

## DISPOSITION AGREEMENT

This Disposition Agreement (“Agreement”) is entered into on September 8, 2017 by and between the Office of Campaign and Political Finance (“OCPF”) and the Respondent, Families for Excellent Schools Advocacy Committee (“FESA Committee”) in which the parties mutually agree, for the purposes of this Agreement only, as follows:

### I. INTRODUCTION

1. Families for Excellent Schools, Inc. (“FES”) is a 501(c)(3) tax exempt charitable organization and Families for Excellent Schools- Advocacy (“FESA”) is a 501(c)(4) tax exempt social welfare organization. Both entities were organized in Delaware in 2011 and are based in New York.

2. FES and FESA are closely related entities, sharing the same executive director and administrative office in New York City but with a separate legal structure. During the period covered by this Agreement, they shared a similar mission, which was described in each entity’s IRS Form 990 as “changing education policy.” Both organizations have employees and are active in other states promoting education reform. FES and FESA have a contractual cost-sharing agreement. Pursuant to that agreement, FESA serves as the common paymaster for both entities. FES regularly transferred funds to FESA to cover payroll and other business expenses.

3. In August 2015, a ballot question committee, the Great Schools Massachusetts committee (“the GSM Committee”), organized in Massachusetts for the purpose of supporting an anticipated ballot question that would increase the cap on charter schools in Massachusetts.<sup>1</sup> The GSM Committee received contributions and made expenditures to support the ballot question.

4. The FESA Committee is a Massachusetts ballot question committee organized pursuant to this Agreement.

5. OCPF has the authority to review and investigate the legality, validity, completeness, and accuracy of all reports required to be filed and all actions required to be taken by political committees, candidates, campaign treasurers, and any other person or entity pursuant to M.G.L. c. 55 or any other laws of the Commonwealth relative to campaign contributions and expenditures.

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<sup>1</sup> The GSM Committee, which organized on August 20, 2015, was initially called Public Charter Schools for Mass. It changed its name to “Great Schools Massachusetts” on July 8, 2016.

6. The political contributions, expenditures, and other activities noted in this Agreement are subject to the provisions of M.G.L. c. 55 and the regulations issued by this office in accordance with M.G.L. c. 55.

## II. FACTS

1. The initiative petition seeking to increase the cap on charter schools was filed with the Attorney General's office in August 2015 pursuant to Article 48 of the Massachusetts Constitution. After the Attorney General certified the petition, it was filed with the Secretary of the Commonwealth. The proponents gathered the required signatures but the legislature did not take action on the issue by the May 3, 2016 deadline. The proponents then gathered the additional signatures required and the Secretary qualified the petition for the ballot on July 6, 2016. It then became Question 2, which was submitted to the voters in November 2016. A "Yes" vote on Question 2 would have authorized up to 12 new charter schools or enrollment expansions in existing charter schools by the state Board of Elementary and Secondary Education per year.

2. The GSM Committee was organized with OCPF (also in August 2015) in preparation for a potential ballot question in 2016. The GSM Committee received most of its initial funding prior to the July ballot certification from individuals. After July 6, however, it received funds primarily from FESA and other non-profit entities.

3. Although both FES and FESA gave funds to the GSM Committee, the majority of the contributions to the GSM Committee were provided by FESA, using money FESA raised from individual donors for that purpose. FESA was the largest donor to the GSM Committee by a substantial margin, contributing more than \$15 million<sup>2</sup> of the approximately \$21.5 million raised in monetary donations.<sup>3</sup> Although five ballot question committees were organized at any time to support Question 2, the GSM Committee was the most active.

4. Because the overwhelming majority of funds received by the GSM Committee were contributed by FESA, OCPF initiated a review to determine if FESA solicited or received funds to support the ballot question. OCPF was concerned that FESA may have been required to organize as a ballot question committee to disclose the original source of the funds given to the GSM Committee. When OCPF contacted FES, they cooperated with OCPF's review and provided requested information. OCPF subpoenaed FES and FESA bank records for the period

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<sup>2</sup> In addition to the more than \$15 million received from FESA, the GSM Committee also received approximately \$1.2 million in monetary contributions from FES.

<sup>3</sup> The GSM Committee also received in-kind contributions from FES and FESA of \$631,535.29.

beginning August 1, 2015 and ending January 31, 2017, and compared FESA's receipts and expenditures with the GSM Committee's receipts.

5. The GSM Committee, between July 1, 2016 and the election, reported receiving a total of approximately \$21.7 million. The vast majority of this amount, \$15,349,500, as disclosed in the GSM Committee's campaign finance reports, was contributed by FESA. A review of FESA's bank records showed that FESA's transfers to the GSM Committee closely followed FESA's receipts from individuals, e.g., during one typical period in August, 2016, individuals contributed \$2,500,000 to FESA; within one week of receiving these donations, FESA made five separate wire transfers to the GSM Committee, each of \$500,000. Several individuals who provided the initial funding to the GSM Committee in 2015 (and whose names and donations to the GSM Committee were listed in public reports made to OCPF by the GSM Committee in a timely manner in compliance with applicable regulations) were also among the largest donors to FESA during the period in 2016 when FESA was transferring funds to the GSM Committee.

6. In addition, with very few exceptions, prior to July 6, 2016, when Question 2 qualified for the ballot, the FESA account had been funded by money transferred from FES, and not by direct contributions to FESA from individuals. The amounts FESA received each month before July 2016 from FES were generally less than \$500,000, and were for payroll-related expenses. Between July and November 2016, however, over 90% of the amounts received by FESA were from individual donors, not FES.

7. Also, the amounts received by FESA between July and the November 8<sup>th</sup> election significantly increased, further suggesting that FESA solicited the contributions with the intent to give them to the GSM Committee to influence the election: \$3,247,500 was raised in July; \$3,696,000 in August; \$2,594,433 in September; \$7,512,500 in October; and \$2,026,000 in November. After the election, however, FESA's monthly receipts were again limited to transfers from FES and the amounts received by FESA returned to levels similar to monthly amounts received prior to July 2016.

### **III. OCPF CONCLUSIONS**

#### **1. FAILURE TO ORGANIZE AS A POLITICAL COMMITTEE AND FAILURE TO ORGANIZE IN A TIMELY MANNER – M.G.L. C. 55, §§ 1 AND 5**

Section 1 of the campaign finance law defines a political committee as “any committee, association, organization, or other group of persons...which receives contributions or makes expenditures for the purpose of ... opposing or promoting a ... question submitted to the voters.” Section 5 requires that “each political committee shall organize by filing with the director...a statement of organization.” Based on the nature, timing and amounts of the deposits into

FESA's account and the transfers from FESA to the GSM Committee, FESA was soliciting and receiving funds for the purpose of making contributions to the GSM Committee to influence a Massachusetts election. FESA was, therefore, a ballot question committee within the meaning of the Massachusetts campaign finance law. By failing to register with OCPF in a timely manner, FESA violated M.G.L. c. 55, §§ 1 and 5.

2. FAILURE TO DISCLOSE CAMPAIGN FINANCE ACTIVITY IN A TIMELY OR ACCURATE MANNER – M.G.L. c. 55, § 18

Section 18 of the campaign finance law requires that political committees file accurate reports of contributions and expenditures with OCPF. FESA violated M.G.L. c. 55, § 18 when it failed to file timely or accurate campaign finance reports disclosing its contributors.

3. CONTRIBUTIONS MADE IN A MANNER INTENDED TO DISGUISE THE TRUE SOURCE OF THE CONTRIBUTIONS – M.G.L. c. 55, § 10 AND 970 CMR 1.22

Section 10 of the campaign finance law and OCPF regulations state that no political committee shall make contributions in a manner that disguises the true source of its contributions. FESA violated M.G.L. c. 55, § 10 and its related regulations by receiving contributions to support Question 2 without disclosing the contributors, and by providing funds to the GSM Committee in a manner intended to disguise the true source of the contributions.

#### **IV. FESA COMMITTEE RESPONSE**

Without admitting the “facts” in Section II of this Agreement, the Respondent acknowledges OCPF's conclusion with respect to these “facts” and the parties accept these “facts” for purposes of resolution only.

It was always the intent of FES, FESA, and the donors to comply with Massachusetts campaign finance and disclosure laws. Prior to beginning their work in Massachusetts, FES and FESA received advice from outside counsel at a nationally recognized law firm in Washington, DC with expertise in this area concerning FESA's obligations under the relevant Massachusetts campaign finance laws and regulations. Outside counsel advised concerning how to comply with AO-14-05 and 970 CMR 1.22, and relied heavily on OCPF advisory letter AO 14-05, which discusses that an organization that raises funds for a political purpose, but does not indicate to donors that the funds will be used to influence a specific election, does not generally need to register as a political committee. FES and FESA acted in good faith on that legal advice, and reflected this advice in its communications with its donors.

Accordingly, FES and FESA did not earmark or take direction from donors concerning the way that FESA would use a specific donation, and donors did not direct that FESA use a donor's funds in a particular manner.

The donors relied in good faith on the solicitation materials and advice provided by FESA in making donations to FESA in the manner that they did. FESA regularly provided documentation to donors that discussed FESA's legal analysis and FESA assured donors in writing that FESA was complying with its obligations under applicable state law and that it would not take any steps that would require it to register as a political committee. Many of the donors to FESA also made contributions directly to the GSM Committee that were disclosed during the course of the campaign. Donors making contributions to FESA did not intend to disguise the source of contributions intended for the GSM Committee.

FES and FESA fully cooperated with OCPF during its review. FES and FESA believe they followed Massachusetts law and dispute OCPF's legal conclusion. FES and FESA further deny and continue to deny all wrongdoing, fault or liability under Massachusetts General Laws or otherwise.

The FESA Committee is resolving this matter with OCPF in good faith, solely in order to move forward with its work of organizing families to advocate for educational opportunity and avoid costly litigation.

## V. RESOLUTION

In order to resolve the matters now before OCPF the parties agree, pursuant to 970 CMR 3.07(1) and M.G.L. c. 55, § 3, for the purposes of this Agreement only, as follows:

1. FESA has made a payment to the Commonwealth of Massachusetts in the nature of a civil forfeiture in the amount of \$426,466.78. This amount was the cash on hand for FES and FESA as of August 21, 2017.

2. The FESA Committee has filed a Statement of Organization (Form 101BQ) as a ballot question committee and has also filed a campaign finance report to disclose all funds received and expenditures made for the period July 1, 2016 to December 31, 2016. The report is available for public inspection on OCPF's website: [link to report](#). FESA agrees that it will begin the dissolution process of its designation as a 501(c)(4) organization upon execution of this Agreement.

3. For a period of four years from the date of this Agreement, FES will not engage in fundraising in Massachusetts, soliciting in Massachusetts, or engage in any ballot question or other election-related activity in Massachusetts.

4. OCPF agrees not to refer the Treasurer of the GSM Committee, the Respondent, or any related person or entity, including but not limited to the officers, employees and donors of FES or FESA, to any other governmental agency, including without limitation, the Office of the

Attorney General, for any alleged failure to comply with the provisions of M.G.L. c. 55 or 970 CMR referenced in this Agreement.

5. OCPF may, at any time, review compliance with this Agreement. If it believes that the Agreement has been violated, after notice to the Respondent through the person signing the Agreement, OCPF may, notwithstanding the provisions of the foregoing paragraph, proceed with any action against the Respondent consistent with M.G.L. c. 55 or otherwise authorized by law.

6. This Agreement shall be binding upon OCPF, the Respondent, and their successors.

7. This Agreement constitutes a complete disposition of all matters referenced in this Agreement.

8. The parties have entered into this Agreement, knowingly and voluntarily, in an effort to resolve all matters set forth in the Agreement. It is an agreement, each party preserving their respective positions, and not a final adjudication of the merits of those positions.

9. This Agreement is a public record under Section 7 of M.G.L. c. 4 and shall be subject to public inspection as required by Section 10 of M.G.L. c. 66.

FAMILIES FOR EXCELLENT SCHOOLS-  
ADVOCACY COMMITTEE

By:



Jeremiah Kittredge  
Treasurer

OFFICE OF CAMPAIGN  
AND POLITICAL FINANCE

By:



Michael J. Sullivan  
Director 9/11/17