.m. on Monday, September 14, 2015, Mrs. Huck emailed Mrs. Parker seeking to meet with her and Mr. Whitehead that day or the next to discuss her son’s “accidents at school.” Ms. Parker wrote back asking: “Was there an issue today which required an expedited meeting?” She informed her that the most recent accident “was an unexpected onset of an intestinal bug.” She advised she would be glad to meet to discuss. However, wanted her

husband to be present but he was away for the week. She offered the following Monday (September 21, 2015) to meet.

Ms. Huck then made it clear why she and Mr. Whitehead wanted to meet with her. At 3:36 p.m. she wrote: "The reasons for our scheduled meeting is to inform you of the enclosed policy and if there is another occurrence this week", her son "will be unenrolled at Mason Classical Academy...Let us know if you still want to meet on Monday." Mr. Whitehead was copied on the communication.

On September 15, 2015, another accident occurred in the bathroom just as the child was getting to the toilet itself. Mrs. Parker was called and she came to school to clean it up. She recalled Mr. Hull telling her that he expected her to clean it up; which she did. Once she had done so and was walking her child out of the bathroom to hallway, she was handed a copy of Policy SE 1.0, told her that her child was done at MCA and Mr. Whitehead escorted both of them out of the building.

On September 16, 2015, a separate event occurred apparently involving a second grade student, who also experienced an accident. Embarrassed, the child tried to flush his underwear down the toilet which got clogged in the process. The ensuing plumbing problem led the Administration to the decision to find out who the culprit was. The decision, was also made, without prior parental notification, to check the pants of multiple students to see who might not be wearing underwear. This investigation was spearheaded apparently by Mr. Whitehead. The student was identified, confronted, and apparently confessed to his actions.

On Wednesday, September 23, 2015, Mrs. Parker wrote a lengthy email to Mr. Whitehead expressing her concerns including the fact that she felt the medical issues, including the medical issues involved, were not taken seriously by the Administrative team. She then stated her concern about the other child and the fear and embarrassment that he must have felt. She concluded her remarks as follows:

While this is disturbing on so many levels, you must understand how these children have been made to feel. These are good, obedient children who just want to comply and obey the rules. You have to think on their level. When a teacher, a superior, someone of authority gives them directive, they want to comply – even if that means putting common sense aside to do so. We've taught them to listen, be respectfully and comply with what they are told...

While I have been advised by man concerned MCA parents to report these incidents to outlets outside of MCA, I support this school and want to go through the proper channels, extending courtesy that both my child and I were never given. I am calling on you to please make these things right. I care very much about this school. I want it to flourish and succeed. I was one of those parents involved from the beginning. My heart is here, even though my child was judged unfairly, far too harshly, and his expulsion was unjust. What is happening here

is very concerning. It must be addressed and remedied for both the mental and physical health of our children and for the good standing of the school.

Mr. Whitehead wrote her back that day acknowledging that he had read all of her concerns noting: "I will forward this on to all related personnel for further review." With respect to the bathroom incident that Mrs. Parker had noted toward the end of her email, he informed her of the following: "The child who caused the clog WAS NOT disciplined in any way for the unfortunate event. Any rumors stating that the child was disciplined by MCA are completely false."

Despite Mr. Whitehead's representation that he would send her email on for further review, she never heard from anyone at MCA. Pursuant to Board Policy, she prepared a detailed grievance letter that included much of what she had expressed to Mr. Whitehead. She sent her written grievance to MCA Board Members including Mr. Donalds and Mr. Mathias. Mrs. Parker never heard back from the Board and no inquiry was ever undertaken to address her concerns.

On October 3, 2015, Mrs. Parker then sent her grievance to Dr. Messer, the District's then Director of Charter Schools, for review. Dr. Messer informed her the District could not undertake a review and wanted to give MCA's Board a chance to do so. She also contacted the Charter School Office of the FDOE and received no response. Ultimately, Mrs. Parker concluded that she would receive no response to help her redress her concerns. As a consequence, after speaking with several other parents who were upset by the underwear incident and lack of transparency at MCA, she agreed to speak with the media to voice her concern. The story was picked up by NBC-2 News and the Naples Daily News ("NDN").

The response to the media reports was something Mrs. Parker could not have predicted. Mr. Whitehead, the School's Assistant Principal, who had promised to forward Mrs. Parker's concerns, now directed his energies by indirectly attacking her on social media. He began his post by discussing rumor spreading and gossip as essentially criminal "spread against a person or organization." Warming to his subject, he then extrapolated as follows: "When you kill a good reputation intentionally, wrongfully, and by stealth, you have in fact killed that person." He noted that persons who spread rumors are cowards. He then explicitly added the following message: "I would have no problem with facing anyone like that and terminating their lease on life." (Emphasis added).

Board Member Laura Miller read Mr. Whitehead's remarks and supported them. "Joe, I agree with you. It's imposing for me to believe that the parent who called for an interrogation of staff by DCF is a true patriot." She later added that founders of the school "would never dream of this kind of cowardly, destructive action without having good form to discuss their grievance with the teachers, administration, and then if need be the Board." It is clear, that Board Member Miller had not looked into the facts before commenting. Mrs. Parker had written to the teacher, written to Mr. Whitehead, and written to the Board. Mr. Whitehead never responded to Mrs. Miller's posting that he had received and reviewed Mrs. Parker's concerns and had promised to send them on to the appropriate persons. Other comments mocked the child and Mrs. Parker's



parenting skills including anonymous ones written under cover of “CCEA-Collier Citizens for Educational Achievement” that were particularly destructive in nature.

Board Member Lichter also weighed in on the social media posts. She commented on a pro-MCA statement by calling out Mrs. Parker by name as follows: “Thank you for your support. Perhaps you and others should personally let Mrs. Parker know how you feel.” Yet, neither she nor anyone else on the Board or Administration made any effort to investigate the matter or sit with Mrs. Parker to address her concerns. They never reviewed what the policy provided.

For whatever reason, Mrs. Lichter decided that she wanted to attack Mrs. Parker again almost three and a half years later in a series of emails sent to District School Board Members. She noted that she “was very surprised that not one of you asked me to send the report on Valerie Parker. This just proves that you have no interest in truth or hearing our side for your convenience. I have attached the report to this email. Your minds will be blown! If anyone should be investigated, it is this School Board.”

A review of the alleged report discloses a non-report; just a cobbling together of emails, newspaper, letters, and so on. A good portion involves comments involving the underwear incident which had nothing to do with the complaints raised by Mrs. Parker. Mrs. Lichter begins her email with a statement of false reporting guidelines and the criminal penalties related to them. She then proceeds to comment on an alleged DCF report and claim that she knew of a call from Mrs. Parker to DCF (Mrs. Parker never called DCF) and then proceeds to comment on it. How she came into possession of it, or who authorized it, she does not say. Why MCA never prepared or produced a report based on the September – October 2015 events, she also does not say nor does she say why no one acted on Mr. Whitehead’s promise to pass Mrs. Parker’s concerns along or why her written grievance was never addressed. Certainly, her report is silent on them. It appears her email was an attention-seeking device to get Board Members to respond to her.

Mrs. Lichter’s April 4, 2019, email was a springboard to a further set of attacks sent via email to the School Board on April 5, 2019. In one of them, she goes after Mrs. Parker and her child directly “The report I sent you did not include details regarding the 4<sup>th</sup> and final incident. Her child not only had an accident but he put feces matter all over the floor, the walls, the stall, the toilet, and the sink.” What Mrs. Lichter left out is that she had no personal knowledge of any of this. Her comments are a variant of the comments set forth in the anonymous CCEA Facebook post noted previously from November 2015.

Mrs. Lichter also sent a separate email, which is actually a photo, pertaining to Ms. Lucarelli’s campaign. Mrs. Parker is apparently in the picture. Mrs. Lichter has drawn a black circle around her face identifying her as “Valerie Parker”. Below is a small photo of Mrs. Lucarelli with a group of children in a classroom. Mrs. Lichter has drawn a black circle around the faces of two children with the notation “Valerie Parker’s children.” In the subject line of the email, Mrs. Lichter has written “CRIMINAL – No need for me to comment further.” The email address shows the email was sent from Mason Academy ([klichter@masonacademy.com](mailto:klichter@masonacademy.com)). The email warrants disclosure in its entirety.



From: Kelly Lichter [<mailto:klichter@masonacademy.com>]

Sent: Friday, April 5, 2019 10:22 AM

To: Westberry, Jory <[WestbeJo@collierschools.com](mailto:WestbeJo@collierschools.com)>; Lucarelli, Stephanie <[lucars@collierschools.com](mailto:lucars@collierschools.com)>; MITCHELL, JENNIFER <[mitchj3@collierschools.com](mailto:mitchj3@collierschools.com)>; Carter, Erick <[cartee1@collierschools.com](mailto:cartee1@collierschools.com)>; Terry, Roy <[TerryRo@collierschools.com](mailto:TerryRo@collierschools.com)>; Patton, Kamela <[patton@collierschools.com](mailto:patton@collierschools.com)>; Fishbane, Jon (Jonathan) <[fishbj@collierschools.com](mailto:fishbj@collierschools.com)>

Subject: CRIMINAL-No need for me to comment further

Valerie Parker

**STEPHANIE LUCARELLI**

**A MOTHER and A TEACHER**  
**REAL EXPERIENCE in OUR SCHOOLS**

**STEPHANIE LUCARELLI**  
**A MOTHER AND A TEACHER**

**ACCOUNTABILITY FOR ALL OF OUR SCHOOLS**  
As the parent of four Collier County public school children, I am a parent. I know the challenges that parents face and I want to help our schools. Collier County schools are doing a great job, but they need to be held accountable for the quality of education they provide.

**CUTTING STANDARDIZED TESTS**  
Nobody likes tests — neither parents, teachers, nor students. But a standardized test is a necessary tool to measure student achievement. However, too many schools are using them to punish teachers and students. We need to find a way to use them to help students learn, not to punish them.

**Valerie Parker's children**

**STEPHANIE LUCARELLI - BUILDING STRONG SCHOOLS FOR OUR KIDS' SUCCESS**

As if that were not enough, six day later, on April 11, 2019, Mrs. Lichter emailed Ms. Lucarelli directly and not copying anyone else on the email. She tauntingly wrote the following:

Stephanie:

I assume you are pretty shocked after reading the report, which is why you likely have not responded. Valerie was featured on your campaign materials.

It's amazing that you couldn't find anyone else to be part of your photo shoot. She convinced a lot of people that she was some victim. She does appear to be so genuine and sweet. You were fooled too. You are so blinded by your hatred and disdain for MCA that you did not care about the truth.

You aren't who you claim to be. You got away with the foreclosure situation and lied about it. How do people trust people like you and Valerie Parker???? I am in to all of you and what you are trying to do. It's criminal and despicable.

This email also was sent from Mason Academy. At the bottom of the email is the following notation: "this email is the property of Mason Classical Academy and to be used for official business only."

The Parker grievance and its multiple related issues was not the only grievance filed. Many of the parents who came forward did not file formal grievances even though they felt administrative staff did not address or answer their concerns. Others decided to file grievances with the Governing Board. The Minutes of the May 29, 2018, Board Meeting reflect the following:

Prior to the Principal Evaluation, Mrs. Zuluaga, parent of two MCA students, filed a grievance with the Board of Directors. The grievance will be investigated by the individual board members and response will be given at the next board meeting.

Mrs. Zuluaga had requested that the evaluation of Mr. Hull, scheduled for that meeting, be deferred until her grievance could be heard. Her request was denied and the Board voted unanimously in favor of Mr. Hull's evaluation.

Subsequent to the Board Meeting, Board Member Mrs. Lichter requested Mrs. Zuluaga respond to specific questions she had based on statements contained in the complaint. Mrs. Zuluaga responded to each question in considerable detail, recording them in blue, and emailing them to Mrs. Lichter on May 31, 2018.

The events at issue originated in an email her daughter, a senior at MCA, sent to Mr. Hull at 3:24 p.m. on February 27, 2018, that she wrote on behalf of the senior class and with the

senior class students' assent for her to do so. The email, cast in the form of a letter to Mr. Hull, began with an apology for "the senior skip day idea?" She noted that while it was a joke, she could appreciate how it might be seen by them as disrespectful. She noted that she deeply valued her teachers and did not intend on offending them. She then noted that what on the surface appeared to be "senioritis gone wrong, there is a much deeper reason for this feeling of apathy you have been seeing recently in my class." Ms. Zuluaga then tried to explain to him the feelings of exhaustion and concerns that she and her peers shared. She then explained her meaning in the following way:

The short explanation is simply that we're tired, and often times feel burnt out. The curriculum we're receiving at Mason is far more weighty than anything we are used to, and is often times overwhelming. Many of us are managing collegiate level classes alongside writing our thesis, which requires a lot of additional research to cover the holes we did not go over last year in our moral philosophy class. We look towards the weekend for a relief to our week filled with tests (sometimes more than one test in a single class), quizzes, homework, and our extracurriculars. We want to succeed, and we don't want to dread waking up in the morning, but sometimes the weight is too much, and we yearn for some kind of break.

She then added, on behalf of her classmates and herself, the following observations:

On top of this, oftentimes my classmates and I are overwhelmed by the immense pressure which comes with being the first graduating class. We are aware that being the school's first graduating class is exceptional and should be celebrated. We've been the "guinea pigs" for over 2 years now, and it is finally coming together towards something great. Yet we often feel as though we're being shown off, not for our own benefit, but for the schools. Applying to college is grueling. Especially since I applied regular decision to all my choices, and now, it's simply a waiting game which will ultimately determine my life for the next four years. So when I apply to a reach school, knowing very well my chances are slim but taking that leap of faith anyways, I don't always want it to be public. I understand we are your first graduating class and this information is beneficial to the school, but now, I want this information to be private until I am comfortable to disclose it. The pressure to bring the school acceptance letters, scholarship and grant numbers, and college application adds to the stress I already inflict on myself as I wait for acceptances. At the end of the day, it feels more like we're being set up to compete against our classmates for who can bring in the most money and acceptances, instead of being unified.

(See, the February 27, 2018, email from Ms. Zuluaga to D. Hull).

Ms. Zuluaga concluded as follows: "I do not want you to think any less of me or my classmates over this and I hope it can shed light on how we feel. We don't mean to be dramatic or stressful. We are truly working very hard, Mr. Hull, and we hope that a joke which was never intended to offend doesn't change your opinion of us." (*Id.*).



Mr. Hull's response was to call a meeting of all MCA seniors to address the letter. In her grievance, Ms. Zuluaga contended that Mr. Hull yelled at the students, read the letter out loud, mocking sections of it and demeaning students in the process, calling students out publicly, chastising her daughter, calling her out for her friendship with his son allegedly saying then if you are so tired you shouldn't be speaking to my son on the phone at midnight. Mrs. Zuluaga noted that Mr. Hull had referred to "to a time they were on the phone together very later at night at least one year before this incident." This and multiple other comments reduced her daughter to tears and asking him to stop which he would not do. Mr. Hull was also alleged to have accused the students of being selfish and ungrateful. (See, the Grievance document and Thursday, May 31, 2018, email from L. Zuluaga to K. Lichter).

When the undersigned asked Mr. Hull about the meeting with the senior class and his review of the letter, he acknowledged that he met with the senior class collectively. He stated that he did not target Ms. Zuluaga. When asked whether he publicly questioned her character and her National Honor Society status, he responded that he did not remember. He acknowledged that he did go through the letter line by line and allegedly explained to them that such behavior had to stop and that they were responsible for their actions. He stated that he did not yell at the students but gave them a wake up call and told them that they needed to get their acts together. He also claimed he told them that they needed to show appreciation for all the help being given to them to enable them to receive scholarships. He stated quite emphatically that he does not abuse kids and that one of his own was in the 2018 graduating class.

After the meeting with the senior class, Mr. Hull emailed Mr. and Mrs. Zuluaga on Wednesday morning February 28, 2018. He requested that they meet ASAP to discuss the February 27, 2018, email "and a few other things" concerning their daughter. He added: "I would be willing to do any time today, even cancelling a class I teach, if you are able to come in." They agreed to do so and advised they could come in at 12:30. Mr. Hull accepted. (See, the February 28, 2018, exchanges between Mr. Hull and Mr. and Mrs. Zuluaga). They had an intense exchange concerning the email, the meeting with the senior class, and related issues involving Ms. Zuluaga.

That evening Mrs. Zuluaga emailed Mr. Hull. She noted that in light of the meeting held that day, "we believe that it is important that we meet again to find the proper way to move forward. We are available tomorrow any time after 11:00 a.m., please let us know what time is convenient for you." Mr. Hull responded at 7:16 p.m. as follows: "It will have to be next week. I am booked solid for the rest of this week. What day and time works for you." (See, the February 28, 2018, exchange between L. Zuluaga and D. Hull). Mr. Zuluaga responded the next morning, March 1, 2018, expressing his disappointment noting that "it is really important to find the truth of this situation, and considering that we are only three weeks away from graduation, we would rather have you listen to our concerns sooner rather than later." Mr. Zuluaga added "he found no reasons to conclude that his email was disrespectful." "We believe that she was speaking up, which is what we have always taught her to do." He then proceeded to express his and wife's concerns as follows:



The way in which you reprimanded my daughter ultimately embarrassing her in front of her classmates by utilizing past, personal and irrelevant incidents; yelling at her and her classmates and humiliating her by threatening to strip her away from the awards she had earned so far is definitely not acceptable and will not happen again.

We have already spoken with our daughter and given her the specific instructions to walk away if you choose to approach her in those terms and to wait until one of us is present.

You need to stop the bullying to our daughter with personal issues from her past.

(See, email from S. Zuluaga to D.Hull, March 1, 2018).

Mr. Hull did not respond nor did the parties meet again. Mrs. Zuluaga, in her response to Board Member Lichter's questions, provided her with the email communications noted above. (See, email from L. Zuluaga to K. Lichter, May 31, 2018, response to final inquiry from Mrs. Lichter).

At the July 16, 2018, Board Meeting, Board Member Lichter announced that the grievance had been denied. The Meeting Minutes provide the following information: "Taking any and all input seriously the MCA Board of Directors investigated the complaint and examined the statements of all concerned parties. After careful deliberation, the Board found no evidence that any further action was necessary." (See, the Minutes to the July 16, 2018, Board Meeting).

When asked about the Board's investigation, Mr. Hull noted that he was not involved in it. He also noted that he was unaware of the Board itself investigating complaints and did not believe it was appropriate for Board Members to do so. He did note, however, that he welcomed an investigation being undertaken. But he never saw nor received a written report in connection therewith.

But after the filing of the grievance, another thread to this issue emerged during the second week of June 2018. On June 12, 2018, from their personal email account, Mr. Hull and Mrs. Hull wrote to Zuluagas informing them as follows:

Please consider this your final notice about contact with my son [REDACTED]. As his parents and legal guardians we are forbidding Any contact whatsoever between any member of your family and Any member of my family...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. (See, email from David Hull to the Zuluagas, June 12, 2018, at 3:54 p.m.).

Mr. Hull then decided to involve his Assistant Principal, Mr. Whitehead, a former City of Naples Police Officer, to provide him with assistance and advice concerning whether there were criminal consequences for the contact he noted above. Mr. Whitehead made inquiries on Mr. Hull's behalf. Mr. Whitehead replied "Thank you for advising me of this...I have contacted the SAO and CCSO regarding this situation as you mentioned below regarding previous info and I will advise you asap as we move forward...I will keep you posted on my interaction with relevant entities."

At 8:19 that evening, Mr. Hull (though email is signed "David and Sabine Hull") took the liberty of writing directly to the student, Ms. Zuluaga without notifying her parents. He stated:

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 [REDACTED] in any way –face-to-face, digitally, on the phone, through online media, or otherwise....

We are willing to leave things as they are now, unless you or [REDACTED] decide to violate the mandate of this message. Otherwise, as [REDACTED] 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.

The next evening, June 13, 2018, at 7:45 p.m., Mr. Whitehead wrote to Mr. Hull the following: "I spoke with a State Attorney today, who I have a long term professional relationship with." He noted he was advised that Mr. Hull should save all communications involving the two students and all members of her family. He adds: "I will be the collection point that compiles these documentations for evidence as we move forward." Mr. Whitehead does not say what right he has as an MCA Assistant Principal, to act as police detective, on behalf of the Principal, to move against an MCA family, (while one of the Zuluaga children had just graduated, another was still enrolled).

Fifteen minutes later, at 8:00 p.m., Mr. Hull wrote again to the Zuluagas. He informed them that he had a need to respond to them one more time. He wrote: "The reasons for this response is to address the advice offered by the State Attorney and to let you know that I have already have a substantial amount of such communications...I will continue to collect."

Mr. Zuluaga responded at 9:21 p.m. that evening to both Mr. Hull and Mr. Whitehead 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.

Neither Mr. Hull nor Mr. Whitehead responded. (See, the email chain involving Mr. Hull, Mr. Whitehead, and Zulugas of June 12 – 13, 2018).

As the following will show, there are multiple examples of Mr. Hull's confusion of boundaries between the personal and the professional, and the disregard of the privacy rights, reputations and sensitivities of others. These, as will later be discussed, have serious legal and policy ramifications.

For example, on May 11, 2018, after a faculty committee of eleven teachers voted to present the Student of Virtue award to a twelfth grade student they believed to be the most deserving, Mr. Hull interjected himself in the decision-making process emailing to the faculty committee members that he believed his son was the better candidate and should have been given the award. He began by saying that he tries "hard to bite my tongue when it comes to my own children and their enrollment at this school." He then goes on to say that "being the Principal requires me to honor my duty as such" by speaking out on behalf of his son, "as I would for any student who needs a case being made on his or her behalf."

Mr. Hull proceeded to post and provide a comparative list of the awarded student's (and his son's) disciplinary record, tardies, GPA, awards, college acceptances and scholarships received in dollar value. He then informed the faculty members as follows: "I have also copies screenshots of demerit reasons for each student and attached it to this email." The screenshot includes photos of the two students. He added: "I must have missed something about how you objectively measured the 12<sup>th</sup> grade Student of Virtue." Mr. Hull concluded his message, as follows: "But in rare form I will put my dad hat on as I sit at my principal desk, and point out that I disagree with your decision. More important, I hope all the other students were given serious consideration and objectivity for this award." (See, email from David Hull to multiple faculty members dated Friday, May 11, 2018, at 4:56 p.m., subject: Student of Virtue).

There is no evidence that Mr. Hull ever notified the awarded student's parents of what he planned to do or obtained their permission to post their son's disciplinary history, tardies, GPA, and so on. Nor did they know he would be posting a comparative disciplinary screenshot, involving their son and Mr. Hull's son, denoting the names of the homeroom and issuing teacher with a narrative of the event/activity or which the student was disciplined, that would be viewed by multiple faculty members as a public record.

When asked about the matter, Mr. Hull acknowledged that he intervened and believed his decision was warranted. He felt the chosen student was not a strong candidate and that he believed he should speak out. He acknowledged preparing a comparative of demerits between the two students. When asked why, he responded because it was about virtue which reflects upon the school. When asked if he would have requested the committee to review their decision if a parent other than Mr. Hull had brought the matter forward, he responded that yes he would have.

Several months prior to the Student of Virtue email, on December 1, 2017, Mr. Hull emailed Sheryl Rogers, the District's then Director of Charter Schools discussing a parent issue he was having. In the email, after specifically naming the student, he informed her of the student's grades by letter, the student's grade level, his own argument with the parent, and the

nature of the testing the child was receiving. He told Dr. Rogers that he “just wanted to let you know about this situation since the mom was so out of control and angry and threatening to sue the school.” He asked Dr. Rogers to look into the child’s “situation at his prior school (which was a District school), including wanting to know whether the District Principal of the school the child previously attended have issues with her and so on. There is no evidence that Mr. Hull sought parental permission to share such information with an administrator from another school agency nor is there any indication why he believed he had a unilateral right to share a child’s academic (and social) background with Dr. Rogers.

In addition, on August 30, 2018, Mr. Hull took it upon himself to write to District School Board Member’s about an MCA parental matter. He named the parent, the student, and the specific academic issue involving the child. He stated he was aware that the parent had contacted District School Members. And he expressed his concern that according to the parent at least one of the Board Members had allegedly weighed in on what the outcome for the student should have been.

Mr. Hull then proceeded to lecture the School Board that “this opinionated suggestion gave her false encouragement and perpetuates her anger at the situation. This is not good for her, her child, the school, or CCPS.” He added: “It is unfortunate that any CCPS board member would advise a parent in such a way without knowing any details beyond what the parent said.” He then lectures Board Members on the proper lines of communication and procedures they need to follow. “Please refer grievances, he noted, to the appropriate people going forward and do not entertain complaints by offering your opinions.” (See, August 30, 2018, email from D. Hull to CCPS Board Members). There’s nothing in the Board’s Meeting Minutes in which he discussed this matter or sought authority from MCA’s Governing Board to write District School Board Members on his own about these issues.

While Mr. Hull gave a lot of his time and care to many parents and students, including difficult students, to help MCA grow, he often struggled in his relationships with many parents as well. For example, over several months, Mr. and Mrs. Donalds were in on-going communication with Mr. Hull and Mr. Whitehead concerning their children’s performance and behavior at school. The parents express dismay and regret for their disruptive conduct, took responsibility for it, and expressed that they were working with their children to have them also take responsibility for their actions, including being respectful at MCA.

Nevertheless, they also asked Mr. Hull, as well as Mr. Whitehead, to take a closer look at how discipline is meted out at MCA, the bases for issuing disciplinary demerits, and how discipline affects different children in different ways. On November 2, 2017, Mr. Donalds emailed Mr. Hull about such issues noting: “As I told Mr. Whitehead today, the current pink slip policy assumes that a 6 year old, a 10 year old, and a 14 year old have the same ability to course correct. I have personally coached and mentored children, from ages 5 to 18 for 15 years. That is simply not the case at all.” Mr. Donalds asked that when problematic issues arose, that teachers call him or Mrs. Donalds. His reason was that it helped them to work with their child if disruptive behavior was occurring in order to obviate the need for the issuance of pinks or ultimately suspension. The communication between the parents and administration increasingly broke down.



Mr. Hull took it upon himself to write 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. 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 made the following judgment: "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 added that the child's alleged misbehavior is "due to an absence of proper parent and training." (See, email from D. Hull to S. Rogers, Wednesday, January 10, 2018, set at 8:32 a.m.). Who authorized Mr. Hull, or gave him the right to present MCA student disciplinary issues and pass judgment on the student's parents to an outside third party, is not mentioned.

On February 7 and 8, 2018, one of the Donalds' children was alleged to have been involved in a series of incidents the school claimed warranted disciplinary suspension. Mrs. Donalds emailed Mr. Hull at 9:33 a.m. requesting to view "the videos you referred to this morning surrounding the incidents of yesterday and today from the time when students were allowed into the hallway through the incidents in question. You can show them to me when I get to the school today or provide electronically." When she arrived at MCA, Mrs. Donalds emailed Mr. Hull at 9:54 a.m. that she was at school in the front lobby and would like to view the video before the suspension carried out." Almost an hour later, she informed Mr. Hull that she was still waiting in the lobby to meet with him and see the video. Mr. Hull and Mr. Whitehead thereafter apparently met with Mrs. Donalds and her son.

At 12:26 p.m., Mr. Hull emailed Mrs. Donalds stating that he was confirming that "you do not have an expectation of our staffing processing your public records request for video footage" of the alleged bathroom incidents..." Mrs. Donalds replied: "Unfortunately, due to the severity of the consequence, we still want to review the video," with their son. Mr. Hull informed her that he would be back in touch with her as to how much it would cost to process the request. He then added that he felt a need to express his concern that she not watch the video with her son. He concluded that given the student's capacity to change his stories, it was not a good idea for him to view the videos with her. "Showing him the video would not be positive or productive in holding him accountable for his actions." (See, the February 8, 2018, email exchange between E. Donalds and D. Hull). Why that should be a concern of Mr. Hull is not clear. Nor is it clear why he has apparently taken it upon himself to parent both the child and the parent.

Late in the afternoon, Mr. Hull provided a cost breakdown and rationale for the requested video. The charge would be \$294.62. He informed Mrs. Donalds as follows: "please make payment by check to the front office, and then we will begin processing your request." (See, February 8, 2018, email from D. Hull to E. Donalds, sent at 4:18 p.m., with the accompanying invoice). In light of the fact that the request involved student discipline, Mr. Hull does not explain why he was treating it as a public records request.

On Wednesday, February 28, 2018, at 6:15 p.m., Mr. Hull decided to forward Dr. Rogers a detailed set of emails between Mr. and Mrs. Donalds, one of their son's teachers, and Mr. Hull. He claimed his goal was to apprise her of an on-going behavior issue "we have been dealing with at MCA." In the final email in the exchange, Mr. Hull took it upon himself to lecture and judge Mr. and Mrs. Donalds at length about their parenting, their child, their failure to pursue the truth, and 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 as follows:

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 before, is in your court.

[ ] is in no way "unredeemable". In fact, I cannot tell you how many times I've told someone "it's not the child's fault." But 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.

Around the time Mr. Hull was working on this email, Mrs. Donalds was trying to get a handle on the school's decision to recommend evaluating one of her sons and sending her a form to complete regarding a certain testing instrument. There was no team meeting to which she was invited to review and discuss the eligibility for services including testing to determine that Mrs. Donalds wrote to Ms. Van Vlyman on Monday, February 26, 2018, as follows: "perhaps you and I should meet so I can better understand this evaluation and the decision being made" for her child. "Alternatively, I could speak with the person at the District handling the evaluation. I feel a little in the dark about this whole process." (See, February 26, 2018, email chain between E. Donalds and S. Van Vlyman). Ms. Van Vlyman apparently spoke by phone during which the tracking charts, behaviors, and evaluation were discussed. On March 1, 2018, Ms. Donalds advised that she wanted to withdraw her consent for testing. Ms. Van Vlyman responded that given Mrs. Donalds' decision, "I will not be proceeding with summarizing the documents". (See, February 27, March 1, 2018 email chain between E. Donalds and Ms. Van Vlyman). There was no meeting during which Mrs. Donalds could review the testing/evaluation process with a school psychologist, testing coordinator, the child's teachers, and Ms. Van Vlyman. And there was no meeting during which she could discuss whether she understood her procedural safeguards prior to provide her with informed consent for evaluation.

On February 27, 2018, Mrs. Donalds emailed Mrs. Van Vlyman requesting the tracking documents Mrs. Van Vlyman had mentioned during their conversation. Ms. Van Vlyman sent her an invoice for the request noting that once payment was received, the copies of the documents would be provided. Mrs. Donalds responded that she had “a right to these documents and should not need to pay for them.” Ms. Van Vlyman replied that she did “not have the information as to your rights to obtain records at no cost, so I am copying Mr.Hull on the reply.” Mrs. Donalds never received a reply. Sometime thereafter, the Donalds decided to remove their children from the school.

In early October 2018, the Naples Daily News (“NDN”) ran an article on Mr. Baird’s Complaint. Mr. and Mrs. Donalds agreed to speak with the reporter about it. Supporters of MCA attacked them for it. Subsequent to the appearance of the article, Mr. Lichter posted the following statement on Facebook: “Byron Donalds, Erika Donalds, and Joe Baird just f\*\*\*\*d with the wrong school. BRING IT ON YOU LYNGB\*\*\*\*S!!!” In the aftermath of the article, a few days after, Mr. Lichter’s post, Board Member Miller took it upon herself to post the following about a certain child and the child’s parents:

LAURA MILLER Abusive  
Disruptive  
Dishonest  
Threatening  
Unsanitary  
Vicious  
Disrespectful  
Angry

When these words describe a student who is robbing their schoolmates of a decent, safe school environment, and their parents cast blame on the people holding them accountable instead of the needs of the child, ugly accusations fly. There is a massive, disgraceful campaign underway by people desperate to save face instead of facing parenting challenges. I’m grateful my child and his teachers are no longer in jeopardy of being attacked, since the policies designed to protect every member of our school are working. I hope the poor children whose parents are still focusing on displacing blame in lieu of their own children will wake up to the screams (and tantrums) for attention happening inside their own homes.

On October 14, 2018, Mr. Baird emailed Ms. Miller privately to take the post down as potentially harmful to the child and harmful to MCA’s reputation. (See, October 14, 2018, email from Mr. Baird to Laura Miller, sent at 3:26 p.m.). She did not reply. He then emailed the Board Members on October 15, 2018, to request the post to be taken down. It was his concern that posting reflected “a clear act of public humiliation on the part of an MCA Board Member.” (See, October 15, 2018, email from J. Baird to MCA Board Members sent at 9:05 a.m.). Mr. Baird sent the Board a follow up email the next day. (See, October 16, 2018, email from J. Baird to MCA Board Members sent at 11:08 a.m.). There was no response nor was there discussion or

comment about the matter at the October 22, 2018 or November 2, 2018, Board Meetings. (See, the Meeting Minutes for those meetings).

### C. Discussion and Applicable Law and Policy

#### 1. The Parker Grievance and Related Matters:

Mrs. Parker complained to the administration and to the Board that she believed that the dismissal of her kindergarten child from the school was wrongful. Her concern was heightened when a second grade student had a toilet difficulty and was not disciplined. Mr. Whitehead informed her directly on that score and promised to bring her concerns to the appropriate people.

Ms. Huck notified her that she and Mr. Whitehead wanted to meet with her to inform her of Policy SE 1.0 and if there was another occurrence that week her child would be “unenrolled” certainly a code word for expelled from MCA. It is quite remarkable that a kindergarten teacher would inform a parent that her child would be administratively unenrolled from the school itself unless she had been directed to do so. Policy SE 1.0 provides, in pertinent part, 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 evaluate the situation. Appropriate action will be taken based on what is in the best interest of all students and the school.

No meeting ever occurred. Mrs. Parker asked that the initial meeting be moved so that her husband could be present. She and her child were escorted out because of an occurrence prior to that requested meeting. The intended meeting per policy was to involve parents (so Mrs. Parker’s request to have husband present was not unreasonable). It was also to include the assistant principal and the school nurse. Mrs. Parker had conveyed to the teacher in detail that her child had serious medical issues affecting his attendance. She complied with Mrs. Barreto’s request for physician confirmation. Thus, the school’s dismissal of the child was abrupt and unilateral. Mrs. Parker could have been requested to keep her child home until the meeting occurred. Certainly, the medical issues were worthy of discussion and review before expelling her child.

Mrs. Parker articulated all this in her Wednesday, September 23, 2018, email to Mr. Whitehead. That evening, Mr. Hull sent a letter to “MCA families of a K-2 student” that he planned to hold a forum on Friday, September 25, 2018, to correct the “incredible amount of misinformation out there about a bathroom situation that happened last week.” (See, the emailed letter from Hull to K-2 parents dated September 23, 2018, and sent at 6:49 p.m.). The forum was argumentative and divisive and did little to defuse parental concerns despite Mr. Hull’s promise “to put everything to rest...”



When the NDN published its article on or about November 20, 2018, Mr. Hull wrote a letter to the MCA community describing his displeasure with the reporter and the article, and presented his response to reporter. In it, he ignored the events concerning Ms. Parker and the K-2 parents who were upset by checking the underwear of their children and the divisive forum. He changed the focus and created an alternative narrative writing:

Here is the bottom line: there is an assault on school choice across this great nation. The assault comes in many forms, and it does not only affect our school... The attack on school choice must not go unanswered, whether in this school district or in others across the nature. Education should not be political.

Yet, Mrs. Parker and other upset parents, were not attacking school choice. Their complaints had nothing to do with school choice.

Mrs. Parker was upset by the abrupt “unenrollment” of her child. She wanted him to continue at MCA. Indeed, she informed Mr. Whitehead: “I care about this school and want it to flourish and succeed...” Neither Mrs. Parker nor the other concerned parents who questioned the actions taken by the administration and the failure to notify them in connection with the steps they planned to take after the clogging of the toilet, were attacking school choice. Yet, because of the NDN article, they are cast in the role of “the enemies at the gate” of the school by the principal. Mr. Hull stated “Education should not be political.” Yet everything about his article was political and polarizing in nature.<sup>2</sup>

Mr. Whitehead’s Facebook threat to Mrs. Parker, and impliedly to other concerned parents all of whom he has deemed to be rumor mongers and cowards, stated that he “would have no problem facing anyone like that and terminating their lease on life”. His conduct is unbefitting a professional educator. He was, and is, the MCA’s Assistant Principal. He cannot claim that he took off his Assistant Principal’s hat when he wrote this. The Code of Ethics of the Education Profession in Florida (FAC 6B-1001) provides that “the education values the worth and dignity of every person, the pursuit of truth, devotion to excellence...” “and must be aware of the importance of maintaining the respect and confidence of one’s colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.” His Facebook threat was also abusive and intimidating which is proscribed by the Code.

<sup>2</sup>It is of interest that on February 25, 2018, that Mr. Hull emailed Dr. Rogers concerning “a kindergarten student who is not potty trained. There has been around 7 or so ‘accidents’ this year. We continue to do our best, working with the mother...” He noted that he felt it necessary to inform the mother that her child was not ready for school. Dr. Rogers immediately replied that she was concerned that the accidents could involve medical issues he needed to be very careful. Mr. Hull also noted that “we were bitten in the past over an issue similar to this; although that was a more severe issue” and “the school was attacked relentlessly over falsehoods put forth by that student’s parents without the ability to defend itself.” Mr. Hull’s deep need to cast aspersions on a former MCA parent almost two and half years later is of serious concern. He did not tell Dr. Rogers that he was the one to dismiss the Parker child without allowing for a meeting to take place so that parent(s) could discuss the child’s medical issues. He thus knowingly disregarded MCA policy, yet continues to blame the parents for his wrongful actions.

As if this crude Facebook posting were not enough, Mr. Whitehead posted another one stating: “This is a Joe Whitehead Show urine stream media alert !!!!!!!!!!!” He then described how the local media had descended on MCA with irrelevant questions for him and Ms. Lichter. He asserted that “the intent of the whole attack” was among other things:

2. To promote the lunatic agenda of a handful of disgruntled parents who want to shut down charter schools (with the support of the CCPS admin) and do all that they can to damage MCA and all who benefit from the positive environment in which the students are thriving.
3. To further promote the agenda of the radical teachers union (CCEA) and gin up hatred for charter schools.

He concludes that on his show “Kelly Lichter and I will set the record straights... Tune in and hear our SMACK DOWN of this anti-American lunatic driven BS!”

Urine stream media alert? Lunatic agenda? Smack down? Anti-American? Promotion of a radical teachers union (“CCEA”) agenda and gin up hatred for charter schools? This is coming from the Assistant Principal of a school that emphasizes classical values and virtue. Mrs. Parker wrote to Mr. Whitehead and he promised to help her. There is nothing lunatic or un-American about that nor is there anything lunatic or un-American about parents who voice their concerns about administrators and administrative actions (which would be very much American).

Mr. Hull wrote that education should not be political. Everything about Mr. Whitehead’s post is political, designed to be political, and is hostile and profoundly divisive in nature. No one at MCA ever reprimanded him for the impropriety and uncivility of these posts. Would Mr. Hull or Mr. Whitehead tolerate a student posting messages about (a) ending the lease on another’s life; (b) calling people cowards and lunatics; (c) using terminology such as the urine stream media; or (d) labeling others as un-American? In all likelihood the student would be severely disciplined and such posts be deemed to be a violation of MCA social media policy set forth in Policy SE 25.0 (p. 58 in the April 26, 2018, Policy Volume, and p. 59 January 23, 2019 Policy volumes. Prior to the student social media guidelines of the policy, attention is called to the sections dealing with Board Members and organizational employers).

Board Member Miller’s support of Mr. Whitehead’s comments is also unbecoming a School Board Member. To agree with such threatening statements is inherently wrongful, reflects her lack of knowledge, treating a parent or parents in a demeaning way, and then accusing a parent who did follow the rules as “unpatriotic” is inappropriate to say the least. Board Member Lichter’s encouraging others to let Mrs. Parker know how they feel was a form of rabble-rousing and unbecoming a President of a School Board. In the Board Policy Manual (in both Volumes at p. 2), the following is provided:

Election to the Board of Directors carries with it a responsibility of stewardship. The directors are the custodians of the integrity of Mason Classical Academy; they hold in trust the school’s reputation as created by its founders, and as developed by those who have shaped the

school in the past.

In the Pillars of Character Development, which a Board Member is called to sign is the Pillar of Respect. Under that pillar is the following: “To treat others and myself with kindness. To be polite and considerate. To appreciate the good in others and myself and show compassion. To treat others and property of others as I wish to be treated.” Board Members Miller and Lichter acted contrary to their stewardship, respect toward others, and integrity toward the reputation of MCA as enshrined in Board Policy and aspirational commitments.

Similarly, Board Policy SE 25.0 provides in the section on social media the following “Board Members are organizational employees, are personally responsible for the content they publish on-line. Your behavior should reflect the same standards of honesty, respect and consideration that you use face-to-face.” Board Members Miller and Lichter did not honor this policy on their media postings nor did Mr. Whitehead whose conduct they condoned and followed. These conclusions apply as well to Board Member Miller’s gratuitous demeaning of a student connected to MCA and the students’ parents. (Given the timing of the post, one could easily figure out to whom it was directed).

Subsequent to the October 2018 NDN article, Mr. Hull wrote a detailed email on October 12, 2018, to MCA parents “to combat the latest newspaper hit piece.” In it, he wrote: “Children should not have to worry about the details of their school behavior haunting them when they are adults.” It would seem that his statement and the statements contained in Board Member Miller’s posting of around the same time are very much at odds with one another. Both Board Members faulted in their duty to serve the MCA community. Rather than trying to calm a difficult situation to let everyone move on, they knowingly contributed to inflaming it. Board Member Lichter took her refusal to follow MCA policies and principles to a new level when she resumed her attack on Mrs. Parker some three and a half years later. She accused her of dishonesty, and her having association with District School Board Member Lucarelli as criminal. She circled Ms. Parker’s face as a target as well as those of her children. She then followed up with an attack on Ms. Lucarelli personally as a means to intimidate her. Her email attacks were sent from her Mason Academy address.

In item 11 of the Board Duties and Responsibilities (See, both noted policy volumes, at 5), it provides: “Board Members as leaders of the School must have moral character and embrace the values of democratic society.” Such values would constitutionally include freedom of speech and freedom of association. To accuse a former MCA parent that her involvement in someone’s campaign, and her association with the candidate is criminal, is a fundamental attack on her First Amendment associational rights and the ability to vote for the candidate of her choice, whether Mrs. Lichter liked it or not. To draw a circle around her and her children is a form of wrongful targeting and intimidation that reflects a dark element within the moral character of the writer and damages the reputation of a school that seeks to uphold democratic values and the importance of respect and virtue.

Equally important, Board Member Lichter’s emails calling another (Mrs. Parker and Ms. Lucarelli) criminal potentially subjects her personally to an action for defamation. When words on their face without the aid of extrinsic proof, are injurious, they are considered defamation per

se and no proof of damages are needed to establish liability. See, Fun Spot of Florida, Inc. v. Magical Midway of Central Florida, Ltd., 242 F. Supp 2d 1183, 1197 (M.D. Fla. 2002 (Citing Hoch v. Rissman, 742 So. 2d 451 (Fla. 5thDCA 1999)). If a false defamatory statements suggests someone has committed a dishonest or illegal act, it is considered, for example, as slander per se. See, Fun Spot of Florida, Inc., supra, at 1197 and Campbell v. Jacksonville Kennel Club, 66 So. 2d 495, 497 (Fla. 1953). Aside from the personal responsibility she bears for her statements, Ms. Lichter has put the reputation and integrity of the Board and MCA itself at risk.

#### The Family Educational and Privacy Rights Act (FERPA)

The provisions of the Family Educational and Privacy Rights Act (FERPA) are set forth in 20 USC 1232g and its interpretive regulations set forth in 34 CFR §99.1, et seq. The provisions of FERPA are also incorporated into Florida law in FS §1002.22 and 1002.221 and FAC 6A-1.0955. 20USC 1232(g)(b)(1) provides in pertinent part the following:

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to 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;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

In this regard, 34 CFR §99.30(a) provides:

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in §99.31.

(b) The written consent must:

- (1) Specify the records that may be disclosed;
- (2) State the purpose of the disclosure; and
- (3) Identify the party or class of parties to whom the disclosure may be made.

In connection with Section 99.31(a), disclosure without consent would include the following condition:



(1)(i)(A) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

With this in mind, Mr. Hull did not receive parental permission to disclose student educational records (1) of the student whose record he posted relative to the Student of Virtue; (2) of the student whose educational records were emailed to Dr. Rogers on December 1, 2017; (3) of the student whose record was sent to the District School Board on August 30, 2018; (4) the January 10, 2018, email obviously pertaining to the Donalds that was sent to Dr. Rogers; and (5) the sending to Dr. Rogers the February 28, 2018, email chain between Mr. Hull, the Donalds, and their child's teacher involving the child's educational situation at MCA. Mr. Hull's sending confidential student educational information, without the written parental permission to do so, to persons who were not in the zone of interests of persons who would otherwise have a legal right of access to the student's information, constituted a violation of FERPA for each improper transmission. With respect to the foregoing, that would mean that he and MCA, violated FERPA on five separate occasions.

Moreover, when Mrs. Donalds sought access to the video that would evidence her son's alleged wrongdoing, Mr. Hull responded by treating it as a public records request and informed her that she would have to first write a check for \$294.62 before the video could be processed. But Mrs. Donald's request was not a public records request, but a FERPA request for a video related to the discipline of her child. She had a right to access and view the video. In the Letter to Wachter, December 7, 2017, the USDOE Office of Management ("the Office") addressed the request for a video linked to student discipline. In it, the Office determined that providing access to the video, a District (or in this case a School) "just provide the parents of a disciplined student...with the opportunity to inspect and review the video..." (See, Letter, at p. 5). In this context, in the Family Policy Compliance Office FAQs on videos under FERPA, the following is noted: "FERPA provides parents and eligible students with the right to inspect and review the students educational records and nothing in the FERPA statute or regulations permits educational agencies and institutions to charge parent or eligible students for fees or costs associated with the exercise of that right." Mr. Hull and MCA, thus violated Mrs. Donalds rights under FERPA.

Similarly, when Mrs. Donalds questioned her being charged for the tracking documents pertaining to her child, Ms. Van Vlyman informed her she was copying Mr. Hull because she could not respond to Mrs. Donalds question. Neither Mrs. Van Vlyman nor Mr. Hull ever replied to her. Thus, she was never provided access to the educational information she had a right to review. Hence, MCA violated FERPA again. Accordingly, as a consequence of Mr. Hull's actions (and non-action in the case of the last matter), he and MCA violated FERPA on seven (7) separate occasions thereby placing MCA at risk in connection with the receipt of Federal and State funds.

### Confusion of Boundaries

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. Mr.

Hull knew that when he wrote to the Student of Virtue faculty review committee and wrote to the Zuluagas, he had crossed the boundary into a need to control others and intimidation. Mr. Hull's threats toward the Zuluaga's and their daughter, with the active support of Mr. Whitehead, came two weeks after Mrs. Zuluaga filed her grievance. It is thus unsettlingly apparent that their actions were at least partially in retaliation for the grievance, especially since Mrs. Zuluaga had followed Board protocol.

Similar to the Zuluaga situation, is one involving former faculty member who left the school at the end of 2016-2017 school year. In leaving, he gave Mr. Hull's son a gift of books including those by classical authors Ayn Rand and others. Mr. Hull attacked them in February 2018 in the form of a phone call followed by an Instagram message accusing them of ruining his son's life...a remarkable statement given their well-wishes to him as a highly thought of student.

On July 4, 2018, the former faculty member wrote to Mr. Hull to cease and desist contact him and his family. He pointedly wrote that "unfortunately this message is made necessary by repeated instances of harassment against my family, which you have initiated, now over a year since we concluded our employment with Mason Classical Academy." Mr. Hull refused to back away and let it go. He decided to respond that day and did so in a sarcastic and accusatory manner. He began his email as follows:

I find it interesting that you made many false claims here and sent them to my work email address. I also find it interesting that you consider one phone call and two identical Instagram messages over a 6-month period "harassment". I never pegged you for a millennial snowflake, but I've been wrong before.

He then proceeded to attack him for "undoing a life of character development of his parents," encouraging atheism, and providing him with wrong advice. He ended the email much like he did in the Zuluaga situation demanding complete discontinuation of any communication with his son (which apparently had occurred months before). (See, July 4, 2018, email communications between Mr. G and Mr. Hull).

Mr. Hull's attacks were not only uncivil and a violation of MCA's civility policy (See, Policy SE 48.0, at pp. 78 – 79 in the April 2018 Volume and 78 in the January 2019) and unprofessional, but they are unbecoming of an educational leader. He has certainly lost sight on multiple occasions of the boundaries that should separate his personal life and his professional life. While Mr. Hull may preach virtue, such attacks disclose something very different.

Finally, Mr. Hull's commentaries on and criticisms of parenting styles and parenting abilities are inappropriate and unprofessional and are source of division and resentment. They are also potentially defamatory.

### Civility Policy

In addition to the violations of Civility Policy SE 48.0 by Mr. Whitehead, Mrs. Lichter, Ms. Miller, and Mr. Hull, attention needs to be called to the Facebook attack by Mr. Lichter that

has been previously noted. The Civility Policy applies to parents and patrons, just as it does to staff. In this context, it provides the following:

All parents and patrons of Mason Classical Academy shall behave with civility, fairness and respect in dealing with fellow parents, patrons, staff members, students, 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. Examples of uncivil behavior including, but are not limited to: use of profanity; personally insulting remarks; attacks on a person's race, gender, nationality, religion, or sexual preference; or behavior that is out of control.

By any benchmark, Mr. Lichter's comment were uncivil. He is a parent, founder, husband of the Board President, and certainly a public person in the MCA community especially. His Facebook comments have no place in civil public discourse. They were threatening, demeaning, and crude. Moreover, as will be seen in the next section, Mr. Lichter was the General Manager of CCMG. His comments are hardly befitting of one who has held himself out to the charter school community in multiple districts as one who will provide community relations and governance training.

#### Some Final Observations

F.S. 1002.33(9)(p)2, provides that "each charter school's governing board must appoint a representative to facilitate parental involvement, provide access to information, assist parents and others with questions or concerns, and resolve disputes." Similarly, in the governance section of the 2017 Charter Contract (Section 9), it is provided that governing board of MCA must appoint a representative and the language then tracks verbatim the above quote from the statute.

With this in mind, at the June 13, 2016, Board Meeting under New Business, Mr. Hull recommends Ms. Turner as the liaison to parents. The Board voted to approve her as the liaison to parents...However, the parents who spoke with the undersigned and other staff members when asked responded they were unaware of the liaison position or who filled it. Ms. Turner who, as part of the position, had to attend Board Meetings per statute and charter, never reported on any liaison work undertaken.

It appears the liaison has existed in name only much like the Student Advisory Council which has never met to respond to parent issues and resolve parental disputes and grievances as set forth in the 2013 Application (See, pp. 68-69). Accordingly, the Board has let slide critical components for dispute resolution.

While Mr. Hull may want to inform people that there has been only one grievance in four years (which is not true), such a comment stresses form over substance. One grievance filed with Ms. Lichter as Board President, or with other Board Members, does not disclose the deeper reality of numerous complaints, concerns, and grievances with in verbal or email form. The

depth of this issue is seen in District documents that track students who left other schools and have enrolled in District or other schools. With respect to MCA, from August 1, 2014, to the present, 614 students have left to enroll in District schools, home education programs, or local private schools. Thus, to ignore this reality would be to ignore the reality of unresolved conflict and concerns of many parents who to this day still admire the Hillsdale instructional model and curriculum.

At the March 7, 2016, Board Meeting, during the course of a discussion pertaining to parent survey results, Board Member Donalds suggested that there needed to be a “customer service” mindset which would define parents as clients. Board Member Miller rejected the idea arguing that “it would compromise the environment for everyone involved.” (See, Board Meeting Minutes for March 7, 2016). It is unfortunate that the Board and the Administration did not listen to Mr. Donalds. Much of the future parental conflict could have been reduced or resolved.

## **VII. The Issue of Potential Conflict of Interest**

As part of his Complaint on June 8, 2018, Mr. Baird notified the FDOE’s Office of the Inspector General that he was supplementing his Complaint concerning what appeared to potential conflicts of interest involving Ms. Lichter, Mr. Hull, and Ms. Smith in the formation of a company named the “Classical Charter Management Group, LLC.” This additional information was also received by the District’s Board Chair Mr. Terry for review. The undersigned with the assistance of members staff have looked into the issue. The following will set forth our findings.

On September 25, 2017, Articles of Organization were filed for the Classical Charter Management Group, LLC, (“the Company” or “CCMG”). Article III provides that “the Company is formed for the purpose of engaging in the business of consulting and managing charter schools.” The effective date for the Company’s commencement was September 29, 2017. Article VI noted that the persons authorized to manage CCMG were Kelly E. Lichter, David Hull, Jr., and Gena L. Smith. Ms. Lichter would serve as the Company’s Registered Agent. On October 10, 2018, Florida’s Division of Corporation records show the Company was reinstated to replace Kelly Lichter with Nicholas W. Lichter, as both a member and the new Registered Agent of the Company. Mr. Hull and Ms. Smith remained as members of the Company.

The evidence shows that CCMG sought to provide consulting and management services to several prospective charter schools seeking to replicate the MCA model in several Districts. The name of the replicating school in each District is to be the “American Classical Charter Academy (“ACCA”). Applications for ACCA have been filed in Osceola, Lake, Polk, and Hillsborough Counties.

A review of the ACCA’s Applications show CCMG as the school’s Applications Central Consultant of record. In the Applications one finds language such as “ACCA is replicating the governance model, academic structure and financial management of Mason Classical Academy, a high performing school in Naples, Florida.



In the final draft of ACCA's Application for the Osceola School District, signed on January 17, 2017, the Charter School's President, there is detailed CCMG's key person and their respective roles in assisting the school. It is presented as follows:

Full Name	Current Job Title & Employer	Role with Proposed School
Mrs. Kelly Lichter	Chief Executive Officer Classical Charter Management Group	Community Relations and Governance Training
Mr. David Hull	Chief Operations Officer Classical Charter Management Group	Principal and Teacher Training and Monitoring
Mrs. Gena Smith	Chief Academic Officer Classical Charter Management Group	Curriculum, Instructional Materials and Teacher Training and Monitoring

A year later, on January 23, 2019, and January 25, 2019, respectively, one finds, for example, the company identified in the Applications for Hillsborough and Lake County School Districts and presented as follows:

Full Name	Current Job Title & Employer	Role with Proposed School
Mr. Nick Lichter	General Manager Classical Charter Management Group	Community Relations and Governance Training
Mr. David Hull	Chief Operations Officer Classical Charter Management Group	Principal and Teacher Training and Monitoring
Mrs. Gena Smith	Chief Academic Officer Classical Charter Management Group	Curriculum, Instructional Materials and Teacher Training and Monitoring

The Company has also been assisting ACCA in Polk County as well.

As a threshold matter, since its founding Ms. Lichter as MCA's Board President, never publicly disclosed at any Board Meeting her involvement in the Company or that she had formed a partnership with two key employees of MCA, Mr. Hull and Ms. Smith, to develop charter schools in other counties based on the MCA model. There is also no reference in the applications that MCA's instructional and governance models has been developed from Hillsdale College's models, training, and, tutelage. This is especially important since Ms. Lichter, Mr. Hull, and Ms. Smith (and even Mr. Lichter who is involved in the selling of a distinctive instructional model as part of any Community relations and governance training) have overlooked, or knowingly disregarded, MCA Policy 2.0, Curriculum Development, to which they are bound. It provides the following: "MCA has a contract with Hillsdale College that requires the use of the curriculum they provide." The policy the quotes directly from the contract which address two critical points for the purposes of this discussion (1) "MCA Corporation shall look to Hillsdale College as the first and primary source of models, resources,

and guidance on the development and operation of Charter School's academic program..."; and (2) "Hillsdale College shall provide MCA Corporation a general model for a curriculum of a charter school..." (Manuals, both editions, at 108). It is also of concern how Ms. Lichter can oversee Mr. Hull's work at MCA while overseeing his work as her partner at CCMG.

Further, there has been no public and transparent Board Meeting discussion of Mr. Hull and Ms. Smith going out of town and doing presentations to the different four school districts as members of a consulting firm while employed at MCA, as well as all the training and preparation time that would be involved overtime and the impact such time would have upon their work at MCA. In this context, Ms. Smith is being held out as one involved in curriculum, instructional materials, and teacher training and monitoring. Yet, what is not disclosed is that she has no academic background, credentials, or certification in curriculum and instruction or teacher training. Indeed, she has not attended college and has neither academic training in these areas nor served as a certified classroom teacher. (And one does not know where Mr. Lichter has received training or experience sufficient to teacher the multiple ACCA Boards in the area of governance).

Further, while MCA Board Member Lichter was the Chief Executive Officer of CCMG from September 29, 2017, until Mr. Lichter replaced her as the General Manager on October 10, 2018, regardless of the level of work undertaken during that time period, she voted to approve, at the May 29, 2018, MCA Board Meeting the evaluation and bonus for her CCMG business partner, Mr. Hull, as Principal of MCA without recusing herself or disclosing a possible conflict or concern for the appearance of impropriety. She also voted to approve the salary schedule the terms and conditions for which would benefit her CCMG business partner Gena Smith without concern for disclosing their business relationship and its relationship to Ms. Lichter Board Member status and Ms. Smith's beneficial employee status.

Ms. Lichter as MCA's Board President and CCMG's Chief Executive Officer has created, if not a conflict of interest in her two roles, the appearance of impropriety in voting to approve items that financially benefited her partners Mr. Hull and Ms. Smith. And in the case of Mr. Hull her voting to approve his 2018 evaluation would serve as an importance precondition for his receiving a bonus as any MCA employee. Mr. Hull and Ms. Smith also have a responsibility in all this by also chose to remain silent while governing benefits.

Mr. Baird's concerns are well-founded.

## **VIII. Financial Issues and Best and Brightest Program**

### **A. Financial Issues**

In light of Mr. Baird's Complaint, MCA through staff and legal counsel provided the undersigned with a copy of the 2017-2018 Audit Findings for Agreed Upon Procedures for the Governing Board as well as unaudited statements. The auditor reviews the policies and procedures in place relative to governance and the FTE process. The Auditor reviewed general sunshine law issues but did not address the Board's Meeting Minutes over time and related

findings or the non-implementation of standing committees. MCA also provided unaudited financials for review.

The undersigned discussed MCA's unaudited financials with District staff in the Finance Department. They advised that they did not have a problem with them nor McCreedy & Associates financial statements provided by MCA through Ms. Turner. Given staff observations, the undersigned will not question the acceptability of the submitted financials.

#### B. Best and Brightest

In February 2019, the State of Florida Auditor General issued several findings directed to the District relative to appropriate teacher scholarship oversight. This included auditing District Charter Schools. One of the findings was for the District to determine the propriety of some 113 scholarships totaling \$236,800 awarded to charter school teachers, and for any scholarships awarded to ineligible recipients to take the appropriate action to recover and refund the amounts to the FDOE.

In particular, the District was to review the documentation for the Best and Brightest program for FY 2017-2018. The District's Human Resource department in collaboration with the District's Administrative Director reviewed the matter and found MCA had failed to meet the statutory requirements for appropriate documentation. For example, that following was found:

1. All documents submitted with the GROWTH/VAN SCORE AND FINAL EVALUATION SCORE are post-dated in March 2019. Therefore, for the purposes of the SY 17-18 audit, they were not in compliance at the time of the award request.
2. No valid documentation to support final evaluation/overall rating placed on the roster for submission to the state for the scholarship money.
3. Roster appears to be reflective of ONLY the Instructional/Professional Practice rating (2/3rds of the Annual Performance Rating) which does not Comply with the award requirements; rating reflected on the roster is a Partial rating and should not be awarded.
4. Post-dated GROWTH/VAM SCORE AND FINAL EVALUATION SCORE documents demonstrate that several teachers have been downgraded By your own calculations, in their FINAL EVALUATION/OVERALL RATING once the GROWTH/VAM score was calculated. Therefore, The employee was OVERPAID on the original roster.

In its initial conclusions, MCA advised that is owed FDOE \$20,800.00. Based on careful roster review and other documentation, the District found that the original roster for SY 2017–2018 Best and Brightest Teacher and Principal Scholarship Program for payment was submitted inaccurately for 37 out of 42 employees. There was NO SY 17-18 SUPPORT

DOCUMENTATION demonstrating the overall FINAL EVALUATION SCORE/OVERALL RATING listed on the roster at the time of submission to FLDOE.

As a consequence, the District found that MCA's initial findings were inaccurate. It was found that MCA owes the State \$137,600.00 which must be promptly remitted. The lack of documentation and appropriate oversight taken to manage the program has placed a serious financial obligation on MCA and places MCA at risk of further investigation by the State. The District's findings were emailed to Mr. Hull on May 23, 2019. (See, the May 23, 2019, Memo from Ms. Wenrich and Mr. Hull with accompanying documents).

#### **IX. Faculty Concerns**

In speaking with multiple faculty members, a series of repeating themes emerged that must be taken into account as part of this investigative review. The discussions with such faculty members occurred over different dates and times and included only the individual who had agreed to come forward. There is no evidence of such persons speaking with other faculty members in advance of the meeting. At no time did we disclose to any such faculty member the names of those with whom we had spoken or with whom we anticipated speaking.

The themes are those that directly involve Mr. Hull and are based on the direct observations and experiences of the given reporter. They may be set forth as follows:

(1) Mr. Hull was observed to yell at or berate teachers in front of the students and other faculty and staff;

(2) Mr. Hull talked condescendingly, often in a demeaning way, to faculty at multiple faculty meets;

(3) Mr. Hull was observed to berate and shame students in front of other students, teachers, and staff;

(4) The faculty reporters observed and experienced that if one disagreed with Mr. Hull, he would become defensive, hold it against the person, and target the person with sarcastic statements and comments;

(5) The faculty reporters noted that they were often observed by Ms. Smith, the School's Curriculum Coordinator. Reporting faculty conveyed that they were uncomfortable with it since Ms. Smith had no education background, no teaching degree, or classroom teaching degree, and did not attend college. The faculty were often not observed by Mr. Hull who, they felt, wrote up evaluations based on Ms. Smith's observations; and

(6) The faculty reporters observed, felt, and experience that it was often unsafe to speak out which affected trust and created a polarized faculty.

These observations are given credence in light of the Zuluaga matter, the Student of Virtue matter, Mr. Hull's lecturing of District School Board Members, negative comments about



parents to third parties, and so on; all previously discussed. In addition, in the meeting with Mr. Hull, he acknowledged that Ms. Smith undertook multiple observations of teachers and reported them to him and that he relied upon them in addition to his own observations.

## **X. Miscellaneous Matters**

### **A. The Alleged Investigation of the Baird Complaint By MCA**

In the NDN article, it was reported that according to MCA's counsel, MCA had conducted an internal investigation in Mr. Baird's allegations and found them to be without merit. Similarly, at the request of his client, counsel for MCA wrote to Mr. Baird the following:

Several correspondences you have sent to various parties have been forwarded to my office for review. Mason reports that it has conducted a thorough review of this matter. Witnesses were interviewed and correspondence, including contemporaneously written emails written by you, were reviewed.

At the meeting with the undersigned, Ms. Turner noted that she dissected the Complaint and sent it to McCreedy & Associates. Mr. Marshall stated he had looked at some financial documents. All three persons acknowledged that they did not interview anyone, conduct an internal investigation of Mr. Baird's Complaint or prepared any report in connection therewith.

### **B. Grievance Issue**

In follow up to the grievance issues previously discussed, it should be noted that MCA parent Dr. Thornburg engaged in an approximate email correspondence from 2017-2019 with Mr. Hull, Mr. Whitehead, and Board Member Lichter concerning discipline involving his children and other matters that he needed to address. His correspondence shows multiple efforts to set up in-person meetings. Over turn disciplinary decisions made, recognitions in some instances (such as expressed by Mr. Whitehead) that the facts surrounded one of his children needed amendment. (See, the email history chain from Dr. Thornburg).

In March 2019, Dr. Thornburg sought to bring a disciplinary issue before the Board and wrote Mr. Hull for direction, who then sent Dr. Thornburg's request on to Board Member Lichter. Her responses speaks volumes about the process and should be cited in its totality:

**From:** Kelly Lichter [<mailto:klichter@masonacademy.com>]

**Sent:** Monday, March 4, 2019 8:46 AM

**To:** [brianthornburg@yahoo.com](mailto:brianthornburg@yahoo.com)

**Cc:** David Hull <[dhull@masonacademy.com](mailto:dhull@masonacademy.com)>; Joe Whitehead <[jwhitehead@masonacademy.com](mailto:jwhitehead@masonacademy.com)>; Fishbane, Jon (Jonathan) <[fishbj@collierschools.com](mailto:fishbj@collierschools.com)>; [charterschool@hillsdale.edu](mailto:charterschool@hillsdale.edu)

**Subject:** Parent Grievance

Dr. Thornburg,

Good morning! Principal Hull forwarded me an email from you this morning. You said, "How can the Board be reached? I cannot find their email addresses or telephone numbers on the MCA website. I cannot reach them if they are not reachable."

You did not seem to have any trouble finding Jon Fishbane's email address or the email address for the Barney Charter School Initiative. The Board is listed here: <https://masonacademy.com/apps/staff/>. You are able to email the board members directly.

Also, the parent grievance procedure is located right under the parent tab on the website: [https://masonacademy.com/apps/pages/index.jsp?uREC\\_ID=224620&type=d&termREC\\_ID=&pREC\\_ID=490980](https://masonacademy.com/apps/pages/index.jsp?uREC_ID=224620&type=d&termREC_ID=&pREC_ID=490980). If you take a look at the policy, you will notice that it does not say to contact the Collier School District, Hillsdale College or the Naples Daily News before you address your concerns with the Board of Directors.

In the last 4+ years, the MCA Board has only had one official parent grievance. Fortunately most issues are resolved before it needs to come before the Board. I think this is a testament to the incredible and compassionate faculty and staff we are blessed to have at MCA. Unfortunately we still have parents who choose to undermine our school by slandering MCA to the Collier County School District, Hillsdale College and The Naples Daily News.

If you feel your concerns have not been resolved, please follow Policy SE 53.0 ([https://masonacademy.com/apps/pages/index.jsp?uREC\\_ID=224620&type=d&termREC\\_ID=&pREC\\_ID=490980](https://masonacademy.com/apps/pages/index.jsp?uREC_ID=224620&type=d&termREC_ID=&pREC_ID=490980).)

The MCA Board of Directors takes all concerns very seriously. Please let me know if you have any questions.

It is hard to imagine that one would feel that he/she would receive a fair hearing after receiving a communication such as this.

## **XI. Conclusions and Recommendations**

### **A. Preliminary Comments**

The instructional model and curriculum provided by Hillsdale College is a very sound one that has enabled the School to academically thrive at a high level. The instructional model and curriculum should not be tampered with and be allowed to continue. Indeed, Hillsdale College should continue and even enhance its professional development and training programs. The undersigned investigator has no interest in, or recommending the closure of MCA. Far from it. While recommendations of a different sort will be made, the academic program, the continued presence of a concerned and excellent faculty, and the development of an eager student learning community should continue on.

## B. Board Members Lichter and Miller

The record shows that Ms. Lichter and Ms. Miller violated the law, MCA policy, engaged in improper social media and email communications, violated MCA Board norms and values they are called upon to follow and model, disregarded the terms of the 2012 Application and breached the terms of the Charter Agreement by their actions. They faulted in their oversight of the Administration in disregarding the multiple committee that were required. They faulted in their oversight of policy implementation, Board Meeting Minutes, and attacks on parents and community members they chose to target. Their actions and behaviors are unbefitting of a Board Member of a School (whether public or private).

Accordingly, it is recommended that they resign immediately. The Board should be reconstituted with a minimum of five (5) Board Members. A reconstituted Board should immediately invite Dr. Carpenter for training as well as invite Hillsdale educators to meet with them for the benefit and growth of the School.

In this regard, a reconstitute Board should immediately proceed with setting up vital standing committees pursuant to 2012 Application, policy, and recommendations of Dr. Carpenter for the future well-being of MCA. These committees should at a minimum including the following ones: (1) Finance Committee; (2) School Advisory Council; (3) Audit Committee; and (4) Employment Committee. These committees should be responsible to, and held accountable by the Board and in consultation with administrative, parents, and business community leadership. The attention to accountability at all levels is important.

In this context, at the July 1, 2016, Board Meeting, Mr. Donalds objected to the approving of Mr. Hull's contract. The Minutes show that the Board had removed key language recommended by counsel. He insisted that the Minutes record his objection. It reads as follows:

"I voted against Principal Hull's contract because I thought the language provided by the Board attorney under section 9 subsection 5 should have remained in the contract. The language states "any other action on the part of the Principal which is detrimental or has a material adverse effect upon the business or reputation of the School."

It is unfortunate that the Board did not listen to him.

A reconstituted Board should also review its grievance procedures, put into place effective conflict resolution matters, work to treat parents as clients, and so on.

Finally, based on review of the enormous number of departing students from MCA, it is clear from District records and parental concerns that MCA has to revisit its ESE delivery system in terms of evaluations, IEP preparation implementation and oversight, 504 plans, and careful gifted tested. For example, District records show some 45 students with 504 plans left MCA. While these are operational, it is important that a reconstituted Board should be aware of this.

C. Mr. Hull and Mr. Whitehead

(1) Mr. Hull

The records shows that Mr. Hull has violated Federal and State law, MCA policy, the Code of Professional Conduct, and mismanaged the Best and Brightest Program. He has thus placed MCA at serious financial and reputational risk.

Moreover, he has engaged in a pattern of divisive, destructive, and intimidating behaviors toward parents, faculty, and students that is of considerable concern especially given that some of them have been based on personal need and interest. His decision to serve as an education consultant on management company for charter schools in other Districts has taken him away from MCA and created a divided attention. In the process of advancing his consultancy to have charter schools replicate the MCA program, he and the company have not disclosed that it is predicated on the Hillsdale Model which is a violation of MCA policy. He is thus a risk of creating dual loyalties in the process.

It is recognized that Mr. Hull has done and contributed good things for MCA and the MCA community. Nevertheless, the above referenced actions and behaviors cast a long and dark shadow over the good work thereby affecting the School and its well-being.

Accordingly, it is recommended that he resign his position. It is recognized that he has 4 years left on his contract. If he chooses not to, a reconstituted Board should place him immediately on probation with careful monitoring and oversight. Mr. Donalds' concerns about removing contractual accountability provisions are as serious now as it was when he first express them to the Board.

In addition, if Mr. Hull continues his work, given the foregoing, it is recommended that he receive professional development work and training in the following areas: (1) social and emotional learning; (2) boundary training; (3) conflict resolution and effective interpersonal relations training; (4) supervisory and management techniques; and (5) an intensive seminar at Hillsdale on classical ethics and virtues that is both intellectually based but also involve experiential learning so the virtues are deeply integrated and internalized.

(2) Mr. Whitehead

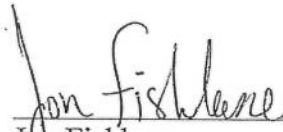
Mr. Whitehead's social media campaigns, involvement and his usage of his police background to intimidate others is of serious concern. His actions are against Board policy, the Code of Ethics, aspirational norms and so on. He also needs to cease and desist using his radio show to use MCA as an opportunity to advance his political and social views.

The record shows that he has helped many people. Many parents who left MCA felt there were times he was someone they could turn to. Mr. Whitehead should be placed on probation and be provided with intensive training of the sort recommended for Mr. Hull as well trainings unique for the work an Assistant Principal does including training in the areas of curriculum and instruction and attendance and discipline.



Finally, it is recommended that there be training for all: Board Members, administration, faculty and parents on the content of MCA policies.

Dated this 30<sup>th</sup> day of May, 2019.

A handwritten signature in black ink, appearing to read "Jon Fishbane", written over a horizontal line.

Jon Fishbane  
District General Counsel of Collier County  
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