

**INVESTIGATION OF ALLEGATIONS
OF IMPROPRIETY
MATER ACADEMY CHARTER SCHOOL(S)
AND ACADEMICA CORPORATION**

**POOR GOVERNANCE RESULTS IN APPARENT
SELF-DEALING**

NOVEMBER 2006



THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

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Miami-Dade County Public Schools

giving our students the world

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November 1, 2006

Members of The School Board of Miami-Dade County, Florida
Members of the School Board Audit Committee
Dr. Rudolph F. Crew, Superintendent of Schools

**Subject: Report on Investigation of Allegations of Impropriety
Mater Academy Charter School(s) and
Academica Charter School Management Company**

Ladies and Gentlemen:

The Office of Management and Compliance Audits, functioning in the role of the Inspector General, has completed the subject investigation. In accordance with Board rules, this report is being transmitted to the School Board, the Audit Committee and the Superintendent simultaneously. The report will be presented to the Audit Committee at its November 15, 2006 meeting. Based on their comments, suggestions and recommendations, the School Board should receive the final report at its November 21, 2006 meeting.

This investigation resulted from an allegation that senior Mater Academy personnel and the schools' management company engaged in illegal acts and unethical business practices. Our investigation disclosed no indications of fraud or abuse by staff of the schools; however, we did find questionable practices, which suggest that the Board and senior management represented by Academica, did not adequately fulfill their fiduciary duties to the charter schools they represent. During our investigation, we found undisclosed related party transactions for the capital outlay program of the school(s). This resulted from weak corporate governance: Past and present officers and board members placed in major decision making roles were employed by and/or served on the boards of other Academica controlled schools and had direct ownership in the management company and other undisclosed interests in for profit companies established to provide financing and lease the facility back to the school(s).

Specifically, a number of members of senior management and/or their immediate family served simultaneously as officers and directors for companies doing business with Mater Academy. While serving in these multiple capacities, certain individuals failed to adequately advise the board of the Mater Academy, Inc. regarding the school's right to purchase the property they occupied. Instead, these individuals initiated the purchase of the facility by School Development HG II LLC, a for-profit corporation owned by an offshore corporation they established for that purpose. While denying any direct or indirect benefit, they have refused to disclose the individuals profiting from these questionable transactions. We estimate that the school is paying \$1.3 million per year in excessive facility costs, which it otherwise might have had a permanent equity interest in.

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Our assertions are based on the documentation provided to us by Mater Academy, its management company, Academica, public records filed with the State of Florida and/or Miami-Dade County, and interviews with applicable individuals and expert consultants. We have attached copies of certain records for reference.

During our investigation, we conferred with the Assistant State Attorney in the Public Corruption Prosecution Unit of the Office of the State Attorney, Eleventh Judicial Circuit of Florida. The State Attorney has declined to initiate a criminal investigation at this time. In accordance with Board rule 6Gx13-8A-1.07 Office of Inspector General/Due Process §11.c, we shared our findings and recommendations with the Board of Mater Academy and Academica. Their written comments through their respective attorneys are included as an appendix to this report.

Sincerely,

A handwritten signature in blue ink that reads "Allen Vann". The signature is fluid and cursive, with the first name "Allen" being larger and more prominent than the last name "Vann".

Allen M. Vann, CPA, Chief Auditor
Office of Management and Compliance Audits

AMV:la

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**INVESTIGATION OF ALLEGATIONS OF IMPROPRIETY
MATER ACADEMY CHARTER SCHOOL(S) AND
ACADEMICA CHARTER SCHOOL MANAGEMENT COMPANY**

INTRODUCTION

On January 26th an unsigned letter, dated January 24, 2006, was received by Dr. Rudolph F. Crew, Superintendent of Miami-Dade County Public Schools (M-DCPS) (please see Appendix A, page 19). This letter was purportedly from ten individuals affiliated with the Mater Academy Charter High and Middle Schools. It alleged numerous violations of law and ethical business practices. However, all identifiable individuals who appear as authors of the letter denied involvement in the preparation of the letter. We were unable to identify the author(s) and so did not conduct a Whistle-blower's investigation. Nevertheless, based on the seriousness of the anonymous allegations of impropriety, we investigated a number of issues raised, including:

- fundraising practices,
- determination of free and reduced lunch and eligibility for Title I funds,
- attendance practices and validity of excused absences,
- equipment accountability,
- approvals of applications and charters for new charter schools, and
- cronyism, related party transactions and poor governance resulting in transactions not in the best interest of the school.

Section 1002.33, Florida Statutes, delineates the School District's responsibilities as a sponsoring district to monitor and oversee our charter schools. Under Section 1002.33, Florida Statutes, charter schools are part of the state's program of public education. All charter schools in Florida are public schools and, like traditional public schools, are funded with local, state and federal tax dollars. Charter schools are typically sponsored by the school board of the county in which the school resides. The sponsoring school board is charged with certain responsibilities including fiscal oversight and monitoring the school's revenues and expenditures. The public funds to operate the charter school are distributed to the school throughout the school year by the sponsoring school district. In turn, the charter school is responsible for complying with generally accepted standards of fiscal management and providing for an annual financial audit in accordance with Section 218.39, Florida Statutes.

In the course of our investigation we reviewed certain transactions and conducted interviews with Mater Academy and Academica staff and M-DCPS employees. We also engaged the services of a real estate appraisal consultant for certain limited components of the investigation. The scope of our investigation was limited to activities and transactions of Mater Academy Charter High and Middle Schools, Mater Academy, Inc. and their management company: Academica Charter School Management Company.

FINDINGS

UNSUBSTANTIATED ALLEGATIONS

We tested transactions and reviewed records for the period July 2005, through February 2006, of Mater Academy Charter High and Middle Schools, to determine the propriety of:

- fundraising practices,
- the determination of free and reduced lunch and eligibility for Title I funds,
- attendance practices and the validity of excused absences,
- equipment accountability, and
- approvals of applications and charters for new charter schools.

Nothing came to our attention indicative of illegal acts, fraud, or gross waste and abuse. Accordingly, we concluded that these allegations are unsubstantiated.

POOR GOVERNANCE AT ACADEMICA CONTROLLED CHARTER SCHOOLS

Currently, Academica Corporation has contracts to provide professional management services to 25 of the 58 Charter Schools sponsored by M-DCPS during the 2006-2007 school year. At most of these schools, Academica officials appear to be the driving force for their establishment and often served as officers of the Boards.

At Academica managed charter schools there appears to be an interwoven web of governance, as individuals Academica placed or recommended for employment also are called upon to serve on the Boards of the other schools they manage. These relationships in turn create weak Boards because Board members are dependent on Academica for their continued livelihoods. The methodology by which Board members are nominated and appointed is not apparent and not clearly documented.



We also noted that all of the Academica managed schools in Miami-Dade County, with eight distinct purportedly independent governing boards, all engaged the

same independent accounting firm, Verdeja & De Armas, LLP, CPAs, to perform their required annual financial statement audits. This firm also audits the four charter schools Academica controls in Broward County. As discussed later in the report, this has affected the adequacy of past disclosures of related party transactions in the financial statements issued for these charter schools.

The Mater Academy, Inc., which is operated as a not-for-profit, 501(c)(3) corporation, was formed in July 1998 on behalf of and to govern the Mater Academy Charter School. By June 2004, Mater Academy, Inc. had three additional schools under its auspices, including Mater Academy East, Mater Academy Charter Middle School and Mater Academy Charter High School. Mater Academy, Inc. contracted Academica Corporation,¹ a for profit educational management company, to manage all of its public charter schools. These duties include general administration, financial management and human resource management. The management agreement between Mater Academy, Inc. and Academica Dade LLC, Section 7, provides that “Academica Dade LLC will identify and propose qualified teachers, paraprofessionals, administrators and other

staff members and education professionals for positions in the School... Academica Dade LLC will coordinate with the Board or the Hiring Committee established by the Board to select individuals for School Based positions.” Academica received \$1.2 million and \$1.5 million in management fees from the four schools in FY '04 and '05, respectively. The current term management contracts with Academica for Mater Academy High and Middle Schools began on July 1, 2004, and end on June 30, 2009. The contracts stipulate that Mater Academy cannot cancel the contract in the first three years except for cause.

The officers of Academica Corporation as of June 30, 2005 were as follows:



- Fernando Zulueta, President,
- Ignacio Zulueta, Vice President,
- Magdalena Fresen, Vice President/Secretary,
- Rosanne Wright, Treasurer.

¹ Academica Corporation is affiliated with several companies including Academica Management, LLC, Academica Dade, LLC, and Academica Charter School Finance, LLC.

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Mr. Fernando Zulueta was also the President of the Mater Academy, Inc. from September 10, 1999 through September 9, 2004. Mr. Ignacio Zulueta served as its Vice President/Treasurer from March 5, 2002 through February 19, 2004, and Ms. Magdalena Fresen served as Secretary from September 10, 1999 through September 9, 2004. These former officers (and founders) are principals of other companies, having significant business ties with the Mater Academy, Inc. In addition, Ms. Martinez, the treasurer of the Mater Academy and the other charter schools managed by Academica, has represented herself to us as being the Chief Financial Officer of Academica.

Governance requirements of charter schools necessitate the establishment of a governing board charged with exercising continuing oversight over a school's operations. At the time of our investigation, the governing board members of the not-for-profit Mater Academy, Inc. were as follows:

- David Concepcion, Chair
- Ruth Jacoby, PhD
- Antonio Roca
- Shannie Sadesky
- Greta Santos (Parent Board Member)

At least two of the current Board members of the Mater Academy, Inc. are affiliated/employed by other charter schools managed by Academica. Ms. Sadesky is the Principal of Somerset Academy Miramar and on the Governing Board of Pinecrest Academy, Inc. Dr. Jacoby serves as Governing Board member of Pinecrest Academy, Inc. and Miami Childrens' Museum Charter Schools, which are similarly managed by Academica Corporation. She is also an employee of Somerset Academy, Inc. Dr. Jacoby indicated that she has been involved with the charter school movement since its beginnings and Fernando Zulueta asked her to be on the Board. When we asked her about various financial arrangements that she was asked to approve as a Board member of Mater Academy, Inc., she indicated that she is an educator, not a businessperson. She relied on other Board members with expertise to question decisions involving business.

We interviewed the parent Board member, Ms. Greta Santos, who recently resigned from the Board. Ms. Santos told us that she was asked to be on the Board by Mater Academy High School's Principal, Ms. Judith Marty, to satisfy her mandatory volunteer hours required for parents of students enrolled in the school. Although she had been on the Board since September 2003, she indicated to us that she was unfamiliar with any of the financial transactions of Mater Academy and that she usually did not know what she was voting to approve.

Similar relationships to the ones previously described have been established at other Academica run Charter Schools. For example, at the time of the investigation:

- Ms. Kim Guilarte, the Principal of the Mater Academy and a Vice President of Mater Academy, Inc. also serves as a Board member of the Somerset Academy.
- Ms. Judith Marty, the Principal of the Mater Academy High School and a Vice President of Mater Academy, Inc. is the Chair of the Pinecrest Academy, Inc.
- Ms. Alejandra Salima, a teacher at the Mater Academy, is on the Boards of the Somerset and Doral Academies.
- Mr. Rene Roviroso, Principal of Mater Academy Charter Middle School is on the Governing Board of Doral Academy, Inc.
- Mr. Rufus Samkin, an Assistant Principal of the Mater Academy High School, was on the Governing Board of the International Studies Charter High School.
- Ms. Millie Fresen, Mother of Magdalena Fresen and Mother-in-Law of Fernando Zulueta, was a Governing Board Member of both Pinecrest and Doral Academy Charter Schools.

Mater Academy's governing board is subject to Section 286.011 and Chapter 119, Florida Statutes, relating to public meetings and records, public inspection, criminal and civil penalties. While the Board met periodically as required, we found that the minutes of meetings were at best cursory and provided little illumination as to the basis of Board decisions.

Charter School Friends Network, an advocacy group for charter schools, indicates in its governance best practices guide, "When the personal or professional concerns of a board director or a staff member affect his or her ability to put the welfare of the charter school before personal benefit, a conflict of interest exists." The best practice is to have a policy on conflict of interest, including full disclosure of board or staff members' connections with groups doing business with the organization. Also, the Center for Nonprofit Management states that a board function is to "review financial and business dealings and exercise proper judgment in self-dealing transactions—avoidance of conflicts of interest." It further states that the administrator's role is to signal to the board if either of the situations is likely to occur.

**QUESTIONABLE RELATED
PARTY TRANSACTIONS**

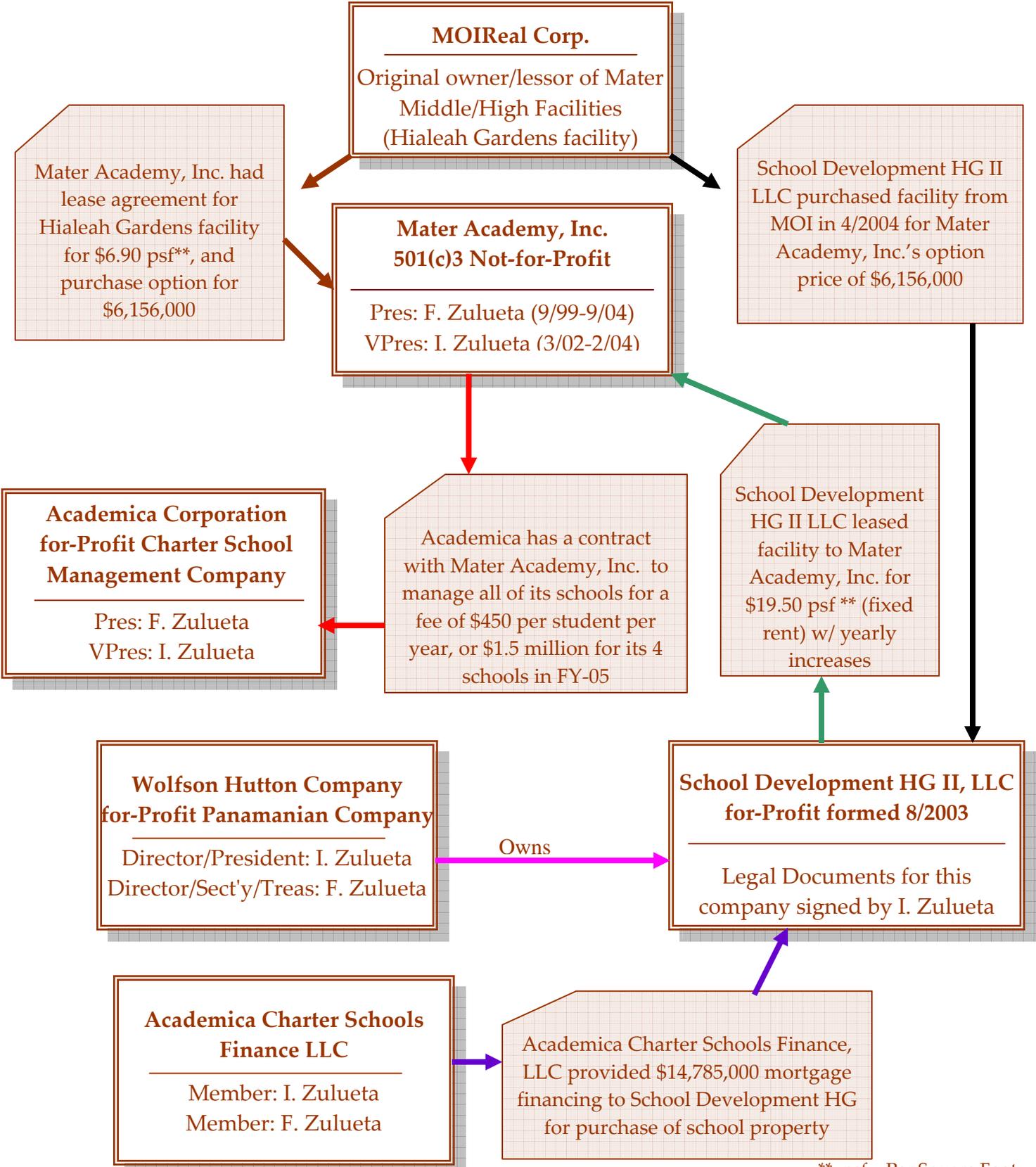
The Mater Academy Charter School's contract with the Miami Dade County Public Schools states that: "No member of the School's Board of Directors will receive compensation, directly or indirectly from the School's operations. Violation of this provision constitutes a material breach of the contract." We found that the Zuluetas, who previously served as both officers and directors of Mater Academy, Inc., engaged in questionable business practices as it relates to arrangements they made for the schools' facilities. These arrangements do not appear to have been in the best interest of the Mater Academies and it is unclear who the financial beneficiaries are. As a result, the school is paying as much as \$1.3 million per year in excessive facility costs.

On November 15, 2002, Mater Academy, Inc. entered into a lease agreement with MOI Real Corp. for its current facilities, which house the Mater Academy High and Middle Charter Schools. The lease provided for a rate of \$6 per sq. ft. through June 15, 2005, and included a purchase option whereby Mater Academy, Inc. could purchase the facilities for \$6,156,000, by giving the lessor 30 days written notice (please see Appendix B, page 21). The November 15, 2002 lease also indicates that the lease payments could be credited towards the purchase price. In May 2003, the term of that lease was extended to June 2008, at \$6.90 per sq. ft., and also stipulates that Mater Academy, Inc. had a purchase option on the property through June 15, 2005 (please see Appendix C, page 22).

In fact, we found that the Mater Academy, Inc. did not exercise this option. We reviewed minutes of meetings and interviewed Board members. From the existing evidence, there is no indication that the Mater Academy, Inc.'s Governing Board formally assigned the option, or that the Zuluetas ever discussed with or presented these options to the Board. The Board members interviewed were unaware of the option: none of the four Governing Board members interviewed had any recollection of deciding to assign or transfer an option to buy the said property, and the Treasurer denied that the option ever existed.

There was a lack of documentation that the Board was provided with detailed information concerning their lease, purchase options, and/or any rental vs. ownership analysis. A cost-benefit analysis would typically be presented by management to the governing board for its deliberations in making substantial facilities/capital decisions such as whether to exercise an option to purchase a property or to agree upon terms of a lease. In this respect, we believe that Academica Corporation failed in its fiduciary responsibility as a management company to adequately inform the Board. We met with Mr. Ignacio Zulueta and an attorney representing Academica Corporation, Mr. Marcos Jimenez of the firm of Kenny Nachwalter, Attorneys at Law. They denied that Mater Academy, Inc. had an option to purchase the facility, but to date have not provided an adequate explanation for their position.

Transaction Overview



** psf – Per Square Foot

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In fact, other parties that Academica refuses to divulge benefited by their failure to adequately disclose their business dealings and relationships through and with other companies. Based on documentation obtained from Mater Academy, Inc. and from public records filed with the State of Florida and/or Miami-Dade County, we found that the property was sold to School Development HG II, LLC, which purchased the property for the option price of \$6,156,000 in April 2004.

Public records show that School Development HG II, LLC (please see Appendix E, page 25) was formed in August 2003 as a for profit corporation, and is wholly owned by Wolfson Hutton Company, a Panamanian corporation. Mr. Ignacio Zulueta serves as Director/President and Mr. Fernando Zulueta serves as Director/Secretary/Treasurer of Wolfson Hutton² (please see Appendix D, page 24). Mr. Ignacio Zulueta and Academica's attorney, Mr. Marcos Jimenez refused to provide us with the list of "investors" in these companies. They insisted that the "investors" were not current or past Board members of either Mater Academy, Inc. or Academica. To date, the documentation to that effect has been inadequate and inconclusive. At one point, attorneys for Mater Academy declined to provide written proof that there is no conflict of interest insisting that the Board's "word should be good enough." The members of the current Board have subsequently signed a statement to that effect. In the absence of the disclosure of who exactly Mater Academy is doing business with, there is no assurance that conflicting interests did not inappropriately drive this business arrangement.

It is questionable, and in fact unlikely, from available evidence that the unidentified "investors" and beneficiaries of these business arrangements initiated by the Zuluetas risked any of their personal capital in these transactions. The financing provided to School Development HG II (\$14,785,000 mortgage, dated April 1, 2004) was part of a larger financing transaction involving multiple (charter school) properties as diversified collateral.

Public records filed with the State or County reflect that Academica Charter School Finance LLC, a corporation in which the Zuluetas are listed as members, issued \$53,780,000 of mortgage loan revenue bonds in April 2004. The proceeds were used to provide mortgages to five for-profit limited liability companies, each of which own property leased to a charter school managed by Academica. Besides the \$14,785,000 mortgage to School Development HG II for the Mater Middle and High facility, the other mortgages financed with the bond proceeds were to School Development East LLC for the Mater Academy East facilities, School Development LLC and School Development LLC II for the Doral and Somerset Academies facilities, and Pinecrest School Development LLC for the Pinecrest Preparatory Academy facilities. All five of these for-profit LLC's are in turn owned by the Panamanian company, Wolfson Hutton Company.

² Up until February 19, 2004, Mr. Ignacio Zulueta was Mater Academy, Inc.'s Vice-President/Treasurer. Mr. Fernando Zulueta was the President of the Mater Academy, Inc. through September 9, 2004.

**MIAMI-DADE COUNTY PUBLIC SCHOOLS
OFFICE OF MANAGEMENT
& COMPLIANCE AUDITS**

Through their attorney, the Zuluetas denied having any ownership interest or obtaining personal financial benefit at the time that the deals were presented to the respective charter school boards. Academica declined to provide any details of the foregoing transactions and the ownership interests therein remain intentionally obscure.

As detailed below, in this past fiscal year the capital outlay funding provided by the State through the School District of over \$3.8 million dollars was used to cover lease payments of \$6.8 million dollars to these companies (and affiliates). The balance of the lease payments were covered through general revenues provided by the School District.

CHARTER SCHOOL	ANNUAL CAPITAL OUTLAY REVENUE	LESSOR	ANNUAL LEASE AMOUNT
MATER ACADEMY MIDDLE	\$672,709	SCHOOL DEVELOPMENT HG II, LLC	\$1,200,000
MATER ACADEMY HIGH SCHOOL	860,479		1,155,000
DORAL ACADEMY CHARTER MIDDLE	434,855		1,188,000
MATER ACADEMY EAST	112,247	SCHOOL DEVELOPMENT EAST, LLC	317,000
MATER ACADEMY EAST MIDDLE	45,462		121,000
MATER ACADEMY	550,290	PALMETTO PARK, INC.	300,000
PINECREST PREPARATORY ACADEMY	351,586	PINECREST SCHOOL DEVELOPMENT, LLC	418,000
PINECREST PREPARATORY ACADEMY CHARTER MIDDLE	95,641		179,000
DORAL PERFORMING ARTS & ENTERTAINMENT ACADEMY	23,837	SCHOOL DEVELOPMENT II, LLC	66,000
DORAL ACADEMY HIGH SCHOOL	653,960	SCHOOL DEVELOPMENT LLC	1,320,000
SOMERSET ACADEMY	7,080	VALENCIA SCHOOL DEVELOPMENT, LLC	442,000
SOMERSET ACADEMY MIDDLE SCHOOL	-0-		71,000
SOMERSET ACADEMY HIGH SCHOOL	-0-	DORAL ACADEMY HIGH SCHOOL	32,000
GRAND TOTAL:	<u>\$3,808,146</u>		<u>\$6,809,000</u>

Source: Charter school certified financial statements - fiscal year ended 6/30/06.

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Mr. Ignacio Zulueta and Academica's Attorney have insisted that even if Mater Academy had the option to purchase the property, they did not have the financial ability to procure a mortgage and buy the facility for the option price. They have provided after the fact documentation to support their position. For example, they provided us with a letter, dated August 16, 2006, from a former loan officer of Zions Bank, Mr. Robert B. Howell, who had been the lead banker in a \$6,015,000 leasehold improvement loan from Zions Bank to Mater Academy, Inc. in May 2003. He states that Mater Academy, Inc. would not have qualified for financing to purchase the property and Zions Bank would not have approved such a loan. It should be noted that in our follow-up telephone interview, Mr. Howell indicated that he left Zions Bank in February 2006 after 10 years with the bank. Mr. Howell now serves as a consultant to charter schools of which Academica managed charter schools are a significant portion of his business. He declined to disclose to us which of the Academica managed charter schools were his clients.

In its responses to our findings and conclusions, the attorneys representing Academica and Mater Academy repeatedly contend that Mater Academy, Inc. would not have qualified for financing to purchase its facility. They cite as a primary reason for this that they are not aware of any charter school in the District or all of Florida that has ever obtained a mortgage equivalent to the one required to purchase the property. Arguably, based on the documentation submitted and historical trends for charter schools, the evidence may suggest that the school could not have exercised its option. However, we are not persuaded by the evidence submitted.

Mater Academy was in excellent financial health, occupied valuable property on which it had already made significant leasehold improvements and had made significant lease payments directly applicable to the purchase price. Mater Academy, Inc. had a cash balance on June 30, 2004 of \$2,519,919, and its working capital (current assets less current liabilities) was \$2,574,862. Mater Academy, Inc.'s outstanding balance on its leasehold improvement mortgage on March 31, 2004 was \$6,015,000 (proof, in and of itself, of significant credit worthiness). In our opinion, Mater Academy, Inc. was in an excellent position to secure additional financing and purchase the facility with minimal cash outflow. The only collateral presented to us supporting these intentionally obscure private transactions is the charter school properties themselves. Why then couldn't the charter schools have purchased the properties?

Upon purchasing the property from MOIReal Corp. in April 2004 for the option price, School Development HG II, LLC leased it back to Mater Academy, Inc. for a period of 20 years at a rate of \$19.50 per sq. ft., plus additional rent charged to the tenant for items such as maintenance, repairs, alterations, insurance and property taxes, etc. (please see Appendix F, page 27).³ Mater Academy and Academica provided us after

³ In April 2004, School Development HG II, LLC, also assumed the \$6,015,000 leasehold mortgage (debt) and improvements (assets) from Mater Academy, Inc. Based on the March 31, 2004, unaudited financial statements, the book balance of the leasehold improvements was \$5,959,251.

the fact supporting data asserting that the \$19.50 rate “is well below the average lease rate of \$23.76 for retail commercial properties in the Miami Lakes/N. Miami Lakes area, and the \$21.95 average asking rate for office properties in the Miami Lakes (closest area, for the fourth quarter 2005.”

We engaged an independent real estate appraiser, Gallaher & Birch, Real Estate Appraisers and Consultants, who concluded that “the lease rate at Mater Academy (middle/high) is about 12% to 30% higher than the lease rates at the other charter schools included in the analysis and there may be mitigating factors that justify the differential.” An excerpt from their analysis is reflected in the table on the right of this paragraph.

Had Mater Academy, Inc. exercised its option to purchase its property in April 2004, its annual mortgage payments would have been approximately \$1,046,000⁴ for 20 years (or about \$8.50 per square foot) compared to paying School Development HG II, LLC \$2,388,750⁵ annually in rental payments (\$19.50 per square foot).

Rental Rates

The rental rates range from a low of \$7.50 per square foot to a high of \$24.18 per square foot; however, the rates show a central tendency from \$15.00 to about \$17.50 per square foot.

School / Location	Mater Academy / 7758 NW 103 St	Oxford Academy, Inc. / 10870 SW 113 Place	Rosa Parks Charter School/303 West Palm Dr
SF Area	122,500	10,500	5,060
Land Area	399,448	NA - Condominium	25,000
FAR	0.31	NA	0.50 (based on entire property of 12,000 SF)
Lease Origination	04/01/04	08/01/05	08/26/05
Lease Term	20 yrs 4 mos.	5 years	2 years
Rent/SF	\$19.50, Absolute Net	\$15.00 + \$3.00 CAM	\$15.71 + CAM

School / Location	Doral Charter School / 8360 NW 33 St	Florida Intl Academy / 7630 Biscayne Blvd.	Spiral Tech Elementary / 12400 SW 72 St
SF Area	32,773	24,000	4,467
Land Area	67,954	33,750	100,188
FAR	0.48	0.71	0.04
Lease Origination	Lease Exten 1/23/04	07/01/02	08/01/05
Lease Term	15 years (initial term 5 yrs)	6 years	1 year
Rent/SF	\$17.31 Assume Net, As of 7/04	\$7.50, Net	\$24.18, Net

The lease rate at Florida International Academy was \$7.50 per square foot, beginning July 2002, the low end of the range and substantially below any of the other lease rates.

⁴ Assuming a mortgage amortized over 20 years and a rate of prime + 2% (6% in April 2004), Mater Academy, Inc.’s annual payment would be \$1,046,362 for 20 years to own the facility.

⁵ The lease agreement between Mater Academy, Inc. and School Development HG II, LLC, is an “absolute” net lease in which Mater Academy, the tenant, must pay for all maintenance, repairs, alterations, insurance, property taxes, etc. Also, beginning April 1, 2007, the fixed rent increases in accordance with a consumer price index.

Adequacy of Financial Statement Disclosures

These transactions were not adequately disclosed as related party transactions in the Schools' FY03-04 or FY04-05 audited financial statements in accordance with generally accepted accounting principles. Financial Accounting Standards Board⁶ Statement 57, requires management to disclose to users of financial statements related party transactions such as transactions where the President of an entity and/or his immediate family is a principal in the lessor corporation. The American Institute of Certified Public Accountants' Statement on Auditing Standard 45 provides guidance to external auditors on attesting as to the existence of related party transactions.

We asked the CPA firm who conducted the audit of Mater Academy Middle and High Schools why the FY04-05 (June 30, 2005) audited financial statements did not disclose the above related party transactions. The firm's personnel indicated that Mater Academy's management represented to them that no related party transactions existed involving the officers/management of the schools. Subsequent to our discussions with Verdeja & De Armas, the schools' accounting firm, the FY05-06 (June 30, 2006) audited financial statements were issued (M-DCPS received in September 2006), and included a note stating, "At the time the lease was signed, Fernando Zulueta was concluding his service as President of the School. Although the landlord is represented by a relative of Mr. Zulueta, neither Mr. Zulueta or that relative voted the School's decision to enter into the lease, which was approved by the School's independent Board of Directors. Neither Mr. Zulueta or his relative were on the Board of Directors at the time, and neither Mr. Zulueta or his relative had a direct or indirect interest in the landlord." Also, the management letters accompanying the FY05-06 audits now contain a finding as follows:

Observation

During our audit, we noted certain transactions with affiliated entities. In addition, we became aware that certain board members and employees of the School serve as board members of other schools.

Recommendation

The Board of Directors of the School should ensure that policies are developed and adopted whereby transactions between a school and any

⁶ The Financial Accounting Standards Board is the designated organization in the private sector for establishing standards of financial accounting and reporting. Those standards govern the preparation of financial reports. They are officially recognized as authoritative by the Securities and Exchange Commission and the American Institute of Certified Public Accountants. Such standards are essential to the efficient functioning of the economy because investors, creditors, auditors and others rely on credible, transparent and comparable financial information.

affiliated entity is reviewed for objectivity in order to avoid any potential conflict of interests.

Prior to our inquiry and discussions with the CPA firm, these types of transactions were never questioned by the outside auditors. For example, we noted that Mater Academy, Inc. at its September 26, 2003, Governing Board Meeting, approved a line of credit to Somerset Academy, Inc. (a component unit of the School Board of Broward County) in the amount of \$175,000. Somerset Academies are purportedly independent from and unrelated to Mater Academy, Inc., except that they are both managed by Academica and Ms. Sadesky and Dr. Jacoby both serve on the Governing Board of Mater Academy, Inc. and as employees of Somerset Academies. As of June 30, 2005, the balance on that loan from Mater Academy Charter Middle School to Somerset Academy was \$150,000 (The loan does not appear on the most current financial statements). Upon our request, Mater Academy and Academica were unable or unwilling to provide us a copy of a written promissory note, nor were we provided with the terms of the loan. No analysis of Somerset Academy's ability to repay the loan was evident and the loan appears to have been completely unsecured (no collateral). The only rationale for Mater Academy, Inc. extending this line of credit, as stated in the minutes, was "Somerset Academy made a request for Mater Academy, Inc. to provide it with a line of credit/loan in an amount not to exceed \$175,000, to be repaid within 3 years with interest." We question the propriety of these types of transactions which are made based on conflicting interests.

TAX EXEMPTION STATUS AND BENEFITS MAY BE ABUSED

The manner in which Mater Academy, Inc. is incorporated as a 501(c)3 not-for-profit corporation does not appear to comport with its actual operation. Academica appears to essentially control the governance of the schools, and its officers appear to be putting their for profit interests above those of the not-for-profit interests of the schools. This may actually be in violation of the Internal Revenue Service Code governing 501(c)3 tax exempt corporations. In fact, the IRS has observed an increase in the use of tax-exempt organizations to improperly shield income or assets from taxation.

Furthermore, the State of Florida extends special tax benefits to charter schools. When the charter school's facilities are owned by someone other than the charter school and leased to the school, the statute contains safeguards to ensure that the full tax exemption will be passed on to the school. The statute requires complete transparency and full disclosure to the charter school. Per FS §196.1983 *Charter school exemption from ad valorem taxes*:

Any facility, or portion thereof, used to house a charter school whose charter has been approved by the sponsor and the governing board pursuant to s. 1002.33(7) shall be exempt from ad valorem taxes. For

**REPORT ON INVESTIGATION
MATER ACADEMY CHARTER
SCHOOL(S) & ACADEMICA**

leasehold properties, the landlord must certify by affidavit to the charter school that the lease payments shall be reduced to the extent of the exemption received. The owner of the property shall disclose to a charter school the full amount of the benefit derived from the exemption and the method for ensuring that the charter school receives such benefit. The charter school shall receive the full benefit derived from the exemption through either an annual or monthly credit to the charter school's lease payments.

We found that School Development HG II, LLC, claimed a full property tax exemption for the property (please see Appendix G, page 29) amounting to \$356,822 for the period January 1, 2005, through December 31, 2005 but did not provide an annual or monthly credit, as required. Nor is there evidence that the Board of Mater Academy was ever apprised of the full amount of the benefit derived from the exemption and the method for ensuring that the charter school receives such benefit.

We met with Mr. Antonio Roca, the Chair of Mater Academy, Inc. and an attorney representing Mater Academy, Inc., Joseph Raia of the firm Holtzman Equels, Attorneys at Law. They, as well as Mr. Ignacio Zulueta, explained that the current lease provides for the payment of property taxes by the tenant as "additional rent". Since the property was granted a tax exemption, the landlord has never paid taxes and has never passed on such costs to Mater as "additional rent".

The leasing arrangements for the Mater High and Middle Schools' property and the substantial related party transactions surrounding them were not properly vetted by an independent governing board. While the lease states that the rental rate excludes real estate taxes, there was no evidence of this lease being negotiated or information made available on the component parts of the \$19.50 per square foot rate. No records of negotiation or market data analysis were evidenced of being presented to the Board at the time it approved the lease. All market information was developed by Academica and its attorney as a reaction to this investigation. The real estate tax break obtained provides additional profit to undisclosed parties on an already questionable lease.

In light of the above, it is our opinion that the for-profit landlord (School Development HG II) and its principals (Ignacio and Fernando Zulueta), who manage the Mater Academies but did not disclose their involvement with the landlord, do not appear to be in compliance with the spirit or letter of the law (§196.1983, Florida Statutes, Charter School exemption from ad valorem taxes). Consequently, we view the exemption taken by the for-profit landlord as a misuse of a tax break.

RECOMMENDATIONS

The following recommendations were made to the Mater Academy, Inc. Governing Board. Their responses to our specific recommendations were provided to us through their attorneys and are included below. The response to our report in its entirety is included in Appendix H, page 30.

- 1. Ensure that Board members are selected in a manner which ensures transparency and independence.**

Management Response:

The Board does not believe that its procedures for selecting members provide any basis for questioning either its transparency or its independence. However, the Board has no objections to reviewing its articles and by-laws with a view toward clarifying how it recruits, nominates and approves new members.

Auditor's Comment:

The establishment of guidelines and the elimination of board members with conflicts of interest would go a long way in improving corporate governance at Academica controlled charter schools.

- 2. Provide training to new Board members on their roles and responsibilities in accordance with Florida Statutes and best practices. Particular emphasis should be put on the Board's duty to review the propriety of financial and business transactions and especially for avoiding conflicts of interest.**

Management Response:

In the past, Mater Board members participated in training programs required by MDCPS. In yet another apparent about-face, MDCPS now asks Mater to train new Board members. The Board accepts the challenge of developing such a training program. The Board has already consulted with its independent auditor and its counsel. It is considering a more formal and comprehensive conflict of interest policy, a code of ethics, anti-fraud protocols, whistle blower policy and a records retention policy. The Board finds the evaluation of such policies will inform the development of any training program. The Board will first address these policies and then the issue of training.

3. **Reevaluate its current lease and take appropriate steps to recoup overpayments relating to:**
- a. **the value of the purchase option and related credits for rental payments,**
 - b. **property tax exemptions not passed through, and**
 - c. **excessive rental payments.**

Management Response:

This recommendation is not reasonable. First, the property tax issue has no material legal or factual basis. Second, nothing in the Report suggests that the “purchase option” had any identifiable value. The facts show Mater could not have acquired an ownership interest in the fully improved facilities on its own. It is not reasonable to initiate litigation over such a baseless claim. Third, the rental payments are not excessive. They are based on market conditions and are much less than what the District is paying for similar property.

4. **For purposes of transparency in the expenditure of public funds, the Mater Academy Board should insist that School Development HG II, LLC and Wolfson Hutton Company disclose its investors/owners.**

Management Response:

The Mater Board has affirmed that it does not have any interest in HG II. The Mater Board has also determined that no current officer or director of Mater has an interest in HG II. No Florida law requires vendors to disclose all of their beneficial owners “for purposes of transparency in the expenditure of public funds,” and no Florida law requires charter schools to determine and disclose the beneficial owners of the charter school’s vendors. MDCPS now knows that no current Mater Board member or officer is benefiting from the April 2004 lease. It has accepted such affirmations from other charter schools and from its own vendors. It should likewise accept the Mater Board’s similar affirmation. The Board can ask the landlord to disclose its principals to you, but the Board is in no position to demand or insist. The Board does not control the landlord.

Auditor’s Comment:

While no law requires vendors to disclose all of their beneficial owners, Academica has insisted on providing no information with this regard either to us or the current and past board. These realty corporations were formed and organized by the Zuluetas, who served as officers of Mater Academy and on other charter schools and later presented these deals to the Boards of the respective charter schools they served on. It is incomprehensible that the current Mater Academy board, who proclaims the virtue of their corporate stewardship,

would not insist on establishing the full transparency of these agreements, going forward, to their own satisfaction and to the satisfaction of the agencies that provide the majority of capital funding that pays for the facility. This cannot be accomplished without full and complete disclosure.

- 5. Determine whether any related party transactions took place that were not properly disclosed in past audited financial statements in accordance with FASB Statement 57. If so, past audited financial statements should be restated.**

Management Response:

Mater has reviewed this recommendation with its auditor and understands that past audited financial statements are in accordance with FASB Statement 57 regarding the April 4, 2004 long-term lease.

Auditor's Comment:

Please note that the most current financial statements and related management letters issued subsequent to our inquiries and discussions with the charter schools' independent auditor provide belated disclosures on these matters (see page 11 above).

- 6. Strengthen internal controls and review its agreement with Academica to ensure that direct or indirect financial interest in applicable companies and transactions are fully disclosed.**

Management Response:

See Response No. 2 above. Also, Mater will work with its professionals and management company to consider appropriate agreements that will more clearly address issues of related party transactions, conflicts of interest and similar issues.

- 7. Ensure that minutes of Governing Board meetings are sufficiently detailed to adequately reflect to the public the Board's decision making process.**

Management Response:

Minutes are not meant to transcribe every element of the Board's decision making process. The Board will review its procedures for preparing minutes.

Auditor's Comment:

Section 286.011(2), Florida Statutes, provides, in part, that: "The minutes of a meeting of any . . . board or commission of any . . . state agency or authority shall be promptly recorded, and such records shall be open to public inspection."

The term "minutes" is not specifically defined in the Florida Statutes for the purposes of section 286.011(2), Florida Statutes, but the Florida Attorney General's office has concluded that the term means a brief summary or series of brief notes or memoranda reflecting the events of public meetings in written form. While not bound to do so, the Mater Academy Board may wish to adopt rules similar to that adopted by the Miami-Dade County Public School District. Board Rule 6Gx13-8C-1.16 Minutes – Board Meeting, Section I. Contents of Minutes, which states that "The minutes shall record all motions and resolutions, the names of the Board members making and seconding the motions and resolutions, essential explanatory and supporting information, and the vote thereon."

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January 24, 2006

Dear Governor Jeb Bush,

I am writing to you to apprise you of the deception you have been subjected to. Your visit to our school, Mater Academy Charter in Hialeah, on January 18, 2006 was nothing short of a fiasco. Let me start by telling you that much effort went into covering up all the ills of the school and to pull the wool over your eyes. However, I and other teachers at this school are fed up with the corruption and scheming that this charter school and all other Academica Corp. managed schools are involved in, so I will do my best to inform you of what is going on. Then perhaps you can do something about this widespread web of fraud that is being spearheaded by Academica Management Corp. as it functions under the guise of operating non-profit organizations, with the smug certainty that nothing and no one can hold it accountable, for the cronyism its founder, Fernando Zulueta, enjoys reaches as far as your own cabinet. Also, the fact that he is a lawyer leads him and his cronies to believe that they are above the law. Here are some points for consideration:

- During your visit to the school last week, you were not privy to the nearly three hundred students who are daily taught in the school's lobby. Our principal, Judith Marty, made sure that they were dispersed to other classrooms you were sure not to visit. In fact, about 165 students were taken to the cafeteria, where you did not see them.
- In order to ensure that the school qualifies as a Title I School and receives the monies appropriated by that program, at the beginning of this school year the principal put all the cafeteria workers in an assembly line to call parents. And over the phone these cafeteria workers, with their own hands, filled out the lunch forms, for these parents, to reflect low incomes and thereby make a great amount of the school population qualify for free or reduced lunch. It can't get more illegal than that!
- Every year since the school opened some students records have been altered, to reflect classes they have never even taken, so that they can meet the requirements for graduation.
- Attendance reporting to the county is fraudulent, often reflecting excused absences in place of truancy.
- Illegal fundraising is rampant
- Significant problems with delinquency such as major school computer theft, and molestation of students by either security guards or teachers are quickly hushed and kept under wraps. The culprits involved are quickly dismissed from the school and the parents are appeased with false information and the smugness that because they are immigrants with little knowledge of our laws and their rights, they can be deceived.
- Know that teachers who take objection to the illegal and detrimental practices being exercised and who give an inkling of making waves are quickly terminated. The ones who stay are either the teachers who stay quiet because they really can't afford to lose their job, or who are new to this country and are afraid they will not meet the qualifications to go elsewhere. They know what is going on but out of fear they don't comment.

Perhaps it is difficult to believe that this is taking place in a country that is supposed to exercise democracy and fair practices. However, we are speaking about Miami Dade County, which seems to operate as an extension of the worst Latin American countries where cronyism and payoffs guarantee the right of certain individuals to prosper and gain power at the expense of the taxpayers. **And, what an embarrassment to Dade County if something were to be done about this considering the fact that three new charter schools were just approved and of course Academica Corp. will manage them. How ironic is the fact that praise for these new schools have already been sung in the Miami Herald, the news media and district education web-sites. How high does the corruption go?**

Mr. Bush, if you are truly an advocate for charter schools then you should try to **do everything** in your power to ensure that it is a system that is 100% legitimate; that no one individual or group monopolizes that entity, through fraudulent means and under the seemingly protection that having a law degree or title affords him or them.

Please conduct an independent investigation. And, I don't mean it to be by means of requesting more documentation or conducting audits, for unfortunately paper can hold anything that is written on it, and documents can be rigged to show accountability. It is being done.

Perhaps the truth can only come out when the following occurs:

- When an independent investigation is conducted and someone monitors and records the personal relationship/friendship **Dr. Carlo Rodriguez, Administrative Director of Charter School's Operations in Dade County and Fernando Zulueta, founder of Academica Corporation**—which manages the majority of charter schools in Dade and Broward County---enjoy. Home visits, dinner dates, mini vacations together and even telephone records might just prove that.
- When someone questions why all the proposals for new charter schools, of which Mr. Fernando Zulueta is behind, that come before the Dade County Public School Board are readily approved; even when there are discrepancies in some of those documents, and others are so visibly copies of previous proposals that have been approved--except they show a school name change. Note that Mr. Zulueta is well acquainted with Mr. Bolanos and other members of the Dade County School Board.
- When members of the Florida State Legislature, such as Ralph Arsa and others are investigated for cronyism and efforts to promote the monopoly Mr. Fernando Zulueta, through Academica Corporation, has aimed to create with charter schools.
- When an independent **trusted education official**, preferably from out of state, sits at every single meeting the governing board of every charter school supposedly holds to decide on issues governing each school, and ensures that really takes place. **AT PRESENT IT IS A NONEXISTENT PRACTICE, REFLECTED ONLY ON PAPER.** In reality, Academica Corp., the management company, is governing the schools.
- **When someone reliable, who can't be subjected to cronyism, infiltrates each and every charter school managed by Academica Corp. and records their true practices.**
- When current teachers, ex-teachers, and other staff from each school is legally subpoenaed and given immunity to testify about what they know.

Sincerely,

Mr. Mathew Bardowell 

Mr. Perry Lantz

Mr. Leon :

Mr. Feria

Mr. Cosano,

Ms. Vivian Colmenares

Mrs. Olga Benoit

Ms. Gabriela de Francisco

Ms. McMillan

Mrs. Allison Ibarra

Mater Academy Teachers

7901 N.W. 103 Street, Hialeah Gardens, FL 33016

**CC: Dr. Rudolph F. Crew, Superintendent of Schools –Miami Dade County
John Winn, Commissioner—Florida Department of Education**

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NET BUSINESS LEASE

THIS NET BUSINESS LEASE, entered into this 15 day of November, 2002, by and between MOIREAL CORP., a Florida corporation, (hereinafter called the "LESSOR") and MATER ACADEMY INC, a non-profit Florida corporation, of Miami-Dade County, State of Florida, (hereinafter called the "LESSEE").

WITNESSETH:

WHEREAS, LESSOR is the owner of a commercial building located at 7758 NW 103rd Street, Hialeah Gardens, Florida, which building consists of 121,776 square feet, an outparcel building previously used as a restaurant known as Fritanga and including all of the parking and outdoor areas (the "Leased Premises"), and

(77901 NW 103 St.)

WHEREAS, LESSEE wishes to lease the Leased Premises for the operation of a school generally referred as a "Charter School"; and

WHEREAS, the parties wish to cancel that particular Net Business Lease, dated June 18th, 2002, as amended, with reference to the easternmost 20,967 square feet of the building located within the Leased Premises executed between LESSOR and LESSEE herein; and

WHEREAS, the parties desire to enter into this Lease Agreement defining their respective rights, duties and liabilities relating to the premises;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **PREMISE.** The LESSOR does this day lease unto LESSEE and the LESSEE hereby leases from the LESSOR, the real property containing a building of 121,776 square feet, as more fully described in "Schedule A" attached hereto and made a part of this Lease, (the "Leased Premises").

2. **TERM.**

a) The term of this Lease shall commence on the November 15th, 2002 (the "Commencement Date"), and shall end, unless otherwise specified in this Lease, on June 15th, 2005.

b) Contemporaneously with the execution of this Lease, the parties have executed an Addendum to the Contract for Sale and Purchase, as amended, executed by the parties of June 18th, 2002 for the Sale and Purchase of the Leased Premises for the original purchase price for \$6,156,000.00 to reflect, among other items specified in said Addendum, that Lessee, upon 30 days prior written notice to LESSOR, may request a closing of said Contract for Sale and Purchase, as amended.



Prepared by and when
recorded return to:
 Ignacio Zulueta
 6255 Bird Road
 Miami Florida 33155

SHORT FORM LEASE AND
NOTICE OF PURCHASE AGREEMENT

This Short Form Lease and Notice of Purchase Agreement is made as of May 20, 2003, between MOI Real Corporation, a Florida corporation, with an address of 2631 SW 107th Court, Miami, Florida 33165, hereinafter designated as Lessor, and Mater Academy, Inc., with an address of c/o Fernando Zulueta, 6255 Bird Road, Miami, Florida 33155, hereinafter designated collectively as Lessee.

WITNESSETH:

Lessor, upon the terms and conditions more particularly set forth in that certain Net Business Lease dated as of November 15, 2002, by and between Lessor and Lessee (as amended from time to time, the "Lease Agreement"), which terms and conditions are incorporated herein by reference, and in consideration of the rent and covenants therein provided, does hereby lease to Lessee, and Lessee hereby accepts that certain property more particularly described on Exhibit A attached hereto and incorporated herein by reference ("the Property") for a term ending on June 15, 2008, upon the terms and conditions set forth in the Lease Agreement.

1. Lessee further has the option to purchase the Property on or before June 15, 2005, upon the terms and conditions set forth in that certain purchase agreement between the parties, dated June 18, 2002 (as amended from time to time, the "Purchase Agreement").

2. Lessor covenants that Lessee, on paying the rent and performing the covenants set forth in the Lease Agreement, shall peaceably and quietly have, hold and enjoy the Property.

3. It is understood that this is a Short Form Lease and Notice of Purchase Agreement, which is for the same rents and upon the same terms as the Lease Agreement, which Lease Agreement is incorporated herein by reference and shall be a part of this instrument as fully and completely as if the same were set forth herein, and gives notice of those rights of Lessee under the Purchase Agreement without enlargement or diminution thereof.

4. The rights of the Lessee under the Lease Agreement have been mortgaged to Zions First National Bank (the "Bank"), and a collateral assignment of the Lessee's purchase rights under the Purchase Agreement has been granted to the Bank, under the terms of a Mortgage and Security Agreement made by the Lessee in favor of the Bank dated as of the date hereof.

5. If a deed, or other conveyance, is not recorded in the Miami-Dade County Public Records by July 1, 2005, then it will be conclusively presumed that the Lessee's option to purchase has expired and has become null and void, without the necessity of filing any other document.

07-23-83 17:06 FROM-

T-008 F04/05 J-548

Signed, sealed and delivered
in the presence of

Annette M. Frances
Witness: Annette M. Frances

Kelly Mallon
Witness: Kelly Mallon

Lessee.

Mater Academy, Inc

Name: Fernando Silveira
Title: President

STATE OF FLORIDA
COUNTY OF DADE

The foregoing instrument was acknowledged before me this 20 day of May, 2003, by Fernando Silveira, the President of Mater Academy, Inc., on behalf thereof. He is personally know to me or who has produced _____ as identification.

Annette M. Frances
NOTARY PUBLIC

Print Name: Annette M. Frances
My Commission Expires: _____
(NOTARY SEAL)

 Annette M Frances
My Commission 00185870
Expires February 20, 2007

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2006 FOR PROFIT CORPORATION ANNUAL REPORT

4. **FILED**
May 25, 2006 8:00 am
Secretary of State

04-26-2006 90214 006 ***150.00

DOCUMENT # P05000166078			
1. Entity Name WOLFSON HUTTON COMPANY, INC.			
Principal Place of Business 1500 SAN REMO AVENUE SUITE 125 CORAL GABLES, FL 33146		Mailing Address 1500 SAN REMO AVENUE SUITE 125 CORAL GABLES, FL 33146	
2. Principal Place of Business		3. Mailing Address	
Suite, Apt. #, etc.		Suite, Apt. #, etc.	
City & State		City & State	
Zip	Country	Zip	Country
4. FEI Number 20-4912267		Applied For Not Applicable	
5. Certificate of Status Desired <input type="checkbox"/>		\$8.75 Additional Fee Required	
8. Name and Address of Current Registered Agent ATRIUM REGISTERED AGENTS, INC. 1500 SAN REMO AVENUE SUITE 125 CORAL GABLES, FL 33146		7. Name and Address of New Registered Agent	
		Name	
		Street Address (P.O. Box Number is Not Acceptable)	
		City	
		FL Zip Code	
8. The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida. I am familiar with, and accept the obligations of registered agent.			
SIGNATURE _____ DATE _____ <small>Signature, name or correct title of registered agent and title if applicable. (NOTE: Registered Agent signature required when re-appointing)</small>			
FILE NOW!!! FEE IS \$150.00 After May 1, 2006 Fee will be \$650.00		9. Election Campaign Financing Trust Fund Contribution <input type="checkbox"/> \$5.00 May Be Added to Fees	
10. OFFICERS AND DIRECTORS		11. ADDITIONS/CHANGES TO OFFICERS AND DIRECTORS IN 11	
TITLE	DP <input type="checkbox"/> Delete	TITLE	<input type="checkbox"/> Change <input type="checkbox"/> Addition
NAME	ZULUETA, IGNACIO	NAME	
STREET ADDRESS	1500 SAN REMO AVENUE SUITE 125	STREET ADDRESS	
CITY-ST-ZIP	CORAL GABLES, FL 33146	CITY-ST-ZIP	
TITLE	DST <input type="checkbox"/> Delete	TITLE	<input type="checkbox"/> Change <input type="checkbox"/> Addition
NAME	ZULUETA, FERNANDO	NAME	
STREET ADDRESS	1500 SAN REMO AVENUE SUITE 125	STREET ADDRESS	
CITY-ST-ZIP	CORAL GABLES, FL 33146	CITY-ST-ZIP	
TITLE	<input type="checkbox"/> Delete	TITLE	<input type="checkbox"/> Change <input type="checkbox"/> Addition
NAME		NAME	
STREET ADDRESS		STREET ADDRESS	
CITY-ST-ZIP		CITY-ST-ZIP	
TITLE	<input type="checkbox"/> Delete	TITLE	<input type="checkbox"/> Change <input type="checkbox"/> Addition
NAME		NAME	
STREET ADDRESS		STREET ADDRESS	
CITY-ST-ZIP		CITY-ST-ZIP	
TITLE	<input type="checkbox"/> Delete	TITLE	<input type="checkbox"/> Change <input type="checkbox"/> Addition
NAME		NAME	
STREET ADDRESS		STREET ADDRESS	
CITY-ST-ZIP		CITY-ST-ZIP	
12. I hereby certify that the information supplied with this filing does not qualify for the exemptions contained in Chapter 119, Florida Statutes. I further certify that the information indicated on this report or supplemental report is true and accurate and that my signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver of it; that I am empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears in Block 10 or Block 11 if changed, or on an attachment with an address, with all other fees empowered.			
SIGNATURE: 		4/20/06 (305) 669-2906	
SIGNATURE AND TYPED OR PRINTED NAME OF SIGNING OFFICER OR DIRECTOR		Date	

ARTICLES OF ORGANIZATION
FOR
SCHOOL DEVELOPMENT HG II LLC, A FLORIDA LIMITED LIABILITY
COMPANY

03 AUG 12 PM 3:19
FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLE I-NAME:

The name of the Limited Liability Company is:

School Development HG II LLC, a Florida limited liability company

ARTICLE II - ADDRESS:

The Mailing Address of the principal office of the Limited Liability Company is:

c/o Ignacio G. Zulueta, Esq.
Address: 6255 Bird Road
Miami, Florida 33155

ARTICLE III - TERM:

The period of duration of the Limited Liability Company is:

Perpetual

ARTICLE IV - MANAGEMENT:

The Limited Liability Company is to be managed by the managing member(s) and said managing member(s) are as follows:

Kelly Mallon
Address: 6255 Bird Road
Miami, Florida 33155

ARTICLE V - ADMISSION OF ADDITIONAL MEMBERS:

The right, if given, of the members to admit additional members and the terms and conditions of the admissions shall be:

New members may be admitted upon the approval by all of the then existing members of the Limited Liability Company.

ARTICLE VI - MEMBERS RIGHTS TO CONTINUE BUSINESS:

The right, if given, of the remaining members of the if given, of the Limited Liability Company to continue the business on the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or the occurrence of any other event which terminates the continued membership of a member in the Limited Liability Company shall be:

The remaining members may continue operating the business provided that the occurrence of any of the foregoing events shall not result in the admission of a replacement member (such as in the event of a judicial or administrative proceeding) that is not acceptable to the remaining members.

FILED
AUG 24 3 19
TALLAHASSEE
STATE
FLORIDA

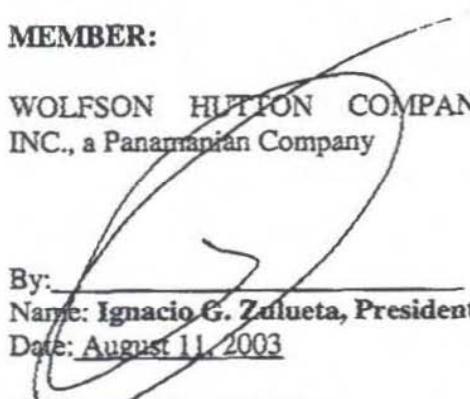
ARTICLE VII - OWNERSHIP INTEREST:

The entire non-assessable and fully transferable ownership interest in the Limited Liability Company is as follows:

WOLFSON HUTTON COMPANY, INC., a Panamanian Company 100%

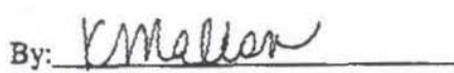
MEMBER:

WOLFSON HUTTON COMPANY,
INC., a Panamanian Company

By: 
Name: Ignacio G. Zulueta, President
Date: August 11, 2003



MANAGING MEMBER:

By: 
Name: Kelly Mallon
Date: August 11, 2003

LEASE AND SECURITY AGREEMENT

**SCHOOL DEVELOPMENT HG II LLC
AS LANDLORD**

-and-

**MATER ACADEMY, INC.
AS TENANT**

**PREMISES: Mater Academy Middle School
Mater Academy High School
7901 NW 103rd Street
Hialeah Gardens, Florida 33016**

DATE: April 1, 2004

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first above written.

WITNESSES:

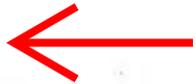
Annette M. Frances
Name: Annette M. Frances

Sylvia John Penneys
Name: SYLVIA JOHN PENNEYS

LANDLORD:

SCHOOL DEVELOPMENT HG-II LLC,
a Florida limited liability company

By: [Signature]
Name: Ignacio Zulueta
Title: Manager



TENANT:

MATER ACADEMY, INC.,
a Florida not-for-profit corporation

Annette M. Frances
Name: Annette M. Frances

Sylvia John Penneys
Name: SYLVIA JOHN PENNEYS

By: [Signature]
Name: Alejandro Ramos
Title: Chairman

Annette M. Frances
Name: Annette M. Frances

Sylvia John Penneys
Name: SYLVIA JOHN PENNEYS

By: [Signature]
Name: Ignacio Zulueta
Title: President



EXHIBIT
TAX EXEMPTION AFFIDAVIT

AFFIDAVIT

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

Before me, the undersigned authority, personally appeared **School Development HG II LLC, a Florida limited liability company** ("Affiant") who, being duly sworn upon oath, deposes and says that:

1. I am the President of School Development HG II LLC, a Florida limited liability company and have personal knowledge of the facts contained in this Affidavit.
2. School Development HG II LLC is the owner of the property with the following folio number and legal description:

See attached Legal Description
3. School Development HG II LLC is the landlord leasing the property at 7901 NW 103rd Street, Hialeah Gardens, Florida 33016, to Mater Academy, Inc., a Florida not-for-profit corporation.
4. School Development HG II LLC will reduce the rent by the amount of tax savings obtained by the tax exemption filings.

FURTHER AFFIANT SAYETH NAUGHT.
Dated this 28 day of February 2005.

School Development HG II LLC

Signed by Ignacio Zulueta as President of HG II. There is no evidence that this was presented to the Mater Governing Board.

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state and county aforesaid to take acknowledgements, personally appeared Ignacio G. Zulueta, Esq., Managing Member of School Development HG II LLC, who is personally known to me, individually and who executed the foregoing instrument.

WITNESS my hand and official seal in the county and state last aforesaid this 28 day of February 2005.

My Commission Expires

NOTARY PUBLIC
Name of Notary Public [Seal]



Annette M. Frances
My Commission DD185870
Expires February 20, 2007

My Home

miamidade.gov

ACTIVE TOOL: SELECT



Show Me:

Property Information

Search By:

Select Item

Text only

Property Appraiser Tax Estimator

Summary Details:

Folio No.:	27-3003-001-0020
Property:	7901 NW 103 ST
Mailing Address:	SCHOOL DEVELOPMENT HG II LLC 6255 BIRD RD MIAMI FL 33155-4883

Property Information:

Primary Zone:	6200 ARTERIAL BUSINESS
CLUC:	0041 EDUCATIONAL-PRIVATE
Beds/Baths:	0/0
Floors:	1
Living Units:	0
Adj Sq Footage:	135,231
Lot Size:	399,448 SQ FT
Year Built:	1962

Legal Description:	3 53 40 9.238 AC FLA FRUIT LAND CO SUB PB 2-17 PORT OF TRS 2-3 & 4 LYG N OF 103 ST DESC BEG NW COR TR 2 E ALG N/L TR 2 1121.29FTS ALG W R/W/L OF BYPASS 100FT W241.57FT SWLY
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Sale Information:

Sale O/R:	22246-2092
Sale Date:	4/2004
Sale Amount:	\$6,156,000

Assessment Information:

Year:	2006	2005
Land Value:	\$5,599,185	\$5,246,465
Building Value:	\$10,240,137	\$9,032,524
Market Value:	\$15,839,322	\$14,278,989
Assessed Value:	\$15,839,322	\$14,278,989
Total Exemptions:	\$15,839,322	\$14,278,989
Taxable Value:	\$0	\$0



Digital Orthophotography - 2005

0 209 ft

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September 29, 2006

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Allen M. Vann
Chief Auditor
Office of Management and Compliance Audits
Miami-Dade County Public Schools
1450 N.E. Second Avenue, Room 415
Miami, Florida 33132

Re: Response of Mater Academy to Draft Report dated September 6, 2006

Dear Mr. Vann:

We represent Mater Academy, Inc. ("Mater") a not for profit Florida corporation which operates several charter schools in Miami-Dade County, including Mater Academy Middle School and Mater Academy High School. On behalf of Mater and its Governing Board, we submit this response to your September 6, 2006 Draft Report (the "Report"). Academica Corporation ("Academica") has separately responded to the Report. Mater attaches Academica's response as Exhibit 17, in further support of this Response.

The Report makes three principal conclusions (accusations would be apt) of impropriety and recommends seven courses of action. Mater's Governing Board is charged to make reasonable inquiry and then to act reasonably, in good faith and in a manner believed to be in the best interests of Mater. After making an extensive inquiry, both personally and through independent counsel, Mater believes it would not be reasonable to accept the conclusions in the Report. The conclusions rest on two unsubstantiated opinions and contradict facts and data corroborated by multiple witnesses and documents. In an effort to improve its performance, Mater will adopt certain recommendations relating to governance. But, Mater will not accept your other recommendations, which will only lead to costly and self-defeating litigation.

I. Preliminary Comment.

You invoke the rules of the independent Office of Inspector General, but you are not, and deny that you act as, the Inspector General. You acknowledge that this investigation commenced with an unsigned letter dated January 24, 2006, purportedly submitted by Mater teachers and charging Mater with illegal and unethical conduct. You have verified that no teacher submitted the letter and that the alleged misconduct did not occur. Yet, you rely on that letter to justify this investigation because of the "seriousness" of those now debunked allegations. There can be no "seriousness" at all to forged and phony allegations. If that is the basis for this investigation to go forward, then it cannot be taken seriously and Mater must respectfully preserve its right to challenge both the authority and propriety of this investigation.

Auditors' Comments and Analysis of Response

 Mater Academy and Academica have been sufficiently notified from the outset that the Office of Management and Compliance Audits is currently acting in the capacity of the Inspector General. The Office of Management and Compliance Audits fully meets the independence criteria of the **Government Auditing Standards, promulgated by the Comptroller General of the United States.**

 The report concludes that certain misconduct cited in the letter is unsubstantiated, while some is, in fact, substantiated by the investigation.

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II. Executive Summary.

1. The Mater Governing Board is not a weak board. The suggestion that certain Board members are “dependent on Academica for their continued livelihoods” is wrong. The Mater Board is presently comprised of four professionals. None of the Board members is dependent upon Academica for their livelihood and that suggestion is irresponsible. This Board has reviewed your two draft reports and, either personally or through Mater’s independent counsel, investigated your claims and the underlying transactions. They have marshaled and reviewed documents, interviewed witnesses, consulted with experts in the field, and they have held Academica accountable for its management of Mater’s charter schools. This Board conducted an emergency meeting in order to consider your preliminary findings within the time constraints imposed on it, and this Board had to repeatedly request a one week extension in order to have adequate time to review and address this Report at its meeting on September 27, 2006. This Board acts responsibly and independently.

It is wrong to impugn the independence of this Board by complaining that Academica’s officers also served as officers for Mater from 1999 through part of 2004. This Board is not influenced by practices which ended two years ago. Two members of Mater’s Governing Board are employed by charter schools which are also managed by Academica. Academica has no power to hire or fire these members, yet you believe they are dependent on Academica and apparently would disqualify them from service on the Board. That is backwards. The Board approves Academica’s contract. They are highly qualified professional educators at schools with outstanding performance and can easily find other employment. These members bring needed expertise and experience to the Board. They understand the rules related to conflicts of interest and it would not be reasonable to summarily disqualify them.

2. The Mater Board believes that the April 1, 2004 Long Term Lease (“April 2004 Lease”) of the facilities for Mater Academy Middle School and Mater Academy High School (“Facilities”) continues to be in the best interest of Mater. This is a reasonable conclusion for two principal reasons: (i) the rent is reasonable in that it is at or below market rates and allows Mater to maintain annual school facilities costs that are substantially lower than the state average; and, (ii) purchasing the Facilities was not a viable alternative for Mater because it could not obtain the financing at that time. Mater is in the business of education, not real estate.

The Report concludes that the April 2004 Lease led to excessive facilities costs and rests solely upon the unsubstantiated and equivocal opinion of an anonymous real estate appraiser. Although Mater has asked you to disclose the identity of the appraiser and the basis for that opinion, you have refused to do so. On the other hand, the Board has reviewed data and received reports showing that the rent for the Facilities is at or below market rent and that the annual school facilities costs are substantially below the average for charter schools. Moreover, the Report insists on comparing Mater’s present 20-year lease of newly constructed school facilities to Mater’s prior 6-year lease of empty and unimproved big-box retail space. If Board decisions must be founded on reasonable inquiry and the best interests of Mater, then the Board must reject the unsubstantiated conclusion and accept the conclusion supported by evidence and data.

Auditors' Comments and Analysis of Response

 The Management Agreement between Mater Academy, Inc. and Academica Dade LLC, Section 7, provides that "Academica Dade LLC will identify and propose qualified teachers, paraprofessionals, administrators and other staff members and education professionals for positions in the School...Academica Dade LLC will coordinate with the Board or the Hiring Committee established by the Board to select individuals for School based positions."

 In fact, this does not appear to be the case. By way of example, at Mater Academy's September 26, 2003, Governing Board meeting, Board member Ms. Shannine Sadesky, Principal of Somerset Academy in Broward County (supposedly unrelated to Mater Academy) moved to approve an unsecured loan to Somerset Academy for \$175,000. With no evidence of a credit analysis or Somerset's ability to repay the loan, it was unanimously approved by the Board, including Dr. Ruth Jacoby, another senior administrator of Somerset Academy.

 Inherent in the report's conclusions is that the Mater Academy Governing Board should have been presented with and reviewed evidence about purchasing or leasing its facilities back in 2003 and 2004, prior to the expiration of its purchase option and contracting with School Development HG, II. It is only now performing the self examination that should have been previously performed.

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The Report concludes that questionable practices of senior management denied Mater the opportunity to exercise an option in April 2004 to purchase the Facilities. This conclusion rests upon your opinion that Mater “was in an excellent position to secure a mortgage and purchase the facility.” Again, despite Mater’s requests for more information, you have elected not to provide Mater with the full basis for that opinion. Again, you use bad data, including the wrong loan amount, wrong term of amortization, and ignore Mater’s true financial position in April 2004. And again, that unsubstantiated opinion is contradicted by facts and opinions provided to the Board by documents and witnesses, including four bankers who have extraordinary credentials in obtaining financing for charter schools. Moreover, you ignore additional information, widely acknowledged in the charter school industry, showing how charter schools, by their nature, are not credit worthy. Given the historical evidence that Mater could not obtain financing to purchase the Facilities and the consistent reports that charter schools in general have not been able to obtain such financing, it is not reasonable to conclude that senior management improperly prevented Mater from purchasing the Hialeah Gardens Facilities.

3. The suggestion that Mater is not receiving the benefit of its tax exempt status under section 196.1983, Florida Statutes, is spurious. It depends upon a hyper-technical and strained reading of the statute and ignores the purpose of the statute. If those taxes were paid, they would be additional rent paid under the lease. However, Mater is exempt from and does not pay those taxes. Mater’s landlord does not pay those taxes. Therefore, there is no rent charge for those taxes under the lease. The spirit and the letter of the law are served. Your recommendation that Mater take steps to “recoup” the amount of the exempt taxes from its landlord, even though Mater does not pay those taxes, would compel Mater to advocate an absurd result, initiate suspect litigation, and risk a material breach of its lease. This recommendation cannot be taken seriously and it calls into question the seriousness of the entire Report.

III. Mater’s Governing Board is Independent.

A. Members of the Board.

Mater’s Governing Board is responsible for setting policy and conducting its business. Each Board member is responsible for making decisions that are in the best interest of the school based upon reasonable judgment. This Board is not a rubber stamp for Academica. Mater relies upon Academica to conduct administration. The Board reviews that work and holds Academica responsible for that conduct. To date, all available metrics indicate that Mater charter schools have performed in an exemplary manner according to educational and financial standards under Academica’s management. As set forth in the chart attached as Exhibit 1, Mater’s schools are among the top performers in the State, with four of its schools earning an “A” under the Florida 2005-2006 A+ Plan and the high school earning a “B.” If Mater’s five schools comprised a separate school district, Mater would be the third highest performing school district in the State. Financially, Mater schools operate efficiently and enjoy cash surpluses that exceed \$4.5 million.

Each Board member is aware of and understands the concepts of conflict of interest and of self-dealing. In fact, Mater Board members have attended seminars required by Miami-Dade County Public Schools (“MDCPS”) for training charter school board members. Furthermore, at the emergency August 25, 2006 Board Meeting, conducted to review the preliminary findings,

Auditors' Comments and Analysis of Response

-  The debt would have been approximately \$12.2 million to pay off its existing leasehold mortgage and secure additional financing to exercise its purchase option.
 -  Mater secured its current 20 year lease based on the expected long term charter renewal of the schools. However, even if we used the 9 years (as this response recommends) as the amortization term, Mater's lease payments would still be \$1.7 million annually, \$600,000 less than its current annual lease payments to School Development HG II, LLC. And, Mater Academy would own its facilities debt free within 9 years.
 -  Our report indicates that Mater Academy, Inc. had a cash balance on June 30, 2004 of \$2,519,919, and its working capital was \$2,574,862. Unrestricted Net Assets of Mater Academy, Inc. for its 4 schools as of June 30, 2004, was \$2,670,447.
 -  We conclude in the report that the property tax exemption taken for the Hialeah Gardens facility (\$356,822 in 2005) by School Development HG II, LLC, was neither in accordance with the spirit or letter of the law.
 -  The evidence shows that the Governing Board knew nothing about its right to receive its property tax exemption. It was never properly disclosed to them by the landlord. Moreover, in accordance with the current lease, the \$19.50 per sq. ft. for fixed rent is effectively increased by an additional rent of \$2.92 ($\$356,822/122,500$) per sq. ft. in 2005, and this will likely increase in each of the 18 remaining years of the lease with School Development HG II.
-

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the members in attendance confirmed that they neither have nor had any direct or indirect financial interest in any entity which has done business with Mater. They also represented that they have always understood that they would be obliged to disclose any such relationship and could not act for Mater under those circumstances. *See* Minutes of Meeting, August 25, 2006, Exhibit 2. All of this is consistent with Section 7.4 of Mater's By-laws. Moreover, upon reviewing the pending Report, each Board member signed a letter expressly stating that the member has no direct or indirect financial interest in the landlord for Mater Academy Middle and High School and that the member has not received any direct or indirect financial benefit from Academica, except possibly reimbursable expenses. *See* Letter dated September 27, 2006, Exhibit 3.

The present Board is comprised of the following individuals: Chairman Antonio L. Roca; Dr. Ruth Jacoby; Shannine Sadesky Hunt; and David Concepcion. Parent member Greta Santos resigned effective September 27, 2006 and has not yet been replaced. *See* Biographical sketches, Exhibit 4.

Mr. Roca joined the Board in June 2004 and became Chairman in May 2006. He also became the president of Mater in May 2006. He is an attorney licensed to practice law in the State of Florida for six years and serves on other boards, including the Miami-Dade County Performing Arts Trust. Since Mr. Roca became Chairman, he has personally directed Mater's investigation of the allegations in the draft reports and has directed the work of Mater's independent counsel. Mr. Roca has his own law practice and is not dependent on Academica for his livelihood. Mr. Roca replaced David Concepcion as chairman. Mr. Concepcion has served on the Board since June 2004. Mr. Concepcion serves as the Chief of Staff to the Honorable Julio Robaina, Mayor of Hialeah. He does not work for Academica and does not depend on Academica for his livelihood.

Dr. Ruth Jacoby is the longest serving member of the Board. Dr. Jacoby is a professional educator and scholar, with years of experience and expertise in charter schools. She has been employed by Somerset Academy, Inc. since 1997, another charter school serviced by Academica. She has worked as a principal, lead teacher and dean; given workshops for teachers; and, authored several books. She has never been employed or paid by Academica. She is not beholden to Academica. Shannine Sadesky Hunt joined the Board in June 2003. She is also a professional educator and a leading proponent of charter schools. She was not recruited by Academica for this position, she volunteered to be put on the Board. She is the Principal for Somerset Academy Charter School and has served as a lead teacher, and workshop and conference instructor. Both Dr. Jacoby and Principal Sadesky Hunt are employed by Somerset Academy and were approved by its governing board. They are not paid by Academica and they are not dependent on Academica for their livelihoods.

B. Allegations of Weak Governance.

Although the Report teases the reader with accusations of "cronyism," "related party transactions," "poor" and "weak" governance, it does not substantiate those accusations. These accusations rely upon a mixture of opinion and conjecture, none of which support the allegation that Mater's Governing Board is weak.

Auditors' Comments and Analysis of Response



The report's findings and conclusions of cronyism, undisclosed related party transactions and weak governance are fully and specifically substantiated with a multitude of factual evidence.

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(i). Mater and Academica had the Same Officers Two Years Ago.

Fernando Zulueta and Magdalena Fresen, presently Fernando's wife, are officers in Academica. At times from 1999 through September 2004, they and Ignacio Zulueta, Fernando's brother, also served as the officers for Mater. However, that is not the case today and that has not been the case for more than two years. It is wrong to impugn the independence of the present Governing Board based upon relationships which have not existed for two years. Moreover, the Academica officers did not serve on Mater's Board, which was charged with making independent decisions. Furthermore, the CFO of Academica does not serve as Treasurer of Mater. Mater no longer shares officers with Academica.

(ii). Former Officers and Other Companies.

This Report repeats the allegation in the last draft that former officers of Mater are principals of other companies having significant business ties with Mater. Report at 4. Fernando and Ignacio Zulueta did not vote to approve the April 2004 Lease and have represented to the Mater Board that they had no direct or indirect financial interests in the landlord when the Mater Board approved the April 2004 Lease. The Mater Board members have now represented in two documents that they have had no interest in that landlord, School Development HG II, LLC. This allegation does not provide a proper basis for you to impugn the independence of the current Mater Governing Board.

(iii). Employees of Charter Schools Managed by Academica.

Mater's Charters require it to have professional educators on its Governing Board. MDCPS not only approved but insisted on that requirement. Administrators and educators employed by MDCPS were approached to serve as board members. Although some were interested, they were discouraged by their superiors from serving on charter school boards that might one day compete with their own school. As a result, the Governing Board was compelled to turn to administrators and educators in other charter schools, who agreed to serve and now greatly contribute to the success of the Mater Schools.

When Mater applied for the Charter for Mater Academy High School in March 2002, it informed MDCPS that it intended to include Dr. Jacoby on its Governing Board because of her expertise and credentials as a professional educator in charter schools. See Excerpts from Application, Exhibit 5. She has since served on the Board about four years. In June 2003, Shannine Sadesky Hunt joined the Board. Mater has repeatedly identified the members of its Governing Board to MDCPS without receiving any objection. Now, years later, the Report charges that these members make the Governing Board weak. This about-face is not justified.

The Report implies that employees of charter schools managed by Academica should be disqualified from serving on Mater's Governing Board because such employees "are dependent on Academica for their continued livelihoods." The Report is looking at this situation backwards. The Board members are not dependent on Academica. To the contrary, they review

Auditors' Comments and Analysis of Response

 The applicable conclusion, supported by substantial evidence, is that the independence of most Academica managed school Governing Boards, including Mater Academy, Inc., is compromised because its individual Board members are frequently employed by or otherwise related to Academica managed schools or Academica's owners. These are long standing practices which exist even today. They did not end two years ago as contended.

 Ms. Ana Martinez served as both CFO of Academica and Treasurer of Mater Academy throughout the investigation.

 The evidence shows that the Zuluetas failed to disclose to the Governing Board and its external CPA firm, their officer positions with the landlord during the period of the questionable transactions.

 There has been a recent change in management in the M-DCPS Charter School Operations Department. The notion that M-DCPS employees serve on Charter School Boards further indicates the administrators of Mater Academy, Inc. and its attorneys do not grasp the concept of conflict of interest. It would be inappropriate from an ethical perspective for employees of the School District, the Charter School's Sponsor, to be on the Board.

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Academica's performance. Ultimately, they approve Academica's contracts. If either party is dependent on the other, then it would be Academica, not vice-versa.

Dr. Jacoby and Ms. Sadesky Hunt were hired and are employed by Somerset Academy -- not by Academica. The independent governing board for that school hires them. Academica does not control that process. There are objective standards for measuring principal and teacher performance which are not controlled by Academica, such as student academic performance. Indeed, the Board can fire Academica and Academica is powerless to retaliate against that administrator at his or her high school.

Furthermore, this analysis of "weakness" does not truly hinge on conflicts of interest but implies outright corruption. The suggestion is that Board members will sacrifice Mater's interests to Academica's interest, to curry favor or avoid reprisals. There is absolutely no evidence, or any suggestion of such evidence, to be found here. You could raise the same suspicion for parent board members whose children attend the school.

(iv). The Report Misstates Certain Facts at Page 5.

Since this Report repeats the inaccuracies of the prior report, we are obliged to repeat these corrections. Mr. Rufus Samkin has moved to Texas and is no longer the Assistant Principal of the Mater Academy High School. He has also resigned from the Governing Board of the International Studies Charter High School. Millie Fresen resigned from the Governing Boards of both Pinecrest and Doral Academy Charter Schools in January 2006 prior to becoming Fernando Zulueta's mother-in-law. Ana Martinez is no longer the Treasurer of Mater.

IV. Mater's Bests Interests Are Served by the April 2004 Lease of Facilities.

When Mater agreed to the April 2004 Lease, it secured the use for twenty years (plus a 5-year extension) of newly constructed school facilities for Mater Academy Middle School and Mater Academy High School. Based upon the substantiated evidence available to it and the lack of any substantial evidence to the contrary, the Mater Governing Board believes this lease continues to serve Mater's best interests. The lease provides Mater with a long-term interest in desirable Facilities at reasonable rates. The evidence, as opposed to unsubstantiated opinion, shows Mater did not buy the Facilities because Mater could not qualify for the necessary financing. Let's review the facts leading up to the April 2004 Lease and then consider the conclusions stated in the Report.

A. Background: Facilities for the High School and Middle School.

On March 14, 2002, Mater obtained the charter for Mater Academy High School and sought adequate facilities near to its elementary school in Hialeah Gardens. In the application for that charter, Mater informed MDCPS that Mater intended to lease those facilities and that Academica would assist in procuring those facilities. It identified Zions First National Bank ("Zions") as the prospective source for construction financing for the facilities. In June 2002, Mater hired Academica to not only manage that prospective school, but also to locate and assist in procuring the Facilities.

Auditors' Comments and Analysis of Response

 The evidence shows that Academica has substantial influence over the hiring process of the schools it manages. In fact, the Management Agreement between Mater Academy, Inc. and Academica Dade LLC, Section 7, provides that "Academica Dade LLC will identify and propose qualified teachers, paraprofessionals, administrators and other staff members and education professionals for positions in the School...Academica Dade LLC will coordinate with the Board or the Hiring Committee established by the Board to select individuals for School based positions."

 Actually, the contract with Academica prohibits Mater Academy from firing Academica, except if it proves cause, for the first 3 years of the contract (through June 30, 2007).

 Mr. Samkin held said positions during the entirety of the investigation's fieldwork.

 Public records show that Ms. Millie Fresen was still a member of the Doral and Pinecrest Governing Boards at the time of her daughter's marriage to Fernando Zulueta on January 21, 2006.

 Ms. Ana Martinez served as both CFO of Academica and Treasurer of Mater Academy throughout the investigation.

 The evidence referred to was fabricated for purposes of presenting to the auditor and was not contemporaneous with the time that the described events took place.

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At their inception, Mater Academy High School (MAHS) and Mater Academy Middle School (MAMS) (collectively “Mater Schools”) had virtually no financial resources, no academic or operational track record, and no ability to borrow funds. They were not creditworthy. Nevertheless, Mater, with the assistance of Academica, was able to: (a) enter into a series of interim transactions that allowed the Mater Schools to commence operations; and, (b) obtain a fiscally responsible long-term lease of the Facilities.

MAHS commenced its first school year in September 2002 with an enrollment of 80 ninth grade students. In June 2003, at the end of its first school year, MAHS received an “F” in the Florida A+ Plan School Grade Program – which placed it at risk of having its charter revoked. The FDOE notified MDCPS that MAHS had a high probability of failure under the state accountability system. Financially, MAHS had a deficit in its Unrestricted Net Assets of (\$50,569.00). MAMS had not yet opened to students in the 2002-2003 school year.

In early 2002, Academica located the Facilities, a vacant former BJ’s Wholesale Club and Linen Supermarket. The dilapidated big-box stores (about 20,000 and 120,000 square feet each) were large enough to support a high school and a middle school, following substantial construction and renovations.

As of June 18, 2002, a purchase agreement for those closed stores was entered into between MOIREAL Corp., as Seller, and Ignacio Zulueta, trustee, as Buyer, for the price of \$6.156 million (“Purchase Agreement”). A \$100,000 deposit was paid by private investors (not Mater) and put at risk. As of that date, Mater entered into a Net Business Lease for about 20,000 square feet of that space for \$6.00 per square foot. Both the purchase agreement and the lease recognized the possibility that Mater could purchase the Facilities as Ignacio Zulueta’s designee. But, Mater was not the buyer under the Purchase Agreement. Also in about June 2002, Zions provided Mater with an interest only loan of \$750,000 to renovate the 20,000 square feet of retail space into school facilities.

On November 15, 2002, Mater entered into a new Net Business Lease which superseded the June 2002 lease. This November 2002 document leased the 120,000 unimproved square foot facility, in addition to the 20,000 square foot one, for \$6.90 per square foot, through June 15, 2005. A May 19, 2003 Addendum to this lease extended the term through June 2008. An April 2003 Addendum to the Purchase Agreement extended the closing date for the purchase of the Facilities through and until June 15, 2005, but expressly stated that that closing date could not be extended by the term of the Net Business Lease.

On about May 20, 2003, Mater borrowed \$6.015 million from Zions to renovate and construct a new school in the 120,000 square foot facility. This \$6.015 million loan subsumed the prior \$750,000 loan. Mater did not have sufficient credit to borrow these monies. Fernando and Ignacio Zulueta, Academica’s principals, were required to personally guarantee the loan, and Academica was required to subordinate its right to payment under its Management Contract to Zions’ right to payment of its loan.

Auditors' Comments and Analysis of Response

 On June 18, 2002, Mr. Ignacio Zulueta signed, as Trustee for Mater Academy High School, Inc., a Florida not-for-profit corporation, an accompanying short term (1 year) lease agreement with MOIREAL Corp., for a portion of the facilities.

 Mr. Ignacio Zulueta has repeatedly refused to disclose the identities of the "private investors." Moreover, the lease payments for the lease with MOIREAL Corp. were paid for by not-for-profit Mater Academy, Inc., not private investors.

 Why would Zions Bank loan \$750,000 directly to Mater Academy, Inc. to renovate a facility for which it only had a 1 year lease, and no right to buy the facility if Mater Academy was not a credit worthy risk, as contended?

 Actually, the 20,000 square foot area was included in the 120,000 facility.

 The personal guarantees of Ignacio and Fernando Zulueta are only now (this response dated September 27, 2006) disclosed to us. Why would the Zuluetas personally guarantee a \$6M mortgage loan on a property for which they had "no direct or indirect interest?" It appears that they did, at the time, and/or do currently have a financial interest in the facility.

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The June and November 2002 Net Business Leases and the \$6.015 million loan were short-term and interim arrangements, while Academica endeavored to secure financing to construct and provide Mater with a long-term interest in the Facilities. They tried to arrange financing for Mater's purchase and improvement of the Facilities, but failed. Two witnesses, Robert B. Howell and Richard Moreno, confirm that Mater failed to qualify for the financing required to purchase the Facilities. See Letter dated August 16, 2006, Exhibit 6; Letter dated September 17, 2006, Exhibit 7. Mr. Howell worked for Zions and handled its loans of \$750,000 and \$6.015 million. Mr. Moreno worked with the National Cooperative Bank Development Corporation a non-profit community development organization in 2002. He assisted charter schools with their facilities development and financing. Mr. Moreno also worked to obtain financing for the Facilities. In December 2002, he and Fernando Zulueta met with two banks, but Mater did not qualify for sufficient financing.

Since Mater could not qualify for the financing necessary to purchase and construct the Facilities, Academica pursued other options for Mater's acquisition of a long-term interest in the Facilities. On about April 4, 2004, School Development HG II LLC ("HG II") purchased the Facilities as the assignee of Ignacio Zulueta, under the June 2002 Purchase Agreement. Ignacio Zulueta also represented HG II. The public record shows that HG II acquired the Facilities with a purchase mortgage in the amount of \$14.785 million. That mortgage also shows that this property, along with other properties, served as cross-collateral for \$53,780,000 in financing issued for a much larger transaction.

On April 1, 2004, Mater entered into the April 2004 Lease with HG II. This long-term lease secures the newly constructed school facilities for Mater for 20 years at \$19.50 per square foot with increases based on CPI. The lease also includes a five year extension. When HG II purchased the Facilities, it paid off Mater's \$6.015 million loan to construct the Facilities and it completed renovating the facilities into 2005. The total renovations greatly exceeded the \$6.015 million loan. HG II also paid Mater \$322,714 which Mater had previously paid to the former landlord (the seller) under the 2002 Net Business Leases. See Exhibit 8. Thus, Mater traded a short-term lease for unimproved space at \$6.90 per square foot and a short-term (five-year) \$6.015 million debt, in exchange for a twenty year lease of new and improved school facilities at \$19.50 per square foot and \$322,714 in cash.

Mater's Governing Board deemed the April 2004 Lease to be in the best interests of Mater and approved that lease in a resolution and at a Board Meeting both dated April 1, 2004. The Report second guesses that decision.

B. The April 2004 Lease - - Reasonable and Economically Sound.

Mater's Governing Board, personally or through its independent counsel, has reviewed the relevant documents, and have met or spoken with Fernando and Ignacio Zulueta, other Academica personnel, their counsel, bankers, consultants and other witnesses. They did not simply rely upon oral representations, but requested and reviewed related documents. At its meeting on September 27, 2006, the Mater Board reviewed the foregoing, or reports from counsel on the foregoing, and concluded that the April 2004 Lease continues to be in the best interest of Mater for reasons which include the following.

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There is no evidence suggesting that the Mater Academy Governing Board pursued, or even considered pursuing additional financing for its facilities.

Academica and Mater Academy have refused to disclose the details of the larger \$53.780 million transaction and its related mortgages, such as ownership of Wolfson Hutton Company and the 5 related landlord companies leasing to Academica managed schools, interest rates and other terms of those mortgages. Publicly recorded documents indicate that Academica Charter School Finance issued \$53.780 million in bonds collateralized by 7 properties in April 2004. In fact, 4 of those 7 facilities were for schools under Mater Academy, Inc. Therefore, the evidence demonstrates that Mater Academy, Inc., by itself occupied a sufficient number of properties to offer a potential lender significant cross-collateralization without relinquishing ownership of its properties to a for-profit corporation.

In fact, the current lease dated April 1, 2004, Section 12, states "Tenant has made alterations to the Premises with the proceeds of a leasehold mortgage loan from Zions First National Bank.... Landlord shall not be required to make any contribution to the cost of any Tenant Alterations or any part thereof, and the Tenant covenants that Landlord shall not be required to pay any cost, expense or liability arising out of or in connection with or by reason of any Tenant Alterations."

The \$322,714 represented a return of Mater's deposit it had given to MOIREAL Corp. (the original lessor) in connection with its short term lease and purchase option for the facilities. This was not compensation to Mater in exchange for HG II's acquisition of the purchase option, as the Mater Academy Attorney is suggesting in this response. Although Mater Academy provided us with a schedule showing this deposit was returned to Mater Academy in 7 payments from October 2004 through March 2005, it failed to provide copies of the actual checks showing the signatories for HG II.

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Mater has already explained that the \$19.50 rate for the newly improved Facilities is well below the average lease rate of \$23.76 for retail commercial properties in the Hialeah/N. Miami Lakes area, and the \$21.95 average asking rate for office properties in the Miami Lakes (closest) area, for the fourth quarter 2005. *See* CB Richard Ellis Miami-Dade Market charts attached as Exhibit 9. Charter schools often lease their facilities retrofitted from either office or commercial/retail facilities, so those properties are generally comparable to the subject property, which in fact was previously a retail location. Moreover, charter school facilities must be built to comply with educational use life safety standards that are more rigorous than those for office and commercial uses, so they are more expensive to build or retrofit than comparably sized office or commercial facilities.

For almost two years, Mater has been looking for additional facilities space in Hialeah Gardens and cannot find space at or below the \$19.50 rate.

The Board asked its auditor, Octavio Verdeja, to attend its September 27, 2006 meeting. Mr. Verdeja reviewed the lease, reviewed the available market data, and explained that he had made his own inquiries regarding prevailing market rates. He reported to the Board that the lease was fair and probably below market. The Board was advised by Academica that MDCPS recently converted a former K-Mart to school facilities resulting in estimated rates of about \$40.00 per square foot after accounting for construction costs. *See* Exhibit D to Academica's Response, which is attached as Exhibit 17.

Furthermore, the Board also considered the March 10, 2006 letter from the Florida Consortium of Charter Schools, which reported that "the facilities lease costs per student station for large charter schools in the urban corridor of South Florida averaged approximately \$1,200" in 2005. *See* Exhibit 10. Mater's costs of facilities per student station in its middle and high school are \$1,000 - - well below the stated average.

The Board has read the statement in the Report that: "An independent real estate appraiser that we engaged concluded 'the lease rate at Mater Academy (middle/high) is about 12% to 30% higher than the lease rates at the other charter schools included in the analysis and there may be mitigating factors that justify the differential.'" Mater's counsel requested the basis for this opinion, the identity of the charter schools surveyed and the list of mitigating factors, but that request was rejected. *See* Letter dated September 14, 2006, Exhibit 11. Thus, the Board is not able to analyze what your appraiser views as important - the differences among the schools in his or her analysis. The Board is thus not able to address the merits of the opinion. For example, the fact that Mater's lease includes the costs of building new school facilities may have been one of the expert's mitigating factors, and may have vitiated the opinion that the rent is high. This Board has an obligation to conduct reasonable inquiry. The refusal to provide relevant information frustrates that role and raises suspicion as to the reliability of the opinion. All of the known facts point to the conclusion that the lease was reasonable.

The Mater Board endeavored to re-visit the circumstances confronting the prior Board in April 2004. At that time, Mater had a lease which would expire in June 2008 at a low rent of \$6.90 per square foot. Mater also owed Zions \$6.015 million for construction. Under that loan,

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-  Gallaher and Birch, Real Estate Appraisers and Consultants, an independent real estate appraiser that we engaged concluded "the lease rate at Mater Academy (middle/high) is about 12% to 30% higher than the lease rates at the other charter schools included in the analysis and there may be mitigating factors that justify the differential."
 -  In fact, charter school facilities are subject to less stringent requirements than traditional public schools, which are subject to the **State Requirements for Educational Facilities (SREF)**.
 -  Mr. Verdeja's firm is the same firm that failed to detect substantial related party transactions surrounding the Schools' facilities and lease arrangements.
 -  According to M-DCPS Facilities Planning department, the analysis by Academica is inaccurate as it does not account for such factors including compliance with School Requirements for Educational Facilities (SREF); cost of furniture, fixtures and equipment; and "additional rent" as defined in the Mater / HG II lease agreement.
 -  The calculation of facilities lease cost per student station is inaccurate. Only the fixed portion of the rent is included in Academica and Mater's responses. Additional rent, which the lease indicates includes such charges to the tenant as maintenance, repairs, and insurance, etc, was omitted from Mater's calculation. If additional rent had been properly included in accordance with the lease agreement, the facilities cost per student station for FY05 would be calculated in excess of \$1,700 ($\$3,689,756 / 2,131$ students = \$1,731.47), well above the average cost per student station of \$1,200 cited in Mater's supporting letter from the Florida Consortium of Charter schools.
 -  3 of the 5 current Board members were Board members in April 2004.
-

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Mater had to make principal reduction payments of over \$500,000 every six months commencing June 2004. And, that \$6.015 million was not sufficient to complete ongoing construction. Mater traded those obligations for the twenty year lease of the new Facilities at the admittedly higher rent of \$19.50 per square foot. But, as noted above, Mater was excused from paying the \$6.015 million loan, received even more costly improvements at the Landlord's expense, and got \$322,714 cash back from the new landlord, HG II, after HG II closed on the purchase. Since April 2004, the high school and the middle school have operated with a substantial surplus. According to its auditor, these schools have very good cash expense ratios of 4.25 and 4.54, respectively. *See* Chart, Exhibit 12. This Board believes that the prior Board in April 2004 made a reasonable decision in the best interest of Mater and gave the schools the economic footing for its current financial success, which includes over \$4.5 million in surplus.

C. Purchasing the Facilities Was Not an Option for Mater.

The Report, like the underlying investigation, is infatuated with the concept that Mater had a "purchase option" for the Facilities. Several documents, including the net leases, refer to Lessee's (Mater's) option to purchase the property. The Short Form Lease of May 2003, also states that the Lessee has an option to purchase. The Report claims that there was a failure to "discuss" the option with the Mater Board. The Report uses the "purchase option" to manufacture this claim. But, any such option is a red herring. The simple fact is that for Mater, purchasing the Facilities was *not* an option.

(i). Mater Tried to Obtain Financing to Buy the Facilities.

Academica, as part of its services rendered to Mater, endeavored to procure conventional financing for Mater to acquire and renovate the Facilities on its own. But, Mater did not qualify. On this point, the evidence reviewed by the Board is quite substantial and undisputed.

Richard Moreno was a consultant for a non-profit organization when he worked with Mater to obtain financing. He accompanied Mr. Zulueta to visit two banks in December 2002 to seek financing for Mater. But, this could not be done. *See* Exhibit 7. Mr. Moreno has an extensive background and credentials in financing and in particular financing for charter schools. For the record, he does not do business with Academica.

Robert Howell, who clearly understood Mater's creditworthiness as the banker who arranged the \$750,000 and \$6.015 million loans to Mater in 2002, explains that Mater did not qualify for the financing to purchase the Facilities. *See* Exhibit 6. Moreover, he carefully explained that charter schools present unique risks to lenders that make it very difficult for them to qualify for traditional financing. These risks include: (1) charter schools have limited charter terms and no guarantee that their charters will be renewed; (2) start-up schools have limited or no financial and academic track record; (3) inconsistent funding patterns; (4) single purpose of the school facility makes it more difficult for a lender to sell the asset in the event of a default; AND, (5) no substantial net worth and insufficient collateral. Consequently, charter schools operate in a distinct economic environment. There are very few financial institutions, investment banks or institutional investors in the U.S. that have experience or interest in providing financing for charter schools.

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This directly contradicts the current lease dated April 1, 2004, Section 12, which states "Tenant has made alterations to the Premises with the proceeds of a leasehold mortgage loan from Zions First National Bank....Landlord shall not be required to make any contribution to the cost of any Tenant Alterations or any part thereof, and the Tenant covenants that Landlord shall not be required to pay any cost, expense or liability arising out of or in connection with or by reason of any Tenant Alterations."

The public records connected with Zions Bank's May 2003 \$6.015 million leasehold mortgage directly to Mater Academy, Inc. also clearly support that the Schools' had a purchase option to buy their facility by June 15, 2005 for \$6,156,000.

In all previous correspondences, the Mater attorney has argued that the School never had a legal right to purchase its facility. For example, he wrote to us on August 18, 2006, "Having had the opportunity to review the documents and make other inquiries regarding the purchase agreement and related transaction, Mater remains resolute in its conclusion that it was not a party to that purchase agreement. Mater understands and appreciates your concern with some of the language of (that) lease relating to the purchase agreement of the "parties." That language was unfortunate, but it simply does not as a matter of fact, and cannot as a matter of law, make Mater a party to an agreement where Mater is not a party." In correspondence to us dated August 31, 2006, the Mater attorney states, "Your Findings incorrectly state that Mater had an "option" to purchase the facilities for \$6,156,000 on or before June 15, 2005, referring to the Net Business Lease dated November 15, 2002 between MOI and Mater Academy. There is no reason to repeat the comments made to you in my correspondence of August 18, 2006. That lease did not grant an option. There was no option." In this response, however, the attorney now appears to be acknowledging that the School had a legal right to purchase its facility, but now uses a fallback argument that the School would not have qualified for additional financing.

Up until very recently, Mater and Academica officials have steadfastly denied that Mater even had the legal right to purchase its facility. There was no documented contemporaneous evidence that they endeavored to secure financing for Mater to acquire the facility.

There is no evidence in the Mater Academy Governing Board meeting minutes suggesting that Mater or Academica pursued, or even considered pursuing additional financing to purchase its facilities.

In Mater Academy's correspondence to us dated 8/31/06, the attached Robert Howell letter decries the collateral value of a single use charter school. In that correspondence Mater also attaches support from the firm of CB Richard Ellis stating "When leased as a single user facility, charter school facilities can be considered special single use occupancies. Leases of special single use occupancies typically command 15% to 20% higher lease rates than those for generic retail or office uses." These statements provided directly contradict one another. In fact, with the substantial growth in the number of charter schools in Florida in 2000 through present, there would be excellent demand from other interested charter school tenants if Mater Academy, Inc. had defaulted on a mortgage and the bank had to foreclose on the property.

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The ultimate financing structure that was developed and allowed Mater to have a long-term lease in April 2004 was innovative and pioneering. This financing structure achieved three essential requirements for Mater Academy: (a) met the fiscal responsibilities of the Mater Schools, with a long-term lease at reasonable rent, without undue risk, (b) provided HG II with funds at reasonable interest rates to acquire, construct and retrofit the Mater Facilities, and (c) provided the lender with an appropriate investment secured by a portfolio of underlying and diversified real estate assets. This last point warrants major emphasis because it was the diversified nature of the portfolio of real estate assets that (a) enabled the financing to occur and (b) determined much of how the transactions were structured.

Mr. Moreno and Mr. Howell both witnessed Mater's failed efforts to procure financing in 2002. Both are experts on charter schools and explained that they are not aware of any charter school ever obtaining -- even to this date -- the type of financing which Mater required. Mater presented Mr. Howell's letter to the District's auditors, but their only response has been to note that Mr. Howell does business with Academica. Report at 7. No effort was made to address or contradict the prohibitive risks discussed in Mr. Howell's letter. And, that is because no good faith argument can be made to rebut his letter. Academica has secured another letter from Rick Burtenshaw, a senior vice-president with Zions, who ratifies and confirms the analysis of both Mr. Howell and Mr. Moreno. See Exhibit G to Academica Response. There is also a letter from Lance Aylsworth, a vice-president with Regions Bank, who also confirms that for charter schools, the financing required by Mater is not possible even today. See Exhibit I to Academica Response. Furthermore, these problems are widely reported by the industry. For example, the Government Accounting Office for the United States government recognizes these problems as do other non-profit charter school support groups. See Excerpts, U.S. General Accounting Office, *New Charter Schools Across the Country and in the District of Columbia Face Similar Start-up Challenges* (2003), Exhibit 13, and Excerpts, *Charter School Facilities, A Resource Guide on Development and Financing*, Exhibit 14.

Thus, the Mater Board has the explanation of Academica's representatives, the corroboration of two distinguished experts, Howell and Moreno, who were present in 2002, and reports that Mater suffered the same difficulties suffered by all charter schools as identified by four bankers (including Howell and Moreno), an independent government agency and other sources. Mater is also aware that no charter school in Florida has ever borrowed the amount required to purchase and construct the Facilities.

The Report offers a single contrary opinion. The Report opines that Mater "was in an excellent position to secure a mortgage and purchase the facility with minimal cash outflow." Report at 8. This opinion assumes a purchase price of \$12 million, amortized over twenty years at an interest rate of prime plus 2%, and the wrong financial data for Mater. When Mater asked the auditors to further identify the bases underlying this "opinion" the request was rejected. Thus, the Mater Board was frustrated in its effort to inquire and is left to consider this opinion in light of all of the other information available to it.

The Report uses the wrong loan amount. The true cost to purchase and improve the Facilities is most accurately reflected in the amount of the HG II mortgage -- \$14.785 million.

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•  Although the Mater Governing Board was not even aware of it.

•  As previously indicated, Academica and Mater Academy have refused to disclose the details of the larger \$53.780 million transaction and its related mortgages. The available evidence suggests that Mater Academy, Inc., by itself occupied a sufficient number of properties to offer a potential lender significant cross-collateralization without relinquishing ownership of its properties to a for-profit corporation.

•  The purchase option granted Mater Academy the right to purchase its facility on or before June 15, 2005.

•  In fact, each of the 5 arguments made in Mr. Howell's letter are fully rebutted above.

•  All of their opinions were presented years after the fact in response to our findings and conclusions. At least 2 of the 4 experts Mater cites currently have substantial business dealings with Academica managed schools.

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Construction of the Facilities continued into 2005 at the landlord's expense. The \$12.00 million assumed in the Report does not cover those costs.

The Report uses the wrong amortization schedule. The twenty-year amortization assumed in the Report was not available to Mater because its charter did not extend for twenty years. In 2004, Mater's charter had only nine years remaining. Using these parameters, the annual mortgage payment with a nine year amortization would have been approximately \$2,500,000, which is more than the \$2.3 million rent to HG II. The Report assumes a rate of prime plus 2%, but in a changing interest rate environment, one can neither know nor predict the actual interest payments over the next twenty years.

The Report, at 7. states that "Mater Academy, Inc. had a cash balance on June 30, 2004 of \$2,519,919, and its working capital (current assets less current liabilities) was \$2,574,862." However, as of June 30, 2004, the combined Unrestricted Net Assets of Mater High and Mater Middle was much less than \$2,574,862 -- only \$1,258,984. This was a significant improvement from the prior year, but these schools still did not have the resources and collateral required to secure over \$14 million in long-term financing.

It is wrong to consider the restricted assets. For example, certain start-up grants have restricted uses and are not available for investment in facilities. Moreover, Mater requires each school to be economically self-sufficient. The cash or surpluses of one school should not be used to subsidize the facilities costs of another school.

Furthermore, the Report would have required Mater to lock all of its liquidity into the property. This could have a devastating effect on Mater and its Schools' financial position with the likelihood of a deficit in their net current asset balance. This was especially so given the risks associated with an ongoing building and construction program.

D. Alleged Self-Dealing.

The Mater Board does not see evidence that prior management, including Fernando Zulueta, engaged in self-dealing. In April 2004, it was known to the Board that Fernando Zulueta was serving as an officer of Mater and Academica. (Ignacio Zulueta resigned as vice-president of Mater in February 2004). It is also clear that the Board looked to Academica to make long-term arrangements for the Facilities. The Board understood its responsibility to review and approve recommendations and decisions made by Academica. There is no evidence that Fernando or Ignacio Zulueta profited privately at the expense of Mater, other than under the Academica management contracts. They have met with the Board, provided relevant documents, explained the 2004 transaction and events leading up to that transaction, and that they had no direct or indirect interest in HG II. Based on this explanation, they did not fail to disclose any self-dealing in connection with the April 2004 lease. It has been suggested that the members of Mater's Board may also have had an interest in the Landlord, which the Board members have denied at a public meeting and now in a letter.

There is no evidence that anyone concealed Mater's theoretical right to purchase the Facilities. Instead of concealing the red herring option, it appears that Academica made every

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As previously indicated, no evidence of this was provided and it directly contradicts the provisions in the current lease between Mater Academy, Inc. and School Development HG II LLC.

Mater secured its current 20 year lease based on the expected long term charter renewal of the schools. However, even if we used the 9 years (as this response recommends) as the amortization term, Mater's lease payments would still be \$1.7 million annually, \$600,000 less than its current annual lease payments to School Development HG II, LLC. And, Mater Academy would own its facilities debt free within 9 years.

Unrestricted Net Assets of Mater Academy, Inc. for its 4 schools as of June 30, 2004, was \$2,670,447.

"Restricted assets" was never even mentioned in the draft report, nor was it used in any calculation in the report.

As indicated in the final report, Mater Academy, Inc. approved an unsecured loan of \$175,000, from Mater Academy Charter Middle School to Somerset Academy (a school purportedly unrelated to Mater Middle) in Broward County without even evidence of a credit analysis. Now it is suggesting that Mater Academy, Inc. could not authorize a loan from any of its schools to another of its own schools, even if this would save the Mater Schools in the aggregate, substantial facilities expenditures. This is simply not a credible or good faith argument.

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reasonable effort to procure financing for Mater to purchase the Facilities, but Mater could not qualify for that financing. This is more a reflection on Mater's limitations, and the limitations of all charter schools, than any reflection on the Zuluetas.

At its meeting on September 27, 2006, the Board reviewed the Report's concerns that the April 2004 Lease was a related party transaction, with its auditor, Octavio Verdeja, Jr. The Board understands that Mater's audited financial statements conform to generally accepted accounting principles regarding Mater's approval of that lease.

E. Board Protocol and Procedures.

The Report complains that it is not clear how Mater Board members are selected and that minutes of Board meetings do not provide detailed explanations of the bases for Board decisions. New Board members are selected in accordance with Mater's articles and bylaws.

Mater does not accept the complaint about its minutes. Minutes are not meant to provide a transcript of proceedings. See Excerpt of Florida Government in Sunshine Manual, Exhibit 15, and Excerpt from Pepin and Rippner, Workbook for Use with the Charter School Accountability Center's Governance Workshops, Exhibit 16. They are meant to reflect Board action. Mater's minutes are typical of its industry. Moreover, they expressly conform to the style and content recommended by MDCPS in its board member training sessions. See Exhibit 16. Copies of minutes have been provided to MDCPS for four years. To date, there have been no objections and the sudden about-face is curious.

Moreover, Mater's Board meetings are open to the public. Notice of meetings is given to the public, including MDCPS.

V. Mater Has the Benefit of its Tax Exempt Status.

Section 196.1983 of the Florida Statutes states:

Any facility, or portion thereof, used to house a charter school whose charter has been approved by the sponsor and the governing board pursuant to s. 1002.33(7) shall be exempt from ad valorem taxes. For leasehold properties, the landlord must certify by affidavit to the charter school that the lease payments shall be reduced to the extent of the exemption received. The owner of the property shall disclose to a charter school the full amount of the benefit derived from the exemption and the method for ensuring that the charter school receives such benefit. *The charter school shall receive the full benefit derived from the exemption through either an annual or monthly credit to the charter school's lease payments.*

(Emphasis supplied). The landlord has provided the affidavit. The April 2004 lease provides that Mater is obliged to pay monthly rent. That lease, being a triple net lease, also requires Mater to pay additional rents, including taxes and other expenses. The additional rents are assessed by the landlord when they are incurred by the landlord. The landlord has taken full advantage of

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 The affidavit was presented to the County's Property Appraiser in February 2005 in order for HG II to receive the tax exemption (\$356,822 in 2005). No evidence was provided that this exemption was disclosed to the School's Governing Board in accordance with State statute. The Miami-Dade County Property Appraiser's office indicated that it does not monitor affidavit/exemption for compliance after initial paperwork is filed.

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section 196.1983's exemption from ad valorem taxes. Since the landlord has not paid those taxes, the landlord has not sought to charge Mater for those taxes as additional rent. Thus, the letter and the spirit of section 196.1983 are honored here.

Not to be deterred by reason, the auditors demand that Mater "recoup" the amount of the exemption from the landlord. The auditors apparently contend that the words "the charter school shall receive the full benefit derived from the exemption through either an annual or monthly credit to the charter school's lease payments," means that even where Mater does not pay ad valorem taxes, Mater is entitled to a credit against its rent in the amount of the exempt and unpaid ad valorem taxes. Such nonsense more clearly evidences the auditors' intent to make trouble for Mater and its landlord than any serious legal reasoning.

The auditors would construe this statute, which is designed to preserve a tax exemption, to be a windfall discount against rent. That construction requires a hyper-technical if not blind adherence to the words of the section's last sentence. That construction does not serve the intent of the statute, but rather serves up an absurd result. That construction may be unconstitutional in that it would wrongfully deprive the landlord of his property without due process of law and without just compensation. That construction is patently and utterly wrong. And, the auditors know very well that no landlord would honor such an ill-advised demand for recoupment, leaving Mater to squander resources in senseless litigation.

VI. Response to Recommendations.

Mater responds to each of the seven Recommendations as follows:

Recommendation No. 1: Ensure that Board members are selected in a manner which ensures transparency and independence.

Response: The Board does not believe that its procedures for selecting members provide any basis for questioning either its transparency or its independence. However, the Board has no objections to reviewing its articles and by-laws with a view toward clarifying how it recruits, nominates and approves new members.

Recommendation No. 2: Provide training to new Board members on their roles and responsibilities in accordance with Florida Statutes and best practices. Particular emphasis should be put on the Board's duty to review the propriety of financial and business transactions and especially for avoiding conflicts of interest.

Response: In the past, Mater Board members participated in training programs required by MDCPS. In yet another apparent about-face, MDCPS now asks Mater to train new Board members. The Board accepts the challenge of developing such a training program. The Board has already consulted with its independent auditor and its counsel. It is considering a more formal and comprehensive conflict of interest policy, a code of ethics, anti-fraud protocols, whistle blower policy and a records retention policy. The Board finds the evaluation of such policies will inform the development of any training program. The Board will first address these policies and then the issue of training.

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Recommendation No. 3: Reevaluate its current lease and take appropriate steps to recoup overpayments relating to:

- a. the value of the purchase option and related credits for rental payments,
- b. property tax exemptions not passed through, and
- c. excessive rental payments

Response: This recommendation is not reasonable. First, the property tax issue has no material legal or factual basis. Second, nothing in the Report suggests that the “purchase option” had any identifiable value. The facts show Mater could not have acquired an ownership interest in the fully improved facilities on its own. It is not reasonable to initiate litigation over such a baseless claim. Third, the rental payments are not excessive. They are based on market conditions and are much less than what the District is paying for similar property.

Recommendation No. 4: For purposes of transparency in the expenditure of public funds, the Mater Academy Board should insist that School Development HG II, LLC disclose its investors/owners.

Response: The Mater Board has affirmed that it does not have any interest in HG II. The Mater Board has also determined that no current officer or director of Mater has an interest in HG II. No Florida law requires vendors to disclose all of their beneficial owners “for purposes of transparency in the expenditure of public funds.” and no Florida law requires charter schools to determine and disclose the beneficial owners of the charter school’s vendors. MDCPS now knows that no current Mater Board member or officer is benefiting from the April 2004 lease. It has accepted such affirmations from other charter schools and from its own vendors. It should likewise accept the Mater Board’s similar affirmation. The Board can ask the landlord to disclose its principals to you, but the Board is in no position to demand or insist. The Board does not control the landlord.

Recommendation No. 5: Determine whether any related party transactions took place that were not properly disclosed in past audited financial statements in accordance with FASB Statement 57. If so, past audited financial statements should be restated.

Response: Mater has reviewed this recommendation with its auditor and understands that past audited financial statements are in accordance with FASB Statement 57 regarding the April 4, 2004 long-term lease.

Recommendation No. 6: Strengthen internal controls and review its agreement with Academica to ensure that direct or indirect financial interest in applicable companies and transactions are fully disclosed.

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Response: See Response No. 2 above. Also, Mater will work with its professionals and management company to consider appropriate agreements that will more clearly address issues of related party transactions, conflicts of interest and similar issues.

Recommendation No. 7: Ensure that minutes of Governing Board meetings are sufficiently detailed to adequately reflect to the public the Board's decision making process.

Response: Minutes are not meant to transcribe every element of the Board's decision making process. The Board will review its procedures for preparing minutes.

VII. Conclusion.

The Mater Governing Board has diligently marshaled and reviewed facts. These facts do not, and cannot, reasonably support the conclusions in the Report.

Sincerely,

Joseph L. Raia

JLR:nmm
Enclosures

cc: Antonio L. Roca, Esq.
Dr. Ruth Jacoby
Shannine Sadesky Hunt
David Concepcion
Marcos D. Jimenez, Esq.

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September 27, 2006

Via Hand-Delivery

Allen M. Vann
Chief Auditor, Office of Management
& Compliance Audits
Miami-Dade County Public Schools
1450 Northeast 2nd Avenue
Room 415
Miami, Florida 33132

Re: Mater Academy/Academica

Dear Mr. Vann:

As you know, I represent Academica Corporation, which provides services to Mater Academy, Inc. ("Mater"), the holder of charters issued by the MDCPS Board for the operation of a middle school and high school located in Hialeah Gardens, Florida. Academica and Mater received your draft report of investigation on September 8, 2006.

Your draft report contains vague allegations of "poor governance" and "apparent self-dealing" and wrongly concludes that Mater is paying excessive costs in connection with its lease of the Hialeah Gardens facility. If you maintain that position, which is not well-founded, you will cause grave harm to Mater, Academica and their representatives, for which they will have to seek redress.

Academica and Mater will fully respond to your draft report by the due date of September 29, 2006. At this point, however, Academica is submitting this preliminary response in order to give you sufficient opportunity to withdraw your improper conclusion and avoid its consequences.

As support for its conclusion, your draft report cites an unnamed real estate consultant who has ambiguously stated that the Mater lease costs are "about 12% to 30% higher than the lease rates at the other charter schools included in the analysis and there may be mitigating factors that justify the differential." Draft Report at 8 (emphasis added). You have refused Academica's and Mater's requests for your consultant's analysis, contrary to your prior offer to provide "additional details concerning the matters discussed in" your draft report. See Vann Letter dated September 6, 2006, attached as Exhibit "A." Your refusal also contradicts your stated desire to "ensure that a report is fair, complete and objective." See Vann Letter dated June 30, 2006, attached as Exhibit "B."

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Auditors' Comments and Analysis of Response

 The findings and conclusions of poor governance and apparent self dealing are not “vague allegations.” To the contrary, the report is replete with fully supported incidences demonstrating poor governance and resultant self dealing . Numerous examples of interwoven relationships with different Academica controlled schools and the evident lack of transparency in the past, need to be addressed immediately by the current board.

 We contracted the firm of Gallaher and Birch, Real Estate Appraisers and Consultants, to conduct an independent, objective analysis to assist us in our analysis of the questionable real estate transactions.

We were not asked to provide information on the consultant's analysis per se but rather a public information request was made for our entire investigative audit file. This request was inappropriate as 119.0713, Florida Statutes exempts the internal work papers from public view until after a report becomes final.

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Your refusal places Academica and Mater in an unfair position because you have asked for a response but are refusing to provide the information necessary for Academica and Mater to submit a complete reply. Your refusal is also unfair because Mater previously provided your office with its supporting data, including market studies demonstrating the reasonableness of the Mater lease, and a letter from the Florida Consortium of Charter Schools showing that Mater's lease cost on a per student station basis is well below the average for large charter schools in South Florida. Your draft report completely ignored Mater's submissions, and now you are refusing to disclose the basis for your unnamed real estate consultant's opinion.

Among other things, it is important for Academica and Mater to know whether your anonymous consultant considered a comparable property that MDCPS has recently leased – a former K-Mart store location at the California Club Shopping Mall on Ives Dairy Road – and plans to improve at a cost of \$7 million for a reliever school. See School Board items attached as Exhibit "C." As you know, Mater's lease of the Hialeah Gardens facility is for a fully improved school converted from its previous use as a big-box retail location (BJ's Wholesale), and the construction loan for the Mater facility was for \$6.015 million. As demonstrated by the chart attached as Exhibit "D," MDCPS's annual cost for the K-Mart property will be approximately \$40 per square foot, whether calculated for the initial term of the lease or for the successive five-year renewals up to the maximum 20-year term.¹ Using MDCPS' \$40 per square foot cost as the benchmark, Mater's \$19.50 per square foot cost of not just reasonable – it is a bargain.² You and your unnamed consultant should tread very carefully before making assertions that are contrary to the actions of your own organization.

We have also requested, but you have failed to provide, any consultant or banker, or any data, to support your "opinion" that Mater could have procured a \$12 million mortgage to purchase and retrofit the Hialeah Gardens facility. That "opinion" is the basis for your accusation that Mater is spending \$1.3 million a year in excess facilities costs: "*In our opinion*, Mater Academy, Inc. was in an excellent position to secure a mortgage and purchase the property with minimal cash outflow." Draft Report at 8 (emphasis added). You support that "opinion" with an assumption that Mater could have "readily procured" a \$12 million, 20-year mortgage with an annual payment of \$1.046 million per year.³ See Draft Report at 7-8. Finally, in what seems

¹ The lease rate escalates during the first five years, and then continues increasing at a 5% rate each year thereafter, without regard to cost of living indexes. The \$6.9 million construction cost is not included and must be amortized to calculate the total facility cost.

² On a per student station basis with respect to the construction cost, the comparison is even worse from the standpoint of your District. Your draft report assumes that Mater could have completely retrofitted the Hialeah Gardens facility for \$2500 per student station (2400 student stations at \$2500 equals \$6 million). By contrast, MDCPS is spending \$11,000 per student station, more than four times as much, to retrofit the former K-Mart location. (640 student stations at \$11,000 equals \$7 million).

³ "*Assuming* a mortgage amortized over 20 years and a rate of prime +2% (6% in April 2004), Mater Academy, Inc.'s annual payment would be \$1,046,362 for 20 years to own the facility." Draft Report at 8, n. 5 (emphasis added). Among other flaws in this hypothesis, Mater would not have received a 20-year amortization term because it had only nine years

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-  The calculation of facilities lease cost per student station is inaccurate. Only the fixed portion of the rent is included in Academica's response. Additional rent, which the lease indicates includes such charges to the tenant as maintenance, repairs, and insurance, etc, was omitted from the calculation in Academica's response. If additional rent had been properly included in accordance with the lease agreement, the facilities cost per student station for FY05 would be calculated in excess of \$1,700 ($\$3,689,756 / 2,131$ students = \$1,731.47), well above the average cost per student station of \$1,200 cited in Academica's supporting letter from the Florida Consortium of Charter schools.
-
-  According to M-DCPS Facilities Planning department, the analysis by Academica is inaccurate as it does not account for such factors including compliance with School Requirements for Educational Facilities (SREF); cost of furniture, fixtures and equipment; and "additional rent" as defined in the Mater / HG II lease agreement.
-
-  Mater Academy and Academica provided no evidence during the investigation that Mater Academy contemplated pursuing additional financing to exercise its bargain purchase option for the facility. In fact, up until recently, Academica and Mater officials, including Ignacio Zulueta and Ana Martinez, have steadfastly denied that Mater Academy, Inc. even had an option to purchase the facility, a fact clearly supported by the numerous lease documents and Zions Bank loan documentation. The scenarios that should have been presented to the governing board by management (Academica) include a. procuring an additional \$6,156,000 mortgage for the purchase as Mater already had the \$6,015,000 mortgage from Zions bank with a remaining term of more than 4 years and, b. procuring a mortgage for approximately \$12.2M and paying off the \$6,015,000 mortgage (SD HG II, a company that was in business less than a year was able to get a mortgage of \$14,785,000 from Academica Charter School Finance, using the School's facility as collateral).
-
-  However, School Development HG II extended a 20 year lease to Mater despite that school only having 9 years remaining on its charter. It was based on the expected long term renewal of the charter.
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to be an effort to inflame readers, you compare apples and oranges to give the false impression that Mater is paying “more than triple” its prior rate for “the exact same property,” without recognizing that you are comparing Mater’s initial short-term lease for unimproved property to Mater’s subsequent lease for a turn-key facility improved at a cost of more than \$6 million to the landlord.”⁴ Draft Report at 8. This is the house of cards on which you base your accusation against Mater and Academica.

You obviously have not consulted or disclosed your consultations with professionals who could help the readers of your draft report understand the specific real estate and financing issues surrounding charter school facilities and the transactions you question. When we first met with you in mid-July, more than two months ago, we asked you the basis for your conclusion that Mater could have “easily” qualified for the financing required to purchase and improve the Hialeah Gardens facility. At that time, you told us that you had no lender or expert to support your opinion. Mater then submitted a letter from Robert Howell, the banker who was most involved in the financing of the subject property. Mr. Howell’s letter explained why the financing that you hypothesize was actually not available to Mater, *see Howell Letter Dated August 16, 2006* (attached as Exhibit “E”), but your draft report merely changed adjectives (saying that a mortgage could be “readily” as opposed to “easily” procured) and added no factual or expert support for your fundamental assumption.

Mr. Howell explained at length the following factors that prevented Mater Academy from qualifying for a loan to purchase and complete construction of the Hialeah Gardens facility: (1) charter schools have a limited charter term and can be terminated any time if they fail academically or financially;⁵ (2) start-up charter schools have a limited track record; (3) the state’s funding commitment for Florida charter schools was a concern during the relevant time frame; (4) the Hialeah Gardens property was a “single use” facility, which is considered a greater risk due to the substantial construction and retrofitting required for alternate use if the school operation becomes unviable; and (5) Mater Academy had an inadequate fund balance and asset base for the required loan, and the bank would make a large loan only if it was part of a larger transaction involving other properties as collateral.

Your draft report does not rebut the substance of Mr. Howell’s letter but instead attacks his credibility. Indeed, when your office contacted Mr. Howell, your employee

remaining on its charter in 2004. Moreover, the *variable* rate you hypothesize (prime plus two) would not produce a \$1.046 million annual payment, because the prime rate changes every year. The \$1.046 million payment is what a *fixed* rate of 6% over 20 years with a principal balance of \$12 million would produce.

⁴ The Draft Report repeatedly stresses this improper comparison: The amount paid by Mater Academy, Inc. to School Development HG II, LLC for the first two and one half years of the lease . . . was \$3,996,562 more than their preexisting lease.” Draft Report at 8.

⁵ In this regard, Mr. Howell explained that a loan sufficient to finance the acquisition and build-out of the facility would have unduly impaired the schools’ limited revenues and would require a loan amortization period longer than the schools’ charter. “I am unaware of any bank that would provide financing terms longer than the charter’s term, and Zions would not.” *See Exhibit “E.”*

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The cost of improving the property was borne not by the landlord, as Academica has repeatedly claimed. As indicated in the current 20 year lease, it was the tenant's cost and Mater Academy procured the \$6,015,000 leasehold mortgage to pay for it. Only in April 2004, after the improvements were completed, did SD HG II assume and pay off that mortgage, with the proceeds from the aforementioned \$14,785,000 mortgage.

We consulted extensively with real estate, financial and charter school professionals throughout this investigation.

We indicated that our conclusion was supported by a number of facts including, School Development HG II (a company that had been in business less than a year) obtained a mortgage for the same facility of \$14,785,000 from Academica Charter School Finance. We also indicated that Mater Academy itself had already, in May 2003, obtained a \$6,015,000 leasehold improvement loan from Zions Bank. Additionally, numerous Charter School facilities credit enhancement not-for-profits existed and USDOE had a credit enhancement program.

The contractual relationship for the lease and loans are with Mater Academy, Inc. not the individual schools. Mater Academy, Inc. had 4 schools in April 2004, and currently has 10. Its multiple schools and related facilities would serve as diversified collateral for any lessor or lender. Academica chose to establish a for-profit lease/ private ownership relationship whereby there would be no equity or residual value to the school and/or Miami-Dade County Public Schools.

In Mater Academy's correspondence to us dated 8/31/06, the attached Robert Howell letter decries the collateral value of a single use charter school. In that correspondence Mater also attaches support from the firm of CB Richard Ellis stating "When leased as a single user facility, charter school facilities can be considered special single use occupancies. Leases of special single use occupancies typically command 15% to 20% higher lease rates than those for generic retail or office uses." These statements directly contradict one another. In fact, with the substantial growth in the number of charter schools in Florida in 2000 through present, there would be excellent demand from other interested charter school tenants if Mater Academy, Inc. had defaulted on a mortgage and the bank had to foreclose on the property.

Exercising the purchase option would have drastically reduced facilities cost to the school now and particularly in future years. It would have provided more public dollars for educational programs for the students in future years.

Mr. Goodman was uninterested in discussing the contents of Mr. Howell's letter. Mr. Goodman did not ask even one question regarding Mater's creditworthiness. See Howell Letter dated September 18, 2006, attached as Exhibit "F."

Since you have attacked Mr. Howell's credibility, Mater has secured additional letters from bankers with knowledge of charter school financing in general and the specific financing for the Hialeah Gardens facility. Those letters establish as follows:

- Rick D. Burtenshaw, Senior Vice President, Zions First National Bank. Mr. Burtenshaw confirms Mr. Howell's letter and states that "Zions Bank would not have made the loan directly to Mater Academy at that time for the reasons outlined in Mr. Howell's letter. We continue to follow similar underwriting guidelines, and would most likely not make a loan directly to Mater Academy today." See Exhibit "G."⁶
- Richard Moreno, former resource specialist for National Cooperative Bank Development Corporation, a non-profit community development organization providing technical assistance to Florida and Georgia charter schools. Mr. Moreno arranged meetings with bank representatives to determine if Mater Academy could qualify for traditional financing and determined that it could not. Mr. Moreno affirms that Mater would not have qualified for the \$14 million required to purchase and retrofit the facility. Mr. Moreno also states that he is personally unaware of any charter school in Florida that has obtained a loan close to the amount that you opine Mater could have "readily procured." See Exhibit "H."
- Lance Alysworth, Vice President, Regions Bank. Mr. Alysworth confirms that until this year he was not able to provide financing to charters schools serviced by Academica due to the risks presented, and that even today Mater Academy would not qualify for the required loan without additional collateral and personal guarantees. See Exhibit "I."

Mater's prior letter to your office also made clear that additional collateral, in the form of cross-collateralized multiple properties, was necessary to obtain long-term financing.⁷ Mater also explained the risks that prevent charter schools from obtaining financing on their own without additional collateral and personal guarantees. Your report, however, completely ignored this information. Thus, your position that a single

⁶ Please keep in mind that Zions Bank was the *only* bank that had ever lent any money to Mater and the bank that best knows Mater's financial position.

⁷ In its August 30th letter, Mater explained that the collateral required for the ultimate financing "was much more than just the property on which the Mater Facilities are housed. This is further confirmed by the public record. The \$14.785 million mortgage was part of a larger \$53.780 million mortgage transaction involving multiple properties as collateral, as evidenced by the cross-collateralization clause in the mortgage." See Mater Letter Dated August 30, 2006, attached as Exhibit "Q."

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Our Auditor did inquire about what supported Zions Bank decision to loan the \$6,015,000 to Mater. Mr. Howell indicated the collateral for that loan would have been the leasehold improvements themselves. Although he didn't remember for sure, he thought there might have been personal guarantees for that loan. He was also unaware of any efforts by Mater to take advantage of charter school credit enhancement programs, saying that he worked for Zions bank, not an organization participating in those programs.

Zions Bank already had made a \$6,015,000 loan directly to Mater Academy, Inc. in May 2003.

Neither Academica nor Mater Academy could substantiate any effort that they attempted to procure financing to purchase the facility for the school. Nor was there any evidence of that in Mater Academy's Governing Board minutes. This letter from Mr. Moreno, who is now the CFO of a local company specializing in fine furniture, antiques, art and collectibles, was dated September 17, 2006, and provided to us on September 27, 2006, after the investigative fieldwork and during final report preparation.

Academica and Mater Academy have refused to disclose the details of the larger \$53.780 million transaction and its related mortgages, such as ownership of Wolfson Hutton Company and the 5 landlord companies leasing to Academica managed schools, interest rates and other terms of those mortgages. Publicly recorded documents indicate that Academica Charter School Finance issued \$53.780 million in bonds collateralized by 7 properties in April 2004. In fact, 4 of those 7 facilities were for schools under Mater Academy, Inc. Therefore, the evidence demonstrates that Mater Academy, Inc., by itself occupied a sufficient number of properties to offer a potential lender significant cross-collateralization without relinquishing ownership of its properties to a for-profit corporation.

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charter school with a one-year track record and limited charter term could readily obtain a 20-year, \$12 million mortgage without additional collateral and personal guarantees, purposely ignores the relevant facts.

Moreover, your parenthetical reference to the \$6.015 million construction loan to Mater Academy as “(proof, in and of itself, of significant creditworthiness)” does not support your position. First, the construction loan was for a term of only five years, and not the 20-year term you hypothesize, and the amount was less than half than was actually required to purchase and improve the property. Second, you ignored Mater’s prior explanation in its August 30th letter to your office that it obtained this interim loan from Zions Bank with the assistance of Academica. And you also ignored Mr. Howell’s explanation that it made this interim loan “with the expectation and understanding that Mater Academy was working to secure a real estate operator and landlord willing to undertake the acquisition and completion of construction of the facility and assume or repay the bank’s loan.” See Exhibit “E”. Third, Zions Bank did not make even that short-term, \$6.015 million construction loan without additional collateral and personal guarantees. Had your employee Mr. Goodman asked Mr. Howell any questions about Mater’s creditworthiness, he would have learned that Zions Bank required Academica to subordinate its management agreement and required Academica’s principals to personally guarantee the construction loan to Mater Academy. See Amended and Restated Subordination Agreement and Irrevocable Guaranty of Payment attached as Exhibit “J.”

It should now be abundantly clear to you that Mater was in no position to borrow \$12 million, as it was in no position to borrow even \$6 million on its own at the time.

In its response, Mater will also establish the following additional facts that you have failed to take into account:

- As you have or should have confirmed through records available to your office, no charter school in the District has ever obtained a 20-year mortgage for \$12 million secured only by the school’s property and without additional collateral and personal guarantees. The few charter schools in the District who have obtained financing on their own have secured much smaller, short-term loans at higher interest rates. For example, the largest such loan to date has been to Coral Reef Montessori Academy charter school, which obtained a \$3.3 million loan in January 2005, after seven years of operation, at a 13% rate, for only a three-year term ending in January 2008, which is six months before the school’s charter expires. This confirms what Mr. Howell and the other expert bankers have advised but you have steadfastly ignored.
- No charter school in all of Florida has ever obtained the mortgage that you hypothesize. This is confirmed not only by Mr. Moreno’s letter but by a review of publicly available data.

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 The \$6,015,000 loan was 5 years, and this was made to them based only on leasehold rights for a short-term lease.

 Mater Academy pays Academica Corporation a management fee of \$450 per student (\$1.5M in FY 05) to, in part, assist its client in "financing solicitation and coordination", as outlined in Section 11 of the management agreement between Mater Academy, Inc. and Academica Dade LLC. This was part of Academica's fiduciary duty to the public charter school.

 Our auditor asked questions about what supported Zions Bank's decision to loan the \$6.015M to Mater. Mr. Howell indicated the collateral for that loan would have been the leasehold improvements themselves. Although he didn't remember for sure, he thought there might have been personal guarantees for that loan.

 The personal guarantees of Ignacio and Fernando Zulueta are only now (this response dated September 27, 2006) disclosed to us. Why would the Zuluetas personally guarantee a \$6.015 million mortgage loan on a property for which they had "no direct or indirect interest?" It appears that they did, at the time, and/or do currently have a financial interest in the facility.

 We are not aware of any charter school in Florida that had negotiated and obtained such a favorable purchase option on its facilities similar to the one procured by Mater Academy in November 2002. That would have given Mater Academy, Inc. an advantage in obtaining financing over other charter schools cited.

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- Almost all charter schools lease their facilities. When Mater applied for the middle and high school charters for the Hialeah Gardens facility, it advised MDCPS that it planned to lease its facilities for the term of the charter and to obtain a construction loan for the necessary improvements, submitting a letter from Mr. Howell to that effect. MDCPS accepted Mater's proposal and granted the charters. You are now attempting to second guess what the District previously approved.

As demonstrated above, there is no basis for the slender reed – your “opinion” – that is the sole support for your reckless accusation that Mater is spending millions in excess facilities costs. Unfortunately, your office has been far from “fair, complete and objective” in this investigation. Regretfully, we must now point out the prior actions indicating that your office is being misused to accuse Mater and Academica of wrongdoing regardless of the relevant facts.

The existence of an agenda against Mater and Academica has been evident since the beginning of your investigation. First, you are susceptible to influence by your supervisors because you are not an independent investigator. Even though you have invoked the “Office of Inspector General” School Board rule, you are not the independent official required by that position. If this were a legitimate OIG investigation, your reporting under the Board rule would be to the School Board and the Audit Committee, and not to Superintendent Crew as it has been. See Office of Management and Compliance Audits Interim Organizational Chart and List of Superintendent's Senior Staff attached as Exhibit “K.”

It is now apparent that Superintendent Crew is looking to instigate a criminal case, and appears to be using your office as a pawn for that purpose. As explained below, he has at least twice tried to stir up the State Attorney's office, even though your investigation is not complete. You have assisted in those efforts by concealing from Academica and Mater your meetings with the State Attorney and by encouraging individuals not to bring counsel to meetings on the ground that there was no need for lawyers.

Second, your explanation for your continued the investigation of Mater, months after you established the falsity of the initial allegations against Mater, is not credible. After your office received a letter dated January 24, 2006 making unfounded allegations against Mater, you concluded no later than February 14, 2006, that all ten purported authors of the letter (teachers at Mater) had denied any involvement with it. Nevertheless, you decided to investigate the forged letter's allegations in light of their “seriousness.” See Vann Memorandum dated February 14, 2006, attached as Exhibit “L.”

By February 27, 2006, your office had concluded that the specific allegations in the letter were false, as confirmed by your employee, Jon Goodman, who advised Mater that your office had found nothing improper and would provide a letter of determination absolving the school of all claims once he reviewed certain requested

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 We have been abundantly fair, complete and objective during this investigation. Academica and Mater Academy, Inc., have been given ample opportunity to provide evidence. We repeatedly delayed our investigation and honored numerous requests to postpone meetings and interviews.

 The Office of Management and Compliance Audits fully meets the independence criteria of the **Government Auditing Standards, promulgated by the Comptroller General of the United States. The Office received a full compliance opinion in its most recent quality control review (May 2005) by the Association of Local Government Auditors.**

 The independence of the Office of Management and Compliance Audits is established in Board Rule 6Gx13-2C-1.14.

 We encountered numerous obstacles and smoke screens in attempting to meet with Mr. Ignacio Zulueta, whose name and signature were on many of the documents of transactions being questioned. For example, one of the obstacles presented by Mr. Zulueta and his attorney, Mr. Jimenez, was that Mr. Zulueta, who is also an attorney and Vice-President of Academica, had done legal work for Academica and Mater Academy. Therefore, they initially argued, he could not talk with us and explain these transactions because this would be a breach of the "attorney-client privilege."

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Mater Board minutes, which were promptly provided. Subsequently, your office never provided the promised letter absolving Mater and instead continued the investigation and asked questions that have nothing to do with the allegations made in the forged letter.

Your recent explanation is that your office investigated a number of issues, including "related party transactions and poor governance resulting in transactions not in the best interest of the school," based on the "seriousness of the anonymous allegations of impropriety" in the forged letter. See Draft Report at 1. The forged letter did not address related party transactions that were not in the best interest of the school. Thus, it is clear that even though the letter was forged and made false allegations, you decided to investigate issues not raised by the letter because the *false* allegations in the forged letter were "*serious*." Clearly, your investigation has resembled a witch hunt as opposed to an appropriate investigation based on credible charges or legitimate concerns.

Third, you and your employees have made repeated threats and have been less than forthcoming during the investigation. Your office has repeatedly threatened to release your final report without any input from Mater, the investigated entity. On June 14, 2006, your employee, Julio Miranda, advised me that your office was not "required" to give Mater an opportunity to respond. On June 15, 2006, during your conversation with Ignacio Zulueta, you stated that if Mr. Zulueta did not answer your questions then Mater would have to respond to the report after it was made public. See Jimenez Letter dated June 20, 2006, attached as Exhibit "M." Even your most recent letter to Mater states that after September 29th, "the report will be finalized with or without the benefit of" Mater. See Vann Letter dated September 20, 2006, attached as Exhibit "N."

Your statements during the investigation call into question your office's motives and fairness. During your June 15th conversation with Mr. Ignacio Zulueta, you encouraged him not to bring me to a meeting with you and told him that he did not need a "criminal lawyer" because this was not a "criminal investigation." See Exhibit "M" (which explains your misunderstanding of my role in this matter). It now seems clear that you concealed from Mr. Zulueta at least one meeting that you had held with representatives of the Miami-Dade State Attorney's Office and your intent to provide information to that office.

Your direct supervisor, Superintendent Crew, recently confirmed your meeting with the State Attorney's Office in a letter to the State Attorney dated September 8, 2006, the same day that Mater received your draft report. Disturbingly, that letter has been forwarded by District staff to individuals not employed by the District. Superintendent Crew's letter confirmed that the State Attorney's staff, "from the Public Corruption Prosecution Unit, met with our Board Counsel and Chief Auditor [you] during the course of the investigation but declined to pursue the matter criminally." See Crew Letter dated September 8, 2006, attached as Exhibit "O." The letter went on to request that the State Attorney "*reconsider* this matter and take appropriate action

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The letter suggests pervasive cronyism, poor governance and inappropriate, undisclosed relationships between various individuals.

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to determine whether or not any public dollars or the public trust have been compromised." *Id.* (emphasis added).

It is obvious that you and your office are attempting to cause charges to be brought rather than conduct a proper investigation. It is also clear that you and your colleagues have not provided objective and complete information to the State Attorney's office. Although Superintendent Crew's letter to the State Attorney repeats your draft report's baseless charge that there "likely" has been millions in excessive facility expenses, it appears that neither your office nor Superintendent Crew provided to the State Attorney the explanatory information and supporting documents that Mater had previously submitted to your office in separate letters dated August 18 and August 30, 2006, copies of which are attached as Exhibits "P" and "Q." And clearly, Mater has not yet responded to your draft report.

Fourth, your draft report itself confirms bias and an agenda against Mater and Academica. Despite your professed desire for Mater's input, you have steadfastly refused to incorporate the information provided to you by Mater, as demonstrated above. Your most recent letter to Mater states that your office has "considered your [Mater's] additional information and incorporated it into our draft report dated September 6, 2006." See Exhibit "N." That is far from true, because your draft report does not acknowledge much of the information Mater presented, much less "incorporate" it.

In addition to the information discussed above regarding the reasonableness of Mater's lease and its inability to procure the required financing, you ignored and did not incorporate the following information in your draft report, contrary to your claim in your September 20th letter:

- Mater's letter explained that MDCPS was aware that Academica personnel previously served as officers of Mater during the start-up of the schools' operations but did not serve on the Mater Governing Board and did not vote on the relevant transactions. In fact, Mater's audited financial statements confirm this. Your report completely ignored this information.
- Mater's letter further explained that two of the five Mater Board members are administrators from other Academica-serviced schools because MDCPS required experienced school administrators and MDCPS-employed personnel were discouraged from serving. Mater added that these two administrators, Dr. Ruth Jacoby and Ms. Shannie Sadesky, are not employed by and have no financial interest in Academica. Academica has no power to hire or fire any administrator at the schools it services. Your report completely ignored this information, and instead makes an irresponsible accusation that Academica schools have "weak

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 Pursuant to School Board Rule 6Gx13-8A-1.07 and the statutes referenced therein, it is incumbent on the OIG to notify outside agencies, such as the State Attorney, when it has evidence of possible criminal and/or unethical transactions involving public monies.

 Academica officers Mr. Fernando Zulueta and Ms. Magdalena Fresen served as President and Secretary, respectively, of Mater Academy, Inc. from September 10, 1999 through September 9, 2004. Mr. Ignacio Zulueta served as Vice-President/Treasurer of Mater from March 5, 2002 through February 19, 2004. They never disclosed to Mater Academy's governing board or its external auditor, that Ignacio and Fernando Zulueta also served as officers in the schools' landlord, School Development HG II and Wolfson Hutton Company.

 The Management Agreement between Mater Academy, Inc. and Academica Dade LLC, Section 7, provides that "Academica Dade LLC will identify and propose qualified teachers, paraprofessionals, administrators and other staff members and education professionals for positions in the School...Academica Dade LLC will coordinate with the Board or the Hiring Committee established by the Board to select individuals for School based positions."

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Boards because Board members are dependent on Academica for their continued livelihoods.”⁸

- Mater's letter also advised you that Mr. Rufus Samkin had moved to Texas and is no longer a member of the International Studies Charter Governing Board, Ms. Millie Fresen resigned from the Pinecrest and Doral Governing Boards in January 2006, and Ms. Ana Martinez is no longer the treasurer of Mater Academy. Your report completely ignored that information.
- Mater's letter also advised you that in April 2004, the time you claim that Mater could have “readily procured” a \$12 million mortgage for its Middle and High Schools, Mater High School had in the prior school year received an “F” in the Florida A+ Plan School Grade Program, placing its charter at risk, and the Middle School had just commenced operations. Your report completely ignored that information.
- Mater's letter also advised you that as of April 2004, Mater High and Middle School did not have \$2.5 million in Unrestricted Net Assets, as their subsequent June 2004 financial statements showed only \$1.2 million in such assets. Your report completely ignored that information, and instead refers to Mater Academy's June 2004 assets without acknowledging that Mater operates other schools, including an elementary school, whose assets could not be used by Mater for the Hialeah Gardens facility, which houses only the middle and high schools.
- Mater's letter also explained that the April 2004 lease rate was higher than the 2002 interim lease because the 2002 lease was for unimproved property and that the 2004 lease rate was higher because, among other reasons, the property had been improved at a cost of over \$6 million to the landlord. Your report completely ignored that information, instead mischaracterizing the 2004 lease rate as “triple” the rate of the 2002 lease for the “exact same property.”
- Mater's letter also explained that although Mr. Fernando Zulueta was the outgoing president of Mater at the time of the April 2004 lease, he did not have any ownership or control of the landlord; neither did Ignacio Zulueta, who was not an officer and was not otherwise affiliated with Mater at the time of the April 2004 lease. The letter explained that Mr. Fernando Zulueta did not vote on the April 2004 lease, and that the 2004 Governing Board exercised independent judgment when it entered into the 2004 lease. The letter further explained that Mr. Ignacio Zulueta's

⁸ You also ignore that the Mater charter school applications specifically disclosed that one of the Mater Governing Board Members, Ms. Ruth Jacoby, was employed by Somerset, an Academica-serviced school.

Auditors' Comments and Analysis of Response



Mr. Samkin and Ms. Martinez held said positions during the time of our investigation. Public records show that Ms. Millie Fresen was still a member of the Doral and Pinecrest Governing Boards at the time of her daughter's marriage to Fernando Zulueta on January 21, 2006.



Our report indicates that Mater Academy, Inc. had a cash balance on June 30, 2004 of \$2,519,919, and its working capital was \$2,574,862. Unrestricted Net Assets of Mater Academy, Inc. for its 4 schools as of June 30, 2004, was \$2,670,447.



As indicated in the final report, Mater Academy, Inc. approved an unsecured loan of \$175,000, from Mater Academy Charter Middle School to Somerset Academy (a school purportedly unrelated to Mater Middle) in Broward County without even evidence of a credit analysis. Now Academica's attorney is suggesting that Mater Academy, Inc. could not authorize a loan from any of its schools to another of its own schools, even if this would save the Mater Schools in the aggregate, substantial facilities expenditures. This is simply not a credible or good faith argument.



The cost of improving the property was borne not by the landlord, as Academica has repeatedly claimed. As indicated in the current 20 year lease, it was the tenant's cost and Mater Academy procured the \$6,015,000 leasehold mortgage to pay for it. Only in April 2004, after the improvements were completed, did SD HG II assume and pay off that mortgage, with the proceeds from the aforementioned \$14,785,000 mortgage.



In fact, Mr. Zulueta did not resign as President of Mater Academy, Inc. until September 9, 2004, almost 6 months after he executed the questionable transactions as a fiduciary agent on behalf of the Schools.



Public Records show that Mr. Ignacio Zulueta was Director/President of Wolfson Hutton Company and Manager of School Development HG II, LLC at the time of the lease. His brother, Mr. Fernando Zulueta was President of Mater Academy, Inc. and Director/Secretary/Treasurer of Wolfson Hutton. Ignacio Zulueta denied to us on June 21, 2006, that he had any direct or indirect financial interest in either of those companies, but, to date, has not provided affidavits to that effect that he offered to provide.



The three Board members who were on the Board at the time and who agreed to meet with us, knew practically nothing about the Schools' leasing arrangements. Nor were they even aware that Mater Academy, Inc. even had a legal right to purchase its facilities through its bargain purchase option obtained on November 15, 2002.

Mr. Allen Vann

September 27, 2006

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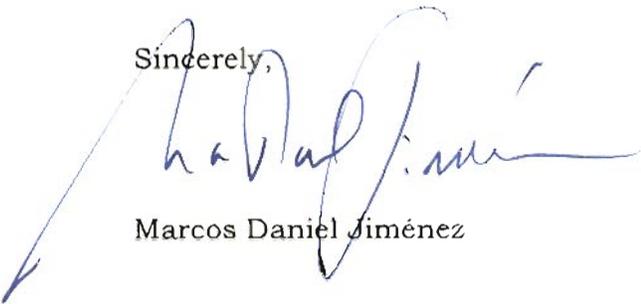
affiliation with the landlord was a matter of public record, known by the 2004 Governing Board, and available to the independent CPA firm who conducted the Mater Schools' audits. Your report completely ignored that information.

It should now be abundantly clear that you did not incorporate the information that Mater provided to you as claimed in your September 20th letter. See Exhibit "N."

The conclusion in your draft report that leads to the baseless accusation of excessive facilities costs forwarded to the State Attorney's Office is untenable and irresponsible. Your refusal to remove this inflammatory claim will be extremely damaging to Mater, Academica and their representatives, particularly since you have clearly signaled your intention to make your irresponsible report public. For now, Academica and Mater trust that you will reconsider the issuance of any report that hinges on nothing more than your unsupported "opinion" and that you will provide the basis for your real estate appraiser's opinion before it is provided to the public, so that Mater and Academica have a fair chance to respond.

Your draft report is a classic product of a decision to reach a conclusion of wrongdoing first and then find "facts" to support it. Mater and Academica will more fully respond to your draft report to show its many inaccuracies. You are dangerously close to crossing the line and causing intentional harm to Mater, Academica and their representatives.

Sincerely,


Marcos Daniel JiménezMDJ/ag
Encls.

cc: Dr. Rudolph F. Crew, M-DCPS, Superintendent of Schools - *(Via Federal Express)*
Ms. Carolyn Spaht, M-DCPS, Chief of Staff - *(Via Federal Express)*
Ms. Antoinette Dunbar, M-DCPS, Deputy Superintendent - *(Via Federal Express)*
Mr. Michael Bell, M-DCPS, Assistant Superintendent - *(Via Federal Express)*
School Board Attorney - *(Via Federal Express)*

KENNY NACHWALTER, P.A.

Auditors' Comments and Analysis of Response



In accordance with Chapter 119, Florida Statutes and School Board Rule 6Gx13-8A-1.07, the final report becomes available to the public concurrent with its release to the School Board, Audit Committee and Superintendent of Schools.

The School Board of Miami-Dade County, Florida, adheres to a policy of nondiscrimination in employment and educational programs/activities and programs/activities receiving Federal financial assistance from the Department of Education, and strives affirmatively to provide equal opportunity for all as required by:

Title VI of the Civil Rights Act of 1964 - prohibits discrimination on the basis of race, color, religion, or national origin.

Title VII of the Civil Rights Act of 1964, as amended - prohibits discrimination in employment on the basis of race, color, religion, gender, or national origin.

Title IX of the Education Amendments of 1972 - prohibits discrimination on the basis of gender.

Age Discrimination in Employment Act of 1967 (ADEA), as amended - prohibits discrimination on the basis of age with respect to individuals who are at least 40.

The Equal Pay Act of 1963, as amended - prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

Section 504 of the Rehabilitation Act of 1973 - prohibits discrimination against the disabled.

Americans with Disabilities Act of 1990 (ADA) - prohibits discrimination against individuals with disabilities in employment, public service, public accommodations and telecommunications.

The Family and Medical Leave Act of 1993 (FMLA) - requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

The Pregnancy Discrimination Act of 1978 - prohibits discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions.

Florida Educational Equity Act (FEEA) - prohibits discrimination on the basis of race, gender, national origin, marital status, or handicap against a student or employee.

Florida Civil Rights Act of 1992 - secures for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status.

School Board Rules 6Gx13- 4A-1.01, 6Gx13- 4A-1.32, and 6Gx13- 5D-1.10 - prohibit harassment and/or discrimination against a student or employee on the basis of gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, pregnancy, or disability.

Veterans are provided re-employment rights in accordance with P.L. 93-508 (Federal Law) and Section 295.07 (Florida Statutes), which stipulate categorical preferences for employment.



Miami-Dade County Public Schools