



Shawn A. Arnold, Esq.♦♦∞
Melissa Gross-Arnold, Esq.■∞
John P. Leombruno, Esq.*
Braxton A. Padgett, Esq.

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September 1, 2019

VIA EMAIL

Jon Fishbane, Esq.
General Counsel
School Board of Collier County
5775 Osceola Trail
Naples, FL 34109

Re: Mason Classical Academy Termination

Dear Mr. Fishbane:

I am writing in regards to the School Board of Collier County's ("School Board") upcoming consideration of whether to termination the Mason Classical Academy's ("MCA") Charter Contract. In particular, I would like to discuss the process surrounding this matter and your role therein. On June 3, 2019, you submitted to the School Board a document entitled *Investigative Report for Mason Classical Academy* (the "Report"). The Report details your investigation into allegations raised by Joseph Baird and other individuals against MCA. At the end of the Report, you made conclusions and recommendations on actions that should be taken to address the concerns raised in the Report. Notably, you did not recommend that MCA be terminated. Rather, you recommended that certain key individuals resign from MCA and that the Board of Directors be increased from three (3) to five (5) individuals.

Following the publication of the Report, MCA took swift measures to address the concerns raised therein. MCA's management held a number of meetings to discuss the contents of the Report, as did the Board of Directors. On July 3, 2019, MCA submitted a twenty-one (21) page document ("Cure Document") detailing actions it would take to cure alleged defaults and violations of MCA's Charter Contract and the law. MCA proposed to taking the following actions:

- Immediately reinstitute the Finance Committee, which will meet three (3) times per year.

- Create a separate Audit Committee or the Board will meet each year as the Audit Committee to review the annual audit.
- Board members will not email each other anything other than ministerial items, such as meeting times and items to be placed on the agenda.
- Board members will undergo Sunshine Law and FERPA training within the next year.
- Staff concerns about the actions of Board members would be discussed only at duly noticed Board meetings.
- The Board will reconsider best practices related to meeting minutes.
- The Board will meet annually as the School Advisory Council.
- The Board will eliminate Board Policy B 17.0 related to management compensation.
- The Board will have three (3) year term limits going forward, which will be reflected in amended bylaws for MCA.
- The Board will seek to add two (2) additional Board members.
- Staff members will refrain from making unprofessional posts on social media.
- Board members will refrain from publicly commenting on social media on issues related to MCA.

Perhaps most importantly, David Hull, MCA's Principal, submitted his resignation effective August 11, 2019, as recommended in the Report. I would also note that MCA disputes many of the factual allegations made in the Report. Along with the Cure Document, MCA made a request for a mediation on July 3, 2019. The purpose of this mediation was to discuss these very issues and attempt to bring this matter to a resolution acceptable by all parties.

Around 7:00 PM on Sunday, July 9, 2019, just four (4) days after MCA submitted the Cure Document and request for mediation, a notice was posted on the School Board's website about a meeting to be held this Thursday, July 11, 2019, wherein the School Board will consider terminating MCA's Charter Contract. Notably, MCA never received notice from the School Board about the meeting and still not as of the date of this letter. Instead, MCA discovered this by chance because an individual spotted the notice on the School Board's website. Further, the notice is void of any indication of what would serve as the basis for such a termination action.

Article I, section 9 of the Florida Constitution guarantees that no person shall be deprived of life, liberty, or property without due process of law. I do not need to remind you that the core tenants of due process are notice and an opportunity to respond. *Carillon Comm. Residential v. Seminole Cnty.*, 45 So. 3d 7, 9 (Fla. 5th DCA 2010). MCA has been afforded neither of these. In any other county, a charter school would receive multiple

notices and a chance to cure prior to its sponsor issuing a notice of termination. This would typically come in the form of a “Notice of Concern” or “Notice of Default” with prescribed actions that can be taken to cure the deficiency. MCA has not received any Notice of Concern or Notice of Default. No document was provided along with the meeting School Board meeting agenda showing that staff has recommended the termination of MCA’s Charter Contract or detailing the basis for such a recommendation. Further, a proceeding to terminate a charter school’s charter contract is a quasi-judicial proceeding. *See e.g. Bd. of Cnty. Com’rs of Brevard Cnty. v. Snyder*, 627 So. 2d 469, 471, 474 (Fla. 1993). Regardless, MCA is not being given the opportunity to call witnesses, present evidence, or to be informed of the facts upon which the School Board will act. *Carillon Comm. Residential*, 45 So. 3d at 10.

During my phone conversations with you yesterday, I asked on three (3) separate occasions for you to provide me information about what would be occurring at the School Board meeting on Thursday. You refused to answer each time. Your attempts to hide the ball are inherently in conflict with notions of due process.

Further, your own role in this matter is concerning. After acting as investigator of this case, you are now advising the School Board on the matter. It appears you will be playing a prosecutorial role at the special meeting scheduled for Thursday to consider MCA’s termination. An attorney should not serve as both the party prosecuting a case and the advisor to a board. *Cherry Communications, Inv. v. Deason*, 652 So. 2d 803 (1995) (finding that the plaintiff’s due process rights were violated where an attorney prosecuting a case for a public commission met with the commission during its deliberations and proffered legal advice). Notions of justice and fair play require a public board sitting in its quasi-judicial capacity “to designate one person to act as its legal adviser and a different person to act as its prosecutor.” *Id.* at 804 (quoting *Metropolitan Dade Cnty. v. Fla. Processing Co.*, 218 So. 495, 497 (Fla. 3rd DCA 1969)).

In this case, you are acting as investigator, prosecutor, and advisor to the School Board. This creates an inherent conflict that threatens the impartiality of the School Board and dispenses with notions of justice and fair play. MCA is entitled to due process as the School Board decides whether to terminate its Charter Contract. Art. I, § 9, Fla. Const. (“No person shall be deprived of life, liberty or property without due process of law...”). MCA has not been given due process thus far, made worse by you playing varying roles that diminish the impartiality of the School Board.

Accordingly, I am asking that you recuse yourself from advising the School Board on this matter going forward. Another attorney should be promptly appointed to serve in this capacity on all aspects of MCA proposed termination.

Finally, I want to address the settlement offer that you proposed yesterday. You proposed the following settlement terms:

- Laura Miller and David Bolduc would resign from the Board.
- Kelly Lichter would remain on the Board.
- The number of Board members would increase from three (3) to five (5).
- The remaining four (4) Board member seats would be filled by individuals hand selected by Hillsdale College, not MCA.
- Hillsdale College would continue its relationship with MCA.

The terms of this settlement agreement are unacceptable to MCA. In particular, it is unacceptable for the governing board of a public charter school to be populated by people selected by a third-party. Hillsdale College is not a party to the Charter Contract and does not owe any duties to MCA. The Charter Statute is clear that the governing body of a charter school is responsible for exercising oversight of the school. Section 1002.33(9), Florida Statutes. Further, MCA's Bylaws require that the Board elect directors. It would violate Florida law, the spirit of the Charter Statute, and MCA's own organizational documents for an outside entity to assume control of the School by hand selecting directors without MCA having any say.

MCA's Board owes a fiduciary duty to the School which would be violated if it did not vet its own Board members to ensure they were qualified, the right fit for the School, and that they were in compliance with all laws, including laws related to background screenings. Section 1002.33(12)(g), Florida Statutes. You have proved unwilling to identify which individuals Hillsdale College has selected to serve on MCA's Board. Further, when I asked you who at Hillsdale College you have been in contact with, you again sought to hide the ball by refusing to answer my question. This settlement agreement amounts to nothing more than a hostile takeover of MCA that is contradictory to the law.

Based on information MCA has obtained, the School believes you have already privately counseled School Board members to terminate MCA's Charter Contract, despite your public recommendation in the Report to the contrary. I would remind you that the standard to terminate a charter contract is clear and convincing evidence of a material violation. Section 1002.33(8)(a), Florida Statutes. Alleged bad deeds of a few individuals cannot and should not serve as the basis to shut down one of the most successful public schools in the State of Florida. The allegations raised in the Report, even if taken as true (much of which MCA disputes), do not rise to the level of clear and convincing evidence supporting a termination of MCA's Charter Contract. Any action to terminate MCA's Charter Contract would surely be overturned, if not for a lack of clear and convincing evidence, then for the total lack of due process MCA has been afforded.

Particularly in light of the requested mediation, I am asking that the upcoming School Board meeting be cancelled so that we can discuss these matters like adults without this artificial deadline you have imposed. Please advise as soon as possible.

Sincerely,

Shawn A. Arnold, Esq., B.C.S.
sarnold@arnoldlawfirmllc.com

C: Collier County School Board Members
Dr. Kamela Patton, Superintendent, Collier County Public Schools