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December 16, 2019

Mason Classical Academy
c/o Mr. Raul Valles, Jr.
Rocke McLean Sbar
2309 S. MacDill Avenue
Tampa, Florida 33629

Via E-mail Only

Re: Mason Classical Academy, Inc. (MCA): Continuing Contractual and Legal Concerns.

Dear Mr. Valles:

MCA's responses to our letters to Mr. Arnold of August 14, 2019 and September 4, 2019, have neither demonstrated a willingness to accept or make corrections. Rather, unfortunately, MCA's continues to disregard its contract, its recent settlement agreement, and the laws of Florida. We must conclude that it is futile to continue to request additional assurances that MCA will accept responsibility, discontinue its conduct, and live up to its contractual and legal obligations.

First Amendment Violations by MCA

The Settlement Agreement requires MCA to adhere to the terms of its Charter, which clearly requires MCA follow the law. See, e.g., § D(1)(iii). Recent statements by MCA board members the Settlement Agreement does not require MCA to follow the Constitution of the United States are ill advised.

MCA was blocking parents and members of the public from its Facebook page if MCA does not consider such persons sufficiently supportive of MCA. MCA's chair took the position that MCA is a private entity it may not subject to the First Amendment. This is manifestly false. MCA is a public school in Florida. Sect. 1003.33, Fla. Stats. (2019)(saying all charter schools in Florida are "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).

MCA then took down its Facebook Page, only for its officials to essentially re-open the forum, as it was fundamentally the same forum that was closed. However, previously excluded

forum members were not provided access to this "new" forum and the "new" forum began blocking commenters not favorable to someone at MCA. We understand that MCA does not like nor want to tolerate any criticism about how its board conducts itself. However, it is only when someone says something government officials do not like that the First Amendment is necessary.[1] MCA's First Amendment violations appear to on-going, despite our previously expressed concerns.

Please either provide the justification for banning some parents from the MCA Facebook pages or end this practice immediately.

Sunshine Law and Agenda

Originally codified by statute, the Sunshine Law recently became part of the Florida Constitution. Article 1, section 24(b) of the Florida Constitution, adopted in 1992, provides:

> All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public....

Section 286.011(1), Florida Statutes (2019), states that:

> All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

The Sunshine Law penalizes members of governmental bodies who meet in secret. § 286.011(3), Fla. Stat. (2019). Minutes of meetings of such boards or commissions are to be promptly recorded and open to public inspection. § 286.011(2), Fla. Stat. (2019).

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[1] Related to this section 768.295, Florida Statutes, Florida's Strategic Lawsuit Against Public Participation (SLAPP), prevents among things suing persons for statements made before a governmental entity. Further, the law prevents a governmental entity from suing a person who has "exercised their constitutional right of free speech in connection with a public issue." We have learned that MCA has decided to sue a former parent. We make no comment on the merits of that lawsuit. We would note the multiple board meetings about hiring attorneys to "go on the offensive. We caution MCA that should its lawsuit be found to be a violation of Florida's SLAPP or Whistle Blower statutes, CCPS will take either finding very seriously.

MCA's Charter, the Settlement Agreement, and MCA' Board Policies all require MCA to follow the Government in the Sunshine Law. Board meetings may only be conducted with reasonable notice and materials must be posted. Contracts, appointments to boards, and votes on reports have all been taken without any of the documents being available to the public.

Florida's Government in the Sunshine Law is "construed so as to frustrate all evasive devices." *Sarasota Citizens For Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). The purpose of the Sunshine Law: "to prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance...." *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974).

Now chronically, votes are being taken on all manner of issues without supporting documents being available to the public to review. Votes on contracts (such as the principal's contract, the public relations firm's contract, the law firm hired to sue a former parent), on appointments to subcommittees by issuing numbers, all were violative of the public's rights to know what exactly is being voted on,[2] as key reports, documents, and contracts were not posted for public to review. Practices that keep documents out of the Sunshine before being voted on are decidedly inconsistent with the law.

For example, no draft of the principal's contract or the Coleman Report, were provided to the public, prior to being voted upon. When changes were sought by board members to the Coleman Report, the Board then delegated its authority to a member to make changes. However, by that board member thereby became subject to the Sunshine Law. But no meeting or minutes were made of the changes being made to the report, and hence there was no accountability to the public, or opportunity to speak.

Further, MCA's practice of holding emergency meetings for routine matters likewise evades the Sunshine Law. Reasonable notice of meetings is normally 7 days. MCA even held an emergency meeting to correct a Sunshine law violation with respect to choosing committee members by number. However, a violation of the Sunshine Law is not an emergency and cannot be remedied by another Sunshine Law violation. Nor is funding money for suing a former parent an emergency. Nor are discussions about whether to sue the Collier County School Board. Nor are discussions about whether to terminate the service of yet another law firm. Nor is a decision about whether to send letter to the District.

No less than 6 recent meetings, 9/27, 9/27. 10/15, 11/22, 11/2, and 12/6 were held as "emergencies." Each evaded the notice requirements of the Sunshine Law.

Related to this, by not posting documents in advance of items to be discussed, the public has been deprived of the right to comment on items.

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[2] We would note that a violation of the Sunshine Law is not cured because it was "inadvertent."

Florida law says that:

> Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action.

§ 286.0114, Fla. Stat. (2019). Reasonable opportunity to be heard requires reasonable notice of what is to be discussed.

However, MCA requires the public to speak before any item is considered. As the documents being discussed have not been made available to the public, there is no possibility that the public could speak on those items as they cannot possibly know what will be discussed later. The right to be heard carries with it the right to be reasonably informed. The oblique discussions of the Board, which appears to have the benefit of documents in front of it which were not posted or made available to the public, does not further enlighten the public so they may be heard.

In light of the above, on at least 10 separate occasions there appears to have been violations of Florida's Government in the Sunshine Law and hence of sections 1002.32(16)(b)(1), 286.011, and 286.0114, Florida Statutes, MCA's contract, and the Settlement Agreement.

There are civil and criminal penalties for violating Florida's Sunshine Law. "Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083." § 286.011(3)(b), Fla. Stat. (2019).

Public Records Requests

Section 119.07(1)(c), Florida Statutes (2013), requires both prompt acknowledgement of the request and a prompt good faith response: "A custodian of public records ... must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith." Section 119.07(1) provides that a delay in making public records available is only permissible under limited circumstances. Section 119.07(1)(c) permits a delay for a records custodian to determine whether the records exist; however, unjustified delay in making non-exempt public records available violates Florida's public records law. *See, e.g., Barfield v. Town of Eatonville,* 675 So.2d 223, 224 (Fla. 5th DCA 1996) ("An unjustified delay in complying with

a public records request amounts to an unlawful refusal under section 119.12(1)"). It is not only the length of the delay, but also whether the delay was unreasonable or excused under Chapter 119. *Consumer Rights, LLC v. Bradford County*, 153 So. 3d 394, 397 (Fla. 1st DCA 2014) *and Office of State Attorney for Thirteenth Judicial Circuit of Florida v. Gonzalez,* 953 So.2d 759, 765 (Fla. 2d DCA 2007).

Public Records requests are not subject to objections that they are overly broad or not direct. Nor is delay, let alone outright refusal to process the request, nor demands of narrowing the scope, allowable under the law. Nor is the public required to revise its request. Nor is the public required to specify and identify any document, of which it may not even be aware, for a request to be valid. These are all serious misunderstandings of the public records law.

In the case of electronic records, the amount of time and cost to produce even voluminous records is rather insignificant, so it is hard to justify not even starting on requests unless the requests are narrowed. Indeed, if the request is not even begun, it is hard to understand how the requestor could be advised of the time and cost of fulfilling the request. Nor is the public required identify themselves by name or residence for MCA.

MCA's board members' claims at recent board meeting that public records requests are "gotcha games" as thus MCA should require narrowing of requests or identify if they are local has no basis in law. Under no circumstances may MCA deliberately deny a request for such records, nor to delay in such a manner as to rise to a denial. Nor may requests for public records be timed with MCA's public relations agenda, such as was apparently the case with the early drafts of the Coleman Report. We find it difficult to understand the claim that Mr. Arnold advised you improperly. Not providing records to members of the public in a timely manner is a violation of section 1002.32(16)(b)(1) and Chapter 119, Florida Statutes, MCA's contract, and its Settlement Agreement.

Please provide us with all public records requests made to MCA in the last year by any source, all records related to the processing of those requests, and copies of the documents provided to the requestor. Please provide the requested records by electronic format. Consider this a request under Florida's Public Records Law.

Audit

The Settlement Agreement requires MCA to have an independent audit, by October 15, 2019. The date was agreed to at mediation by the parties. MCA has dispensed with McCrady based on baseless assumptions and unilaterally moved this deadline. The stated reason of the Board for dismissing McCrady was that CCPS has interfered by talking with them. No evidence was solicited or considered for this conclusion at the board meeting. MCA should not make decisions based on suspicion and unsubstantiated claims. No one at CCPS has ever spoken to or otherwise communicated with McCrady. In fact, only MCA representatives or attorneys have spoken with McCrady to our knowledge. The board had read a letter from the auditor, disagreed with the contents of the letter and then apparently concluded that it did not like the things that the auditor was going to investigate. The idea that an independent auditor must be limited to only

inquire into those areas the entity being audit wants it to, and may not look into or hear from outside sources with information relative to the audit, is unacceptable and calls into question the independence of the auditor.

MCA does not have the authority to alter the date by which the independent audit is to be completed. MCA must renegotiate those terms if it wishes to alter them, as unilateral disregard of these terms, especially based on unfound and accusatory speculation is bad faith and is a contractual breach.

Board Professionalism

The Board seems to openly hostile to our now repeatedly expressed concerns. Indeed, not one of our concerns has been acknowledged; nor have we received the requested additional assurances regarding corrections. Instead, the Board has reacted with unsubstantiated claims that the Collier School Board is "not an honest broker," is engaged in an "effort to continue to undermin[e] the school", and a paranoid and ludicrous conspiracy theory that the District is part of "a hostile takeover" of MCA.

The District merely would like to see good governance from the MCA Board. Unfortunately, neither the Board nor any board member has been willing to take any responsibility for its actions; nor to be accountable in any way to anyone for its actions. This open hostility has now resulted lawsuits against the District and a parent. The Boards' continued refusal to take the corrective actions will not be without serious consequences.

Conclusion

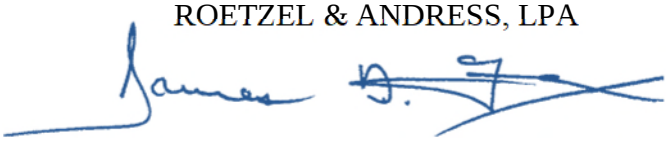
The Florida Constitution, Art. IX, § 4(b) says: "The School Board shall operate, control, and supervise all free public schools," and charter school are "public schools." § 1002.33, Fla. Stat. (2019). Our concerns arise out of School Board's constitutional responsibilities. We suggest that the MCA board humbly accept our communications as a genuine desire for the well-being of the school and for good governance.

Your chronic disregard for the consequences of your actions, your unwillingness to honor your contractual commitments, and your expressed paranoid hostility to your contractual partner, leads us to concluded that you have no interest in, cannot abide by, nor will you accept any guidance, counsel, or even simple requests to follow the law.

We are therefore constrained to advise our client that under these conditions any further contractual relationship with MCA is untenable.

Sincerely,

ROETZEL & ANDRESS, LPA



James D. Fox

cc: Client

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