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September 4, 2019

J. Michael Coleman
Coleman, Hazzard, Taylor, Klaus, Doupe, & Diaz
3003 Tamiami Trail N – Suite 402
Naples, Florida 34103-2714

Via E-mail Only

Re: Mason Classical Academy, Inc. (MCA)

Dear Mr. Coleman:

We have received your response to our letter to Mr. Arnold of August 14, 2019. Before, we address the factual and legal errors in your response, there a number of additional concerns that we must first bring to your attention.

First Amendment Violations by MCA

We have received complaints that the MCA is blocking parents and members of the public from its Facebook page if MCA does not consider such persons sufficiently supportive of MCA. MCA is a public school in Florida. Sect. 1003.33, Fla. Stats. (2019)(saying all charter schools in Florida public schools… ."). Because MCA is a governmental entity, it may not regulate access to social media accounts on the basis of viewpoint discrimination. *See, e.g., Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 577 (S.D.N.Y. 2018), aff'd, 928 F.3d 226 (2d Cir. 2019).

Please let us know when these First Amendment violations have been corrected.

Sunshine Law and Agenda

Board meeting materials still do not appear on the "Meeting Material" section of the Webpage concerning board meetings. Rather all that appears is "The material below will be reviewed at the next board meeting:" and nothing follows.

We do not understand your attempt to defend that practice of not posting agendas in advance of meetings, but then go on to note both that it is a "best practice" and that Florida Attorney General has opined that the posting of an agenda is "in the Spirit of the Sunshine Law." Inf. Op. Fla. AGO (March 24, 2006). Moreover, you cite *Hough v. Slembridge*, 278 So.2d 288,

291 (Fla. 3d DCA 1973) but did not include the court's discussion on agendas where the Court noted the following:

> The agenda plots the orderly conduct of business to be taken up at a noticed public meeting as provided for by city charter or ordinance…Although the drawing up of an agenda is a matter related to a noticed public meeting, it essentially is an integral part of the actual mechanics and procedures for conducting that meeting and, therefore, aptly relegated to local practice and procedure as prescribed by city charter and ordinances.

Further, MCA' Board Policy 3.0, requires agendas and includes the following provision "the agenda for each Board meeting shall be sent to MCA's Webmaster for posting on the MCA's website." This must be done "at least three days" before the Board meeting event. MCA, consistent with the terms of the Mediation Agreement, needs to follow its own policies.

Finally, you have not denied any of the facts from the first letter. For your convenience here they are again:

> After agreeing at mediation on August 1st to this, at the very next meeting on August 5th MCA failed to post the mediation settlement agreement before the meeting. The chairwoman's justification for this failure to post in advance was: "The mediation settlement agreement has not been voted on." The whole point of posting documents in advance is to give the public a chance to review and comment on them *before they are voted on*. Will it be the practice of MCA to continue to not post items until after they are voted upon? We consider this practice a violation of the Settlement Agreement and a violation the spirit and the letter of the Sunshine Law. Further, it has been reported to us that meeting notice for MCA's August 8 meeting was incorrectly posted but that MCA proceed to hold the meeting anyway.

We assume that you have not denied them because they are true. Therefore, please confirm that in the future MCA will be publishing in an advance an agenda with supporting materials for all future Board Meetings.

Board and Staff Professionalism

We remain very concerned about the unsubstantiated claims by Ms. Lichter, now reinforced by you, that the Collier County School Board is engaged in an "effort to continue to undermin[e] the school." These comments at repeated meetings after the Settlement Agreement are hardly evidence of good faith. We would note that no facts are offered by Ms. Lichter or by

you to support these statements. Further, we do not understand what relevance the performance of the students at the school has to do with the First Amendment violations, Sunshine Law violations, and governance issues.

Rest assured that the Districts' only interest is what is best for MCA. We trust that MCA board members will act accordingly.

Flawed Grievance Policy

We wrote at length about flaws in the proposed Grievance Policy, including but not limited to attempts to remove parents' FREPA rights and their legal rights to bring concerns to the Collier County School Board, without reprisal or chilling effect. While you discussed the procedural posture of the policy adoption, you did not address the substantive points raised.

Has a final version of the Grievance Policy been adopted without the offending provisions?

Board Appointments and Terms

You characterize as "ridiculous" our concern that MCA had not implemented staggered terms of board members pursuant Settlement Agreement. However, MCA had not implemented it, still has not implemented, does not say when it will implement this term of the Settlement Agreement. Further, we do not understand why MCA would "decide that it is better to have board members who are not parents of students at the school." Perhaps you could enlighten us on this.

Your characterization of the interactions between Mr. Arnold and Mr. Fishbane regarding new board members is hard to understand. Mr. Fishbane passed on Hillsdale's offer to help find new board members. MCA responded by saying it would refuse to consider anyone proposed by Hillsdale because Hillsdale's was attempting "a hostile takeover of MCA." Further, as you should well know, the parties discussed at length a proposed name of an outstanding potential board member not proposed by Hillsdale. Yet, you now complain that Jon Fishbane did not provide MCA with proposed names?

Please provide us with assurances that MCA intends to abide by the representations it made at the mediation and in the settlement agreement regarding the Board make-up and terms.

Lack of Principal and Teaching Staff

It strains credulity to suggest that MCA's problems with its administration are to be blamed on the District. Your allegation that the District is engaged in an effort to make it "even harder to fill staff positions" for MCA is quite frankly beyond the ken of serious discussion, and no further response is warranted.

Relatedly, it has been reported that that Mr. Hull is now functioning as a shadow principal and occupying his former principal's office. Mr. Hull allegedly returned as a guitar

teacher, made an ESE teacher, and now has been moved into what appears to be an administrative position. The District seeks to know what he is actually doing, what job duties and responsibilities he is actually performing, his job title, and where such title and position have been posted?

Please advise what steps MCA has taken to insure that Mr. Hull is only performing the responsibilities of the positions he currently holds at MCA.

Please also let us know why the District should not be concerned about the teaching and principal situation at one of its public schools, over which the Constitution of the State of Florida make it responsible. See Art. IX, Sect. 4 (b)(saying, "[t]he school board shall operate, control and supervise, all free public schools within the school district.").

Inaccuracies and Misstatements Regarding the MCA Report Process

We are perplexed why MCA would continue to address issues raised before the Settlement Agreement and in light of the Settlement Agreement. We would note that the Whereas clauses make it clear that the Settlement was to "fully settle the issues" included in the "Investigative Report." What is the point of continuing to bring up issues prior to the Settlement Agreement? This hardly seems productive or a good faith moving forward. In any event, in an attempt to clear the air, we would bring the following to your attention.

1. Mr. Hull was aware of the investigation in August 2018 and wrote to Dr. Rogers accordingly that he was aware people were contacting the District in connection with the Baird Complaint.

2. District received and considered MCA information long before any request from counsel for the alleged opportunity for input. In November 2018, Mr. Hull sent Jon Fishbane extensive documentation on two separate occasions. He informed Mr. Arnold accordingly. The information received was noted in the Report.

3. Mr. Arnold also sent information on behalf of MCA (as did Ms. Turner) all of which was considered and noted in the Report.

4. Toward the end of the three-hour meeting with Mr. Hull, Mr. Marshall and Ms. Turner, Mr. Fishbane asked Mr. Hull, for example, if there were any other documents or information, other than those documents he provided in November that he would like to provide for consideration. Mr. Hull replied that he did not.

5. Given the extensive documents he had reviewed, Mr. Fishbane did not see a reason to interview Ms. Lichter or Ms. Miller concerning MCA Board Meetings and why or why not they did what they did. A Board speaks through its Minutes not the thoughts and reflections of its individual Board Members.

6. Jon Fishbane had very limited contact with Hillsdale during the course of the investigation. He was unaware of the December 2018 letter Hillsdale sent to MCA expressing its serious concerns about school leadership, until June of 2019. In any event, there is nothing inappropriate for a Sponsor, through counsel, to have contact with a central party to the Application and Charter.

In any event, whether you agree with above or not, and whether you wish to ascribe lack of good faith to the District for actions taken prior to the Settlement Agreement, we consider these matters to have been "fully settled" pursuant to the Settlement Agreement, and suggest that MCA's time and money be devoted to more productive efforts.

Hillsdale

You spent a considerable time attempting to parse the legal niceties regarding MCA's contract with Hillsdale. While this lengthy discussion was interesting, the fact remains that MCA could have continued it contract with Hillsdale and chose not to. As we said in our previous letter, "Both the Charter and MCA policies require an active presence of Hillsdale." Therefore, the questions we raised about the absence of its partner remain.

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

Conclusion

We urge MCA to take seriously the issues we address in our previous letter and in this one, so that these matters may be resolved.

Sincerely,

ROETZEL & ANDRESS, LPA

James D. Fox

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