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District School Superintendents

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# Florida Association of District School Superintendents

June 20, 2014

## MEMORANDUM

TO: Cathy Schroeder, Agency Clerk  
Department of Education

FROM: Joy Frank  
General Counsel

SUBJECT: Comments on 6A-6.0786 – Model Forms for Charter  
School Applicants and Sponsors

### General Comments

The purpose of this memorandum is to submit comments on and make recommendations concerning the above referenced proposed rule.

As you know, superintendents have opposed the required use of a standard contract. We believe that the requirement to use a standard contract is unconstitutional based upon Article IX, section 4 of the Florida Constitution that empowers each school board to operate, control and supervise all free public schools within the school district. Section 1002.33, F.S., provides the statutory basis for the establishment and monitoring of charter schools in Florida. Subsection (1) clearly states that charter schools are part of the state's program of public education. It goes on to state that all charter schools in Florida are public schools. Therefore, school boards, have the obligation and constitutional duty to supervise charter schools, which are in fact, public schools. Moreover, Article I, section 10 of the Florida Constitution, prohibits the impairment of contracts. Requiring school boards to use a standard contract impairs the right to contract and to protect both student welfare and the public purse. It injects into the contract process a document that is not created by either party to the contract. Therefore, any rule that is developed must be as flexible as possible in order to pass constitutional muster.

Developing a standard contract to serve charter schools in every district is a monumental task. First, Florida is a diverse state with very small, small, medium and large districts. A standard contract used in Wakulla County will be substantially different than a contract that will be used in Miami-Dade County. Districts have developed contracts over the past several years



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to meet the needs of and respond to local situations. These provisions must be preserved. In addition, there are a variety of charter schools – conversion charter schools, alternative charter schools, “mom & pop” charter schools, management company charter schools, virtual charter schools, municipal charter school, to name just a few.

Finally, having one standard contract is counter to the purpose of charter schools – which is to encourage innovation. Innovation is not standard. Therefore, any proposed rule regarding a standard contract must be flexible and afford both parties the ability to negotiate the terms and conditions of the contract in order to protect the welfare of students and protect the public purse while affording the charter school the ability to institute innovative practices. These comments are meant to provide this flexibility.

### **Specific Recommendations**

These recommendations are based primarily on the comments submitted by Lee County School District and my conversations with other district personnel.

There should be a table of contents for ease of use.

The rule should clearly establish the process for negotiation of the contract. It should be clearly stated that the applicant and sponsor are able to negotiate the terms and conditions of the contract. If language is to be maintained that varies from the language contained in s. 1002.33(7), F.S., such language should be clarified.

Page 2. The contract states that the application is attached as Appendix 1 and constitutes a part of the contract or charter. Also, in the event of any conflict between the application and the contract or charter, the charter controls. However, in several sections of the proposed contract, the application appears to control and would supersede the contract/charter. For example, section 1C – 1,2, and 5 and section 2. The references to application need to be removed.

There should be a provision requiring the charter school to give notice if it intends to submit an application to renew or if it intends to non-renew or terminate the existing contract.

The form contract allows the charter a planning year if the school is not ready to open. This should be removed. If the applicant cannot plan sufficiently to open the school on time, it should be terminated and required to apply again. There is no requirement in statute to allow an applicant that fails to meet the assurances of its application to still maintain a charter.

Page 5 - The contract should include additional bases for termination. These should include: failure to correct deficiencies noted in a corrective action plan within one year of notice of the deficiencies; failure to comply with maximum class size requirements; two consecutive school grades of an "F", and spending greater than \$10,000 after notice of termination without sponsor approval. These are specific bases for termination in statute or relate to specific charter school accountability responsibilities established in statute.



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Page 10, paragraph 3A, and on page 11, paragraph 3D2, the contract should require the school to specify enrollment preferences it intends to implement rather than just state it may implement those allowed by law.

Page 11, paragraph 3B, a sentence should be included stating: "The school will not deny admission to, nor withdraw, a student with a disability based on a finding that the student needs a service delivery model not presently in existence at the school." This provision is a requirement of Lee County School District's 2005 OCR resolution agreement.

Page 12, paragraph 3D6, a sentence should be added to state: "A student may not be transferred to another charter school or other school in the district without written parental consent." This is a requirement of statute.

The last sentence of paragraph E on page 12 is inconsistent with Section 1002.33(10)(h), Florida Statutes. The annual capacity is to be established by the governing board of the charter school and the Sponsor. Once established, this is the annual capacity.

Paragraph F on page 12 should include a provision for the school to indemnify the Sponsor from any penalty imposed upon the Sponsor due to the school's noncompliance with class size mandates.

Section H2 on pages 12-13 should read: "The School will maintain active records for current students in accordance with applicable Florida Statutes, State Board of Education rules, and any reasonable student record format or protocol established by the Sponsor for use in other public schools operated by the Sponsor."

To ensure students with a disability are given a full opportunity to attend a charter school, a sentence should be added at the end of the next to last paragraph in I3 on page 14 to state: "A student with a disability will be referred for enrollment at a district school only when school and district staff composing of the IEP team agree that the student's educational needs cannot be met at the school."

Paragraph I4iii on page 15 should be revised. The school should be responsible to assign counsel to defend its actions and make decisions concerning strategy, since in a later provision it is recommended that it must indemnify the school district with respect to its actions in such matters.

The contract should contain a section addressing services to 504 students.

In section L, page 16, there should be a provision requiring the school to notify the sponsor if it is considering dismissal of a student and to share information concerning the basis for such dismissal. This is needed to enable the sponsor to ensure the dismissal is in accordance with appropriate procedures.

The next to last sentence in Section L, page 16 should read: "The School may withdraw a student involuntarily for failure to maintain eligibility, such as district residency requirements, which must



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also be compliant with IDEA, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA) for students with disabilities.”

The last sentence in Section L, page 16 should read: “The school may not withdraw a student involuntarily for poor academic performance or for student disciplinary infractions except as may be provided for in the district’s Code of Student Conduct. The school will ensure that no pressure, coercion, negotiation, or other inappropriate inducement may be used to attempt to have parents/guardians withdraw students from the School. The school will provide sufficient training and oversight to staff members to prevent improper withdrawals. The school shall promptly readmit and reenroll any student who has been inadvertently or improperly withdrawn.”

The last sentence in paragraph N, on page 17, should read: "Students recommended for expulsion or placement in an alternative school..."

Paragraph A1v. on page 18 - should include a requirement that the school provide the sponsor an annual accounting of the use of categorical funds distributed and reimburse the sponsor for any impermissible expenditures.

Paragraph B1 on page 19 appears to require the sponsor to fund a charter school in advance of opening. Though the statute authorizes this practice, it is not required. A discretionary practice should not be required in the standard contract.

Page 20, paragraph 5 - the list of causes for which the sponsor may withhold funding should include an expired or insufficient certificate of insurance.

The contract should contain a provision in section 4B requiring the school to reimburse the sponsor any distributed FTE that is unearned at the time of termination or nonrenewal. If the sponsor must take legal action to recover such unearned funding, the contract should require the school to pay the sponsor's attorney fees.

Page 21, in paragraph C - the provision requiring distribution of federal funding to the school should include a reduction for the value of services provided by the sponsor to the school from such funding, such as training and staff support; and reimbursement by the school to the sponsor in the event of failure to use the federal funds for authorized purposes.

The contract should contain provisions in section 4 making it clear the sponsor has no responsibility to the school with respect to provision of summer school or dual enrollment.

Section 4 should also contain a provision requiring the school provide proof of start up funding before it is allowed to open.

Section 4 of the contract should contain a provision allowing the sponsor access to school financial records. This is needed for the sponsor to perform its duty to monitor the school's financial condition. Section 1002.33(5)(b)1.b., Florida Statutes.



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The date in paragraph iv., on page 25, should be September 1, rather than November 1. State Board of Education Rule 6A-1.0071 requires the district to submit its annual financial report to the Commissioner by September 11. As a school of the district, the charter school's information must be included. The information is needed by September 1 for inclusion in the district report by September 11.

Section 4 of the contract should also contain provisions addressing procedures and responsibilities in the event of the need for a financial recovery or corrective action plan, or expedited review.

Section 5 - there should be provisions requiring sponsor access to inspect the school facility, and notice in the event of relocation.

Page 29 - the aggregate limits for Errors and Omissions and General Liability coverage should be \$3,000,000. \$1,000,000 is not sufficient to ensure financial security for the school.

Page 30, paragraph H - the list of acts for which the school will indemnify the sponsor should include failure to comply with IDEA in provision of a FAPE and implementation of a student's IEP; and violation of the Florida public record and open meetings laws.

Page 32, paragraph K1 - the certificate of insurance submission requirement should be 30 days before the school opens, rather than July 15, since districts start school on different dates.

Section 9A, page 32 - there should be a provision addressing school compliance with the public records law.

Page 34 - the contract should include additional governing board duties of: reporting annual progress as required by Section 1002.33(9)(k), Florida Statutes, and adopting policies establishing ethical standards of conduct for its employees as required by Section 1002.33(12)(g)3.

Page 35, paragraph E.6. - the contract should require that any changes to the management contract be provided to the district in advance of execution. Providing notice after the changes have been executed does not enable the district to perform its monitoring duties. Section 9D should also contain a provision requiring notice if the governing board decides to change management companies and a requirement for the management contract to include an agreement that the company will perform its duties in compliance with the charter contract.

Page 37, Section 12, paragraph A2 should read - "List of members of the Governing Board and Principal, including names, mailing addresses, telephone numbers, and e-mail addresses for each person."

Page 39, Section 12, paragraph C10 should read - "Current list of members of the Governing Board and Principal, including names, mailing addresses, telephone numbers, and e-mail addresses for each person."

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The proposed contract provides no section related to a School Web site, which is an essential means of communicating with parents and the community, and which optionally provides a simple means for Schools to provide necessary information to Sponsors. A new section should be created that provides that:

“The school shall maintain a Web site which displays information regarding the school including the following minimum requirements:

1. The school’s academic performance including the Florida School Grade or rating for each year of the school’s’ operation;
2. The names, telephone numbers and e-mail addresses of the governing board members;
3. The name, telephone number and e-mail address of the local representative of the governing board;
4. The academic and extracurricular programs at the school;
5. Any management companies, service providers, or education management corporations associated with the school;
6. The school’s annual budget;
7. The school’s independent financial audit;
8. The school’s accreditation status;
9. Historical and current minutes of governing board meetings.

This information shall be provided in a publicly accessible portion of the school’s Web site, such that access to this information shall not require creation of a school or Web site account, use of a password or any other limiting factor.

Thank you for the opportunity to comment on this proposal.