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VIA FACSIMILE & REGULAR MAIL

June 4, 2010

Glen Pinder, Executive Director
Lady Liberty Academy Charter School
23 Pennsylvania Avenue
Newark, New Jersey 07114

Re: Lady Liberty Academy Charter School; Open Government Violations

Dear Mr. Pinder:

The American Civil Liberties Union of New Jersey ("ACLU-NJ") was recently contacted by an anonymous requester of public records about the open government practices of the Lady Liberty Academy Charter School ("Lady Liberty"). Since that time, the ACLU-NJ has been monitoring various requests for public documents submitted to the school and has reviewed the responses provided. I am writing to inform you that Lady Liberty has violated several provisions of the Open Public Records Act ("OPRA"), N.J.S.A. 42:1A-1 et seq. and the Open Public Meetings Act ("OPMA"), N.J.S.A. 10:4-6 et seq., and appears to have taken affirmative steps to obstruct access to public information.

Since the ACLU-NJ was first contacted in February 2010, we have heard from various sources about the disconcerting open government practices of Lady Liberty, including that requests for public records, such as Board of Trustees ("Board") meeting minutes or school policies, are routinely ignored or denied for reasons that do not comply with the law. We also understand that Lady Liberty implemented a policy requiring requesters to submit OPRA request forms and that anonymous requests must specifically be submitted in person, thereby preventing the ability of requesters to remain anonymous. The policy appears to have been implemented solely to determine the identity of anonymous requesters. Such actions, if true, are unlawful and antithetical to the practices of open government. See N.J.S.A. 47:1A-1 (declaring that "government records shall be readily accessible for inspection, copying, or examination" to the public); N.J.S.A. 47:1A-5(i) (requiring record custodians to grant or deny requests for information no later than seven business days from receipt of the request); N.J.S.A. 47:1A-2.2 and 47:1A-5(f) (acknowledging that anonymous requests can be made for government records); Tina Renna v. County of Union, 407 N.J.Super. 230 (App. Div. 2009) (holding that record custodians cannot deny requests due to the requester not using the agency's OPRA request form).

Additionally, we understand that Lady Liberty removed its fax number, changed its email address on more than one occasion and then finally removed its email address, from its OPRA request form altogether. Even more troublesome, we were also very disappointed to hear that Board President Anthony Thomas recently responded to an email from an anonymous requester with a "cease and desist notice." Mr. Thomas, who had been copied (to the email address at which he receives other Board information) on an email about a pending OPRA request, told the requester that "[a]ny further emails will be forwarded to [the] authorities for appropriate actions." Without making any assertions about these particular incidents, such actions could be interpreted as affirmative efforts to dissuade or prevent the public from making requests for public information.

Unfortunately, my direct interaction with Lady Liberty has not fared any better. After speaking with Mr. Gil Berrios, Business Administrator, we were able to obtain some of the anonymously-requested records – approximately four months after the information was first requested. However, upon reviewing the records disclosed by Lady Liberty, I discovered that the records were laden with personal information, including social security numbers. Disclosure of social security numbers not only increases the risk of identity theft to unsuspecting individuals but it is also against the express provisions of OPRA. See N.J.S.A. 47:1A-1 (stating that "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy"); N.J.S.A. 47:1A-5(a) (requiring custodians to redact from that record social security numbers, credit card numbers, unlisted telephone numbers, or driver license numbers prior to disclosure to the public).

I also examined one resolution that had been purportedly passed by the Board, but the provided voting record indicates otherwise, showing that a majority of the Board actually did *not* vote for the resolution in question. It goes without saying that the meeting minutes serve as a permanent record and should accurately reflect what happened at the meeting. However, here, when looking at the record alone, the public is left to question how the resolution was passed by Lady Liberty. At best, the public could believe that the record contains an administrative error. At worst, the public could surmise that Lady Liberty has misrepresented what actually occurred at the meeting in question. Regardless, under either scenario, Lady Liberty has failed to provide accurate meeting minutes in compliance with OPMA. See N.J.S.A. 10:4-14 (requiring public bodies to keep "reasonably comprehensible minutes" of all meetings); Liebeskind v. Mayor and Mun. Council of Bayonne, 265 N.J. Super. 389 (App. Div. 1993) (holding that "reasonably comprehensive minutes" requires what actually took place at the meeting and what final action was taken by the public body).

Greatly concerned by the aforementioned issues, I contacted Mr. Berrios to provide notice to Lady Liberty that the ACLU-NJ would be video recording the upcoming Board meetings. Remarkably, Lady Liberty refused to let us tape, stating that the Board would "decide" whether we could record the meetings during its closed meeting. Please be advised that the Board does not have any discretion to determine who is able to record its public meetings. See Robert Wayne Tarus v. Borough Of Pine Hill, 189 N.J. 497 (2007) (New Jersey Supreme Court holding that the public has the lawful right to video record meetings subject to only reasonable time,

place, and manner restrictions). While we would ordinarily file suit in such matters, we chose once again to be lenient, believing that Lady Liberty was merely uninformed of the law.

As the weeks have turned into months, we continue to receive complaints about Lady Liberty's open government practices, and through it all, the simple truth remains: Actions taken to obstruct access to public records and meetings put Lady Liberty at great risk for lawsuits. And frankly, it does not reflect positively on a school that is named after our nation's foremost symbol for freedom and democracy.

In an effort to start anew and put these matters to rest, I have provided a few open government best practices that would demonstrate Lady Liberty's commitment to transparency. Specifically, I encourage Lady Liberty to: 1) comply with OPRA and OPMA to the fullest extent of the laws, including timely responding to OPRA requests; 2) repeal policies or practices that run contrary to OPRA and OPMA, including those described in this letter; 3) accept OPRA requests without regard to the method or form of submission; 4) provide the proper email address, facsimile number, as well as the name and telephone number of Lady Liberty's record custodian on the school's website and OPRA request form; 5) maintain an archive going forward of all Board meeting agendas and minutes on the school's website; 6) charge requesters no more than \$0.10 per page for copies of public records; and 7) correct any misconceptions about the public's right to record public meetings by instructing the public of this right at the beginning of each Board meeting.

Adopting the aforementioned practices would send a strong message that transparency and openness is a priority for Lady Liberty Academy Charter School. Simply put, it would also indicate that the school is trying to do the right thing in terms of open government. However, if Lady Liberty chooses not to adopt these suggestions, the ACLU-NJ will continue to monitor its open governance practices indefinitely, and assess whether legal action is appropriate.

Please contact me if you have questions at (973) 642-2086.

Sincerely,


Bobby D. Conner
Open Governance Attorney

cc: Morton Goldfein, School Attorney