

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL DIVISION**

FRANCIS A. OAKES, III

Plaintiff,

-vs-

Case No. _____

SCHOOL BOARD OF COLLIER COUNTY,

Defendant.

COMPLAINT

Plaintiff, FRANCIS A. OAKES III (“Plaintiff” or "Oakes "), sues the SCHOOL BOARD OF COLLIER COUNTY (“Defendant” or “School Board”), and in support states:

JURISDICTION AND VENUE

1. This is an action within the jurisdiction of this Court to enforce Florida’s Sunshine Law, Section 286.011, *et seq.*, Florida Statutes, and for declaratory and injunctive relief related thereto under Sections 26.012 and 86.011, Florida Statutes. The injunctive relief sought herein includes temporary injunctive relief.

2. Venue is proper because the Defendant is situated in Collier County, and because the actions which gave rise to this Complaint occurred in Collier County.

PARTIES

3. Plaintiff, FRANCIS A. OAKES, III, also known as ALFIE OAKES, is a Florida citizen residing in Collier County, Florida.

4. Defendant, SCHOOL BOARD OF COLLIER COUNTY, is the governing body of the Collier County School District and is constituted a body corporate pursuant to Section 1001.40, Florida Statutes.

GENERAL ALLEGATIONS AND SUNSHINE LAW CLAIM

5. By virtue of a contract voted on and approved by the School Board on November 7, 2022, the Board delegated to Hazard Young Atea Associates (“HYA”), the “fact-gathering” task of soliciting applicants and compiling candidates for the position of Superintendent of the Collier County School District. A true and correct copy of the Board’s contract with HYA is attached hereto as **Exhibit “A”** (the “Contract”).

6. By the Contract, the School Board also delegated to HYA the “decision-making” function of screening candidates, conducting reference checks, identifying the best qualified candidates, and presenting a recommended slate of candidates to the School Board.

7. By delegation, HYA became the alter-ego of the School Board for purposes of deciding on the recommended slate of candidates.

8. Some time prior to April 5, 2023, HYA compiled a list of 45 candidates for the Superintendent position, which was a fact-finding function.

9. Sometime thereafter, but prior to April 5, 2023 HYA decided upon a slate of ten (10) candidates to present to the School Board, which was selected from the original 45 candidates. This was a policy-based decision-making function.

10. That decision-making process occurred privately, without public notice, without the right of public observation, and without minutes taken. By that process, Oakes and the public was denied the right of first-hand access to the decision-making process whereby ten (10) candidates were selected from a field of 45.

11. Not only did HYA not allow Oakes and the public to observe the slate-selection process first-hand, but at the School Board meeting held on April 5, 2023, HYA did not even provide a second-hand retrospective description of the process by which it selected the slate of ten (10) candidates, or why it excluded the other 35 candidates. Instead, HYA simply recited the factual resumes backgrounds of each of the selected slate of 10 candidates.

12. During the April 5 meeting, the School Board never formally voted for the slate of 10 candidates as selected by HYA, nor did the School Board agree to such candidates by consensus. Rather, the School Board relied on HYA to determine that slate. In other words, the School Board “rubber-stamped” HYA’s slate of ten (10) candidates.

13. On the day prior to the April 4 meeting, the School Board’s Chair met with HYA and discussed the lack of merits of one of the candidates. This was one day prior to when HYA presented its slate of candidates to the School Board, as part of HYA’s delegated decision-making process.

14. During the April 5 meeting, the School Board added one additional candidate to the pre-decided slate of ten (10) candidates.

15. During the April 5 meeting, the School Board next proceeded to apply a ranking matrix to those 11 candidates, reducing the field to four (4) candidates.

16. During a subsequent meeting on April 19, 2023, the School Board reduced the candidate field to two (2) individuals, and ultimately at a meeting on May 3, 2023, the School Board selected one final candidate to be the new superintendent.

17. The May 3 final vote on the ostensible new superintendent is the product of the earlier process that occurred outside of the sunshine whereby which the original 45 candidates were reduced to a slate of 10 candidates.

18. The School Board's delegation of its candidate slate-selection authority to HYA insulated that policy-based decision-making process from public scrutiny, allowed circumvention of Florida's Sunshine Law, and constitutes an illegal evasive device.

19. Had the School Board performed the function of deciding upon a slate of 10 candidates without delegation to HYA, it would have had to perform that function at a duly noticed public meeting that was open to the public, with minutes taken.

20. Instead, by virtue of their delegation of authority to HYA, Oakes and the public were denied its right of first-hand access to the review process by which the slate of candidates was selected by HYA. Oakes and the public never had the opportunity to observe first-hand the process by which HYA made a policy-based decision to select the slate of candidates.

21. The School Board Chair's meeting with HYA also constitutes a Sunshine Law violation. HYA, for purposes of formulating and recommending a slate of candidates, was the alter ego of the entire School Board by delegation of the Board's decision-making function. When the School Board Chair met with HYA on April 4, 2023, it was as though the School Board Chair was meeting with the entire five-member School Board, and constituted a private *de facto* meeting of the School Board, without public notice, without public right of observation, and without minutes taken.

22. The foregoing process violates Florida’s Sunshine Law, Section 286.011, Florida Statutes, and Article I, Section 24(b), Florida Constitution.

23. Under Florida law, decisions that are products of a Sunshine Law violation are *void ab initio*. Accordingly, the final vote to select a new superintendent on May 3, 2023, is *void ab initio*, because it is the product of a Sunshine Law violation.

24. The Board’s violation of the Sunshine Law constitutes an irreparable injury to the public at large, including Plaintiff.

25. Pursuant to Board Policy 1020, “[n]o person may be employed as Superintendent of this District unless s/he has signed an employment contract with the Board.” To date, no employment contract has been signed by the ostensible new superintendent.

26. The individual who was selected as the new superintendent is presently employed by the School Board as the interim superintendent.

27. To bring this action, Oakes has engaged the undersigned counsel, and is required to pay a reasonable fee. Pursuant to Section 286.011(4), Florida Statutes, a prevailing plaintiff in an action to enforce the Sunshine Law is entitled to an award of attorney’s fees.

WHEREFORE, Plaintiffs respectfully request that this Court:

(a) temporarily enjoin the School Board from entering into a contract with the ostensible new superintendent, thereby preserving the status quo;

(b) enter final judgment declaring that the School Board violated Article I, Section 24(b), Florida Constitution, and Section 286.011, *et. seq.*, Florida Statutes (the Sunshine Law), in the process of selecting a new superintendent, and that the School Board’s selection of a new superintendent is *void ab initio*;

(c) award Plaintiff attorney's fees for his enforcement of the Sunshine Law pursuant to Section 286.011(4), Florida Statutes; and

(d) grant such other relief as the Court deems just and proper.

Respectfully submitted this 17th day of May, 2023.

/s/ Steven J. Bracci

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LETTER OF AGREEMENT

HYA Signature Search

Purpose

The purpose of this Letter of Agreement (the "Agreement") is to document the working arrangement between Hazard, Young, Attea & Associates ("HYA"), and Collier County Public Schools (the "District") and its School Board (the "Board") to support the Board in its effort to recruit and employ talented leadership. All schedules hereto are an integral part of this agreement and are deemed incorporated by reference herein.

Section I: HYA Responsibilities

HYA shall provide the following services and deliverables:

Engage Phase:

- A. Conduct a planning meeting with the Board and provide a summary of said meeting which will detail the timeline and steps of the search process and decisions made by the Board;
- B. Coordinate the survey of community constituents electronically and provide a report of findings. The *HYA Community and Leadership Profile Survey* is a research-based instrument that is specifically designed for the search process and has a specific analysis, scoring logic and reporting framework. The *HYA State of the District Survey* offers more questions and provides an in-depth picture of the quality of programming, priorities for the Superintendent in the next 3-5 years. Customization of up to 10 forced choice questions and 4 open-ended questions is available for both survey options as selected and paid for by the Board. The surveys are provided in English, Spanish, and Haitian Creole. Additional world languages are available. Administering the survey in paper format is not supported; paper administration can be quoted but note it will change the timeline for delivery of the leadership profile report. Should the Board elect to have open-ended questions, the comments will be provided verbatim and under separate cover; the Board should consult their attorneys before disseminating open-ended comments as they may contain student or personnel information. HYA assumes no responsibility for the release of open-ended comments. Fees for Survey Services are attached to this Letter of Agreement.
- C. Provide up to four individual consultant days for interviews, focus groups and/or town hall meetings to gather in-person input from constituent groups as decided by the Board, e.g., if two consultants are present for a full day, that counts as two days. This is the equivalent of up to 32 one-hour engagement sessions (a session is defined as an interview, focus group, or town hall meeting.). Additional sessions can be added per the daily rate in the pricing section.
- D. Prepare and present a *Leadership Profile Report* to the Board, and propose *Desired Characteristics* based on the data from the survey, interviews with district and community representatives and other material made available to the Associates.

Recruit Phase:

- E. Coordinate and place advertisements as selected and paid for by the Board;

EXHIBIT "A"

- F. Recruit and contact candidates utilizing state and national networks;
- G. Correspond with candidates regarding the search process, timeline, *Leadership Profile* and desired characteristics;
- H. Interview candidates;
- I. Conduct reference checks;
- J. Identify best qualified candidates;
- K. Prepare application materials of selected slate of candidates for the Board consideration;

Select Phase:

- L. Present a slate of candidates, the number of candidates to be determined by the Board with a recommendation from HYA;
- M. Conduct the Interview Workshop and provide materials and protocol to ensure informative effective Board interviews;
- N. Schedule interviews for the Board with selected semi-finalists and finalists;
- O. Facilitate Board discussion to narrow candidate pool after each round of interviews;
- P. Coordinate and provide investigative background check(s) of candidates to the Board President as selected and paid for by the Board;

Transition Phase:

- Q. Communicate with all unsuccessful candidates at the close of the search and the appointment of the new Superintendent;
- R. Hold a transition meeting with the new Superintendent (after employed) regarding information learned throughout the search and next steps in the transition process;
- S. Offer other transitional services to be considered by the Board and if desired, paid for by the Board.

Section II: Board and District Responsibilities

To effectuate the search and selection of a successor superintendent, the Board has the following responsibilities:

- A. The Board will approve the search process at the planning meeting;
- B. The Board will select survey enhancements, advertising and executive due diligence services to be paid for by the Board;
- C. The Board accepts full responsibility for using the information it receives from the executive due diligence services (background check) in a legally acceptable fashion and to comply with all federal, state and local laws regarding the use of background checks and the consequences of use.
- D. The Board will conduct interviews (and site visits, if desired) of finalists shortly after a slate is presented. The HYA Associates will not be present at the Board interviews or site visit but will assist the Board in the scheduling of the interviews and preparation. The HYA Associates will be available by phone during the scheduled interviews.
- E. The Board will seek the advice from its attorney regarding the Board's process for interviewing candidates to comply with open meeting laws in their state.
- F. The Board will decide whether to reimburse candidates for expenses and will reimburse candidates directly.
- G. The Board will write and execute the employment contract with the selected superintendent, with the assistance of its attorney. The HYA Associates will support the Board and its attorney, if requested.

- H. The Board will communicate with local media regarding the search process and appointment of a superintendent with its community relations/public relations designee. The HYA Associates will support the Board and its designee, if requested.
- I. The Board will make every effort to support and work cooperatively with HYA Associates at all levels of the search process to find and appoint a new Superintendent.

Section III: Guarantees

- A. Throughout the search process the HYA Associates will be available to counsel with the Board about the search. The HYA Associates will assist the Board until the Board determines it has found the appropriate candidate for the position.
- B. The Superintendent appointed with HYA's assistance will not be presented to another Board as a candidate if it would result in the Superintendent leaving the District within three (3) years of employment unless the Board provides written authorization to HYA that they may do so.
- C. If the Superintendent departs from the position during the first year under any circumstances or within two (2) years if a majority of the Board by vote is still in place and departure is due to Board dissatisfaction and not personal or familial reasons, HYA will recruit new candidates for the Board at no additional cost barring travel, advertising and due diligence expenses. This applies to HYA slated candidates.
- D. Should the Board choose to end the search before a superintendent is selected, the Board is responsible for the search fee, advertisement, background checks and all expenses incurred prior to their decision based on the fee and payment schedule outlined herein.

Section IV: Fees, Costs, and Payment Schedule

In consideration for Services, the District will pay to Hazard, Young, Attea & Associates for:

- A. Consulting Fee for the search in the amount of \$39,700. This fee is due in three installments:
 - 50% will be invoiced upon contract signing and completion of the Planning Meeting
 - 25% will be invoiced after the *Leadership Profile Report* is presented
 - 25% will be invoiced after the slate is presented
- B. Additional on-site consulting days billed at \$2,500/day as selected and paid for by the Board.
- C. Advertisement pursuant to the Advertising Services Schedule attached to this agreement as selected and paid for by the Board (if selected, as per the proposal, HYA package #3 and ALAS/NABSE for a total of \$7,170).
- D. Background checks pursuant to the Executive Due Diligence Services Schedule attached to this agreement as selected and paid for by the Board (comprehensive investigative executive due diligence service as recommended in the proposal, \$1,950).
- E. Survey services, customization, and world languages, pursuant to the Survey Services Schedule attached to this agreement as selected and paid for by the Board (for the HYA research-based community survey as per the proposal, in English and Spanish, \$2,000).
- F. Materials, Printing and Postage; If the Board requests hard copies of the materials, the district will be invoiced to cover the costs of printing, binding, and shipping materials.

- G. Recruitment for other positions; if the Board employs an HYA recruited candidate within one year of the close of the superintendent search, in addition to the position of Superintendent, 10% of the base salary will be due to HYA for the recruitment of said candidate.
- H. The total, including maximum travel and all recommended option in the proposal, is \$53,820.

Section V: Reimbursement Costs

- A. Travel and hotel expenses for consultants to meet with the Board and/or conduct interviews will be borne by the Board. Expenses are billed after the presentation of the *Leadership Profile Report*, after the slate is presented, and at conclusion of the search. Mileage reimbursement is based on current IRS guidelines. HYA does not ask for reimbursement of meals for its Associates (as per the proposal maximum, without prior Board approval, \$3,000).
- B. Travel and hotel expenses of candidates will be submitted by the candidate directly to the District.

Section VI: Additional Services

- A. If and when selected, the workshop(s) costs will be added pursuant to the Transition Services Schedule of this agreement. (The Interview Workshop is included in the consulting fee for the search.)
- B. If the Board wishes to secure additional services beyond those described in this agreement or to design customized workshops and services, these services can be discussed and defined with the consultants and added to the contract as an addendum.

Section VII: Business Relationship

- A. The District and HYA agree that HYA does not have the status of employee, shall not be entitled to any employee fringe benefits, and shall function as an independent contractor.
- B. The District agrees that any and all Intellectual Property and technology designed, made or conceived by HYA (solely or jointly with others) arising from HYA's work for the District, is the sole property of HYA, without royalty or other consideration to the District.
- C. All information, notes, interview sheets, lists, and other documents developed by HYA consultants shall remain the property of HYA.
- D. The District and the Board understands that it is unlawful for it to either disclose to any person outside of the District's employment or make any unauthorized use of HYA trade secrets or confidential information unless it can be shown that such information has become public knowledge through no act of the District or Board.
- E. The Board's decision to hire or not hire a particular candidate is at the sole discretion of the Board; and the Board takes responsibility for that decision.

Section VIII. Sunshine and Public Records Law

The District and HYA will follow the provisions of Florida's Sunshine and Public Records law during the course and scope of the search and appointment process and thereafter if applicable to this Agreement.

Section IX: Term and Termination

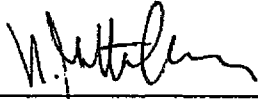
This Agreement shall become effective on the date the Agreement is signed by the District and will continue in effect until the search is completed and mutually terminated by both parties.

Section X.

Should any dispute arise between the parties in connection with this Agreement, the parties mutually agree to try to resolve the dispute informally or with the assistance of a certified mediator before filing any action in a court of law. Florida law will apply to the terms of this Agreement.

Hazard, Young, Attea & Associates:

Collier County Public Schools:

 10/25/22
Signature Date

Signature Date

Nanci Perez, Chief Operating Officer
Name and Title

Name and Title
Reviewed: 