

## ALLEGED DEFAULTS AND CURES

### **#1. Finance Committee and an Audit Committee**

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.

***CURE: The Board will reinstitute the Committee immediately. The Committee will be chaired by Mr. Buldoc, who will select its members. The Committee will meet at least three times a year: once after each FTE survey period and in May for the creation of the next school year's budget. Additional meetings could be called if desired.***

### **#2. Audit Committee**

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:

- (2) Evaluate the request for proposal for annual financial audit services

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- (3) Recommend the selection of the financial auditor
- (4) Attend the entrance and exit conferences for annual and special audits
- (5) Meet with external financial auditors at least monthly after audit field work begins until the conclusion of the audit,
- (6) Be accessible to the external financial auditors as requested to facilitate communication with the Governing Board and the Principal
- (7) 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
- (8) Provide other advice and assistance as requested by the Governing Board; and
- (9) 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 a 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.

**CURE: The Board will either create a separate committee or meet as a board seated as the audit committee to review the annual audit. The committee will discuss findings or recommendations by the independent auditor. The committee will make recommendations regarding the continued employment or changing of auditor.**

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### **#3. Sunshine Law**

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

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was inappropriate about what he was doing and trying to understand why she was directing him in the manner that she did.

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.

**CURE: The email from Lichter to Baird was the first communication and is not a Sunshine law violation. However, as a best practice, board members will not email each other anything other than ministerial items, such as times to meet, items to be placed on agenda, etc. The Board will undergo sunshine law training within the next year even if there is time left on their current training period. This refresher can be done at the same time as FERPA training to be given to staff and admin.**

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### **#4. Individual Board member should never....become involved in specific management issues unless directed by the board**

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.

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**CURE:** Concerns of staff of the actions of GB members should be addressed at a duly called GB meeting.

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### **#5. Meetings were held and business transacted without a quorum.**

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.

**CURE:** The District's conclusions are wrong as a matter of law. However, to end this dispute the Board Resoluion of July 2 will be passed in order to move past this issue.

**Board Resolution to** \_\_\_\_\_

### **#6. Failure to attach supporting documents to agenda online.**

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.

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**CURE:** The requirements of Chapter 286 that apply to School Districts do not apply to charter schools and cannot be the basis for a finding of a violation of the charter contract. Nevertheless, the GB should consider whether this is a best practice that it should adopt and discuss at the next GB meeting.

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### **#7. 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.

**CURE:** Same answer as number 6.

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### **#8. Minutes 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.

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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.

***CURE: The School District states that meeting minutes were wrong when no meeting even occurred. Nevertheless, the answer to this section is the same as number 6 and Mason continues to affirm it will provide accurate meeting minutes.***

### **#9. 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:

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- (10) 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.
- (11) 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.
- (12) Serve as the champion for students in building community support for schools and encouraging greater community participation in the public schools.
- (13) Hear grievances from parents according to the Parent Grievance Policy.
- (14) Assist the Governing Board in filling Board vacancies. (See, 2012 Application at 63).

**CURE: *Governing Board will act as the SAC and will meet annually as the SAC to fulfill the SAC duties and responsibilities.***

### **#9. Employment Committee**

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.

**CURE: *Board Resolution – Eliminate Board Policy B 17.0 Management Compensation Review Policy***

### **#10. Establishing a Quorum at Board of Directors Meetings**

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,

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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



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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

**CURE: Counsel for the District is simply wrong on the legal issue here. There are policy concerns raised by the District that the GB should consider, which are discussed in cure number 6. In addition, the Resolution will address this.**

### **#11. "Illegal" Vote**

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.

**CURE: The FY 2019 budget was ratified on November 30<sup>th</sup> because the board was informed by counsel that meetings at which board members are present by telephone, equal telephonic access to the meeting must be given to the public. At the June 30, 2018 board meeting, Ms. Miller was present by telephone. The board ratified the budget in order to cure the board's prior failure to make the June 30<sup>th</sup> meeting available to the public by telephone.**

### **#12. Mr. Bolduc's Appointment and Subsequent Votes**

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."

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**CURE:** See answer to #6.

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### **#13. Annual Election of Board Members**

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.

**CURE:** I would suggest longer, staggered terms to be created and amendment to the bylaws. With the current board, there should be a staggering of terms, such as one board member agreeing to a three year term, one a two year term, and one a one year term. Then, GB members up for election would receive a three year term and serve it. These are merely suggestions on terms and could be modified, but the principle behind the suggestion is the same. This prevents a large number of GB members coming up for renewal or removal at one time and provides board continuity. A discussion should be held and consensus of how to proceed forward be made. Counsel will then revise bylaws and policies and present to the GB at its next meeting.

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### **#14. Board Policies and Changes – First and Second Readings**

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.

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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.

### **CURE:**

***Are MCA Board policies required to be posted as attachments to the agendas online?***

**No, but this is a best practice the GB should address**

***Are second readings required for MCA Board approval of policies?***

**No**

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*Are MCA Board policies allowed to be included in the consent agendas?*

**Yes. If a GB member wants to pull it for discussion they can. Public comment needs be held prior to the vote on the consent agenda. Such a change to policy should be led by the Principal or by the GB's counsel.**

### **#15. Valerie Parker**

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 [Valerie Parker] 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.

**CURE: The GB doesn't agree with the factual statements made by Mr. Fishbane. However, the GB affirms that it will follow its grievance policy. The GB will discuss potential revisions to the grievance policy.**

### **#16. Mr. Whitehead Indirectly Attacking Mrs. Parker on social media**

The School's Assistant Principal, Mr. Whitehead, 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."

**CURE: Generally the discussion of # 15 would apply here. Mr. Hull has resigned.**

### **#17. Mr. Hulls Emails to Ms. Zuluaga**

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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 Dennis 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 Dennis decide to violate the mandate of this message. Otherwise, as Dennis’ 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.

**CURE: Mr. Hull has resigned.**

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### **#18. Mr. Hull’s Efforts to Influence the Student of Virtue Award**

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).

**CURE: Mr. Hull has resigned.**

### **#19. Mr. Whitehead’s Facebook threat to Mrs. Parker, and impliedly to other concerned parents**

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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 unbecoming 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.

***CURE: Staff members are asked not to address these types of issues on social media.***

### **#21. "Mr. Hull knowingly disregarded MCA policy, yet continues to blame the parents for his wrongful actions."**

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.

***CURE: Mr. Hull has resigned.***

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### **#22. Board Member Miller's support of Mr. Whitehead's comments is also unbecoming a School Board Member.**

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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.

**CURE: A full explanation by Ms. Miller as to what she meant should be put on the record.**

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### **#23. Board Members Miller and Lichter acted contrary to their stewardship, respect toward others**

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.

**CURE: The GB affirms it will act in accordance with this “Pillar” in the future.**

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### **#24. Board Members Miller and Lichter did not honor this policy (SE 25.0) on their media postings nor did Mr. Whitehead whose conduct they condoned and followed.**

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).

## ALLEGED DEFAULTS AND CURES

**CURE:** The GB affirms it will act in accordance with this Policy in the future.

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**#25. Board Members (Lichter and Miller) faltered 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.**

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 faltered 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.

**CURE:** This is an opinion issued by Counsel for the District. The GB may discuss it but no act is required.

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**#26. 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**

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.



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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.

**CURE: The School was prohibited by FERPA from answering this charge and it is unfair for the District to bring up charges it knows the School cannot answer. This matter discusses potential civil liability of one GB member and doesn't require discussion by the GB. A discussion about GB member's speech in the public may be a good idea to see if the GB wants to avoid these potential problems in the future.**

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### **#27. Mr. Hull did not receive parental permission to disclose student educational records**

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

**CURE: Mr. Hull has resigned. Training of staff and GB by counsel on FERPA, ethics, and Sunshine law prior to the upcoming school year would be a preferred cure.**

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### **#28. Mr. Hull's attacks were not only uncivil and a violation of MCA's civility policy (See, Policy SE 48.0 and unprofessional, but they are unbecoming of an educational leader.**

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

## ALLEGED DEFAULTS AND CURES

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.

**CURE: Mr. Hull has resigned.**

**#29. By any benchmark, Mr. Lichter’s comments were uncivil. He is a parent, founder, husband of the Board President, and certainly a public person in the MCA community especially.**

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

## ALLEGED DEFAULTS AND CURES

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.

**CURE: Mr. Lichter is not a GB member and the GB owes no response to the District.**

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### **#30. It appears the parent liaison has existed in name only**

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.

**CURE: As a sign of goodwill, the GB should better educate parents about who fills the role of the parent liaison. Some best practices might include says this fact at each meeting, posting it on Mason’s website, with a detailed explanation of what that role entails.**

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### **#31. 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.**

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,

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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.

**CURE: Ms. Lichter and Mr. Lichter no longer are associated with CCMG and Mr. Hull has resigned.**

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#32. 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

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

## ALLEGED DEFAULTS AND CURES

### **#33. 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.

***CURE: Conclusions by District counsel are not supported by fact. It is a position of the GB that in order to conduct a proper investigation that persons should be interviewed. It is remarkable that Counsel for the District would say that not interviewing both sides makes for an improper investigation. Counsel for the District didn't interview persons at MCA associated with this investigaiton, listened to only one side, and drew concluisions without MCA being able to present its defense, going so far as to say it would not acctpet any further evidence.***

### **Summary**

#### **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 faltered in their oversight of the Administration in disregarding the multiple committee that were required. They faltered 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 unbecfitting of a Board Member of a School (whether public or private).

#### **Mr. Hull and Mr. Whitehead & Mr. Hull**

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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.

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 immediately 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.

***CURE: Discussion should be held Ms. Miller and Ms. Lichter as to whether they want to consider the call for them to resign. Mr. Hull has resigned. Discussion should be held regarding whether Mr. Whitehead should make a cleared separation between his veiwpoints on issues and MCA's position on items as a public school.***

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