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August 12, 2014

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Cathy Schroeder, Agency Clerk
Florida Department of Education
325 W. Gaines Street, Suite 1520
Tallahassee, Florida 32399-0400
Cathy.Schroeder@fldoe.org

Subject: COMMENTS REGARDING SECOND DRAFT OF PROPOSED AMENDMENTS TO RULE 6A-6.0786, F.A.C., TITLED "MODEL FORMS FOR CHARTER SCHOOL APPLICANTS AND SPONSORS"

Dear Ms. Schroeder:

While we appreciate some of the changes made to the first draft of the proposed standard contract, there remain significant concerns raised by the second draft. Please accept the comments below regarding the July 14, 2014, Second Draft of Proposed IEPC-SC Florida Standard Charter Contract as incorporated into the proposed changes to SBER 6A-6.0786, F.A.C. Also attached are the following:

- a strike-through edit of the proposed IEPC-SC form (ATTACHMENT A), and
- the Contract, with many of the highlighted changes detailed below incorporated, as well as footnotes containing justification and/or examples (ATTACHMENT B).

These comments and the strike-through contract were compiled by District officials in consultation with the School Board Attorney's Office and are a result of our experience monitoring and supervising almost 120 charter schools during the last 18 years in Miami-Dade County.

General

By participating in this rulemaking process, The School Board of Miami-Dade County, Florida (School Board), does not waive its right to challenge the constitutionality of the proposed "standard charter contract" as mandated by Section 1002.33(21), F.S., and implemented through this rule amendment. Article IX, Section 4(b) of the Florida Constitution, provides that school boards "operate, control, and supervise" all free public schools within its district. Section 1002.33, F.S., establishes that charter schools are free, public schools and that they operate solely through performance contracts with the school board governing the school district in which they are located. The charter contract is the vehicle through which the school board exercises its constitutional authority to operate, control, and supervise these schools. See

School Board of Volusia County v. Academies of Excellence, Inc., 974 So. 2d 1186 (Fla. 5th DCA 2008). The contract also shapes the manner in which the school board discharges its constitutional and statutory duties to monitor and supervise charter schools. (Section 1002.33(7), F.S.)

Additionally, each school board in Florida has the constitutional right under Article I, Section 10 of the Florida Constitution, to enter its own contracts. Requiring a standard contract developed by the state impairs the school board's right to contract, and in fact requires the parties to use a document that is not created by either party to the contract.

In order to avoid constitutional issues, every provision of the contract must be flexible, within legal restrictions, and subject to negotiation between the parties. Individual school boards and charter schools must also be allowed to negotiate provisions that may be unique to their school district. These contracts also must be able to be adjusted to address differences in the many different types of charter schools, i.e., conversion, alternative, ESE, municipal, virtual, etc.

The rule itself must clearly state that the parties may negotiate every provision in the contract, as long as they are not contrary to law, and that neither party will have an advantage in the dispute resolution process by virtue of any provision as approved through the standard contract rulemaking. In other words, the rule must clarify that (1) the standard language is not the default provision when there is a dispute, and (2) that an ALJ may not determine the "reasonableness" or charter school "flexibility" of a provision based only on the fact that the State Board of Education adopted the language in the standard contract.

Section 1 General Provisions

- A. We agree that the application should be attached and incorporated by reference. However, the parties should be able to negotiate when and/or if an application provision controls a provision. The language regarding conflict between the application and charter provision should be deleted.
- B.
 - 1. The parties should be able to negotiate the contract's effective date.
 - 2. The parties must be able to renew contracts for less than four (4) years. Sometimes a contract for a school that would otherwise be terminated is instead renewed for a term that is less than 4 years on a probationary basis. Also, the language stating that the term "shall be automatically extended on a month-to-month basis, etc..." must be deleted. Otherwise, either party could use that phrase to indefinitely delay agreement on a new contract.
 - 3. The school board must be allowed to negotiate charter schools beginning classes on the same day as the Sponsor for every school year and not just the first year. Allowing over 100 charter schools to begin on different days would cause an operational nightmare in Miami-Dade. Also, while charter schools are allowed to add days to the instructional year, the calendar must be approved by the Sponsor prior to implementation and any subsequent modification must be also be approved in order to implement the plan operationally.

The language regarding automatic granting of a "planning year" when the school has not submitted all of the required documents must be deleted. In fact, the law clearly states that applications are for schools to be opened at the beginning of the next school year "or to be opened at a time agreed to by the applicant and the sponsor." See Section 1002.33(6)(b), F.S. If it is necessary to have this language at all, it should state that the determination of whether to allow the charter another year is at the Sponsor's discretion. The language as proposed would allow an applicant who may have already received a deferral on an application to also receive another automatic deferral of the contract. Additional language should also clarify that, if the school does not open as agreed, it is automatically rescinded and is not subject to the termination process or appeal.

4. Districts should be allowed to require charters to request all contract modifications and amendments through its own charter contract modification process. Miami-Dade has a fairly detailed process because it is routinely inundated with contract amendment requests. Each amendment request requires separate review and different types of documents to be submitted depending on the type of request. The charter contract should also be required, at the Sponsor's discretion, to update to the most current District contract whenever it is amended since there are legislative changes every year. The statute only prohibits the District from making other contract changes for high-performing enrollment expansions. Section 1002.331(2)(e), F.S.
- C. 1. The charter school must identify whether it is adopting the District's CRRP or some other approved reading plan. Alternate plans must be attached in an Appendix. The contract should state that changing the reading plan require a contract amendment.
2. The school should be required to follow the District's ELL plan and not be allowed to adopt its own. The plan is complicated, detailed and allows all public schools to properly identify and place ELLs and provides for crucial consistency when these students transfer among schools.
- D. 1. This section must include many additional good cause reasons for termination, as well as the language "including, but not limited to": failure to correct deficiencies addressed in corrective action plan within one year of notice, failure to comply with class size requirements, receiving two consecutive grades of F or rating of declining, failure to make contributions to FRS if elected, failure to provide the Sponsor with access to school and student records and facilities, material violation of corporate bylaws, illegal or improper students admissions, dismissals, transfers and/or withdrawal practices, failure to comply with transportation requirements, failure to fully the requirements for highly qualified personnel, failure to timely submit School Improvement Plan, failure to use records and grade procedures that adequately provide required information to Sponsor, failure to obtain proof of consent to enroll, withdraw or transfer a student, zoning approvals violation of the Code of Ethics for Public Officers and employees as applicable to charter schools, violation of FERPA, material violation of assessment administration and security procedures, etc.

2. The contract should specify where in the district the request should be submitted in order to avoid confusion and determine accurate filing dates.
3. Under immediate termination, the school should be required to immediately provide all records of school accounts and not be allowed two (2) entire days.
4. The \$10,000 expenditure provision should be included in the contract as well as a provision prohibiting the removal of school/public property upon notification of termination. Clarification should be provided in the contract that property purchased for the school by the management company with funding provided by the school is public property.
5. Included in the contract should be language indicating that lack of a facility may constitute an immediate and serious danger requiring immediate termination; also language should be included that if there is no facility at the time of termination, the Sponsor is not obligated to operate the school during the pending appeal.

Section 2 – Academic Accountability

This section requires much more detail regarding:

- (a) expected outcomes and methods of academic achievement measurement,
- (b) assessments and the support provided by the Sponsor,
- (c) school should be required (not simply “invited”) to participate in the District’s training for test administration, security, audits and reporting of results,
- (d) school must be required in the contract to provide all technology infrastructure necessary for testing and agree that a cost may assessed to school for failure to comply or if the Sponsor has to expend resources to assist,
- (e) provisions for monitoring a D or F school must be included,
- (f) provisions for grade reporting and procedures and textbook inventory requirements must be included,
- (g) requirement that school adopt student and employee computer use and privacy policies,
- (h) requirement that charter high school offer the PSAT to every student in tenth grade pursuant to Section 1007.35, F.S., and follow accompanying reporting procedures,
- (i) requirement that charter school follow District procedure for sending AP exam fees and reporting, and
- (j) requirement that school shall not charge students a fee for AP courses.

Section 3 Students

- A. This paragraph should require the school to provide the enrollment preference in detail rather than just that the school “may implement preferences as provided by law.”
- B. The contract should state that the school will not be paid FTE for students enrolled over the contract and facility capacity.

- C. The contract should clearly prohibit the charter school from accessing Sponsor student records prior to a student enrolling in the school.
- D. The contract should prohibit transferring students without specific parental consent for each transfer as required by Section 1002.33(22)(b), F.S., and to prohibit the school from requesting parents sign a general consent for any and all transfers without further notification or consent.
- E. The contract must prohibit the school from denying admission to students with disabilities or withdrawing them on the sole basis that the student needs a service delivery model that the school does not offer.
- F. The class size provision must include language that requires the school to pay for any penalties associated with the school's noncompliance and allow the Sponsor to deduct any amount from the school's FTE
- G. While the ESE includes some specific services to be provided by the school district, there should also be a detailed breakdown regarding what services the school must provide at its expense and more specificity regarding the services to be provided by the Sponsor; detailed district procedures are also required depending on whether the school chooses to receive services or funds.
- H. Section I.4.iii, should state that either the district will select counsel for the school or the school may select its own counsel. The way it's written, the district would be required to select counsel for the school and the school could additionally hire its own counsel.
- I. The contract should include a section addressing the school's requirement to serve students with 504 plans.
- J. The second and third paragraph under Section L regarding "dismissal policies" should be deleted entirely. There is no provision in law that allows a charter school to dismiss students other than through the *Code of Student Conduct*. In fact, "dismissal" should only be allowed for a violation of the *Code of Student Conduct* after appropriate due process. It should also include a provision that the school shall immediately re-enroll any student that has been improperly withdrawn.

Section 4 Financial Accountability

- A. The requirement that the school shall have "equal access to the Sponsor's student information systems that are used by traditional public schools in the District" must be qualified to apply only to the students enrolled in the charter school. There is no individual educational need for a charter school to have access to all students' records and would be a violation of FERPA.
- B. The contract should include a provision that charter school is responsible for providing summer school or reimbursing Sponsor if students attend the Sponsor's summer school program.
- C. There must be a provision allowing the Sponsor access to all of the school's financial records at any time.
- D. Under Section B6, the second sentence should be stricken. There is no authority for charter schools to be pledging public money, which includes FTE, Title I, IDEA and other funds, to secure debt. In addition, the financial institution must be an approved depository under state law.
- E. Under Section H3iv, the annual audit must be submitted no later than September 1, not September 30 or "another date agreed to by both parties." This information is required

by the Sponsor to be included in its report to due to the State by September 11 per Rule 6A-1.0071, F.A.C.

- F. It should also be clear that the annual audit required is the audit of the non-profit corporation that holds the charter and, that special purpose statement can be submitted only as a supplement to the annual audit if the school desires.
- G. The contract should require that the school shall operate as a non-profit corporation organized specifically under Chapter 617, F.S. Districts should not be required to examine and determine whether other allegedly non-profit structures are truly non-profit as required.
- H. The contract should include provisions regarding procedures and responsibilities when there is a financial recovery or corrective action plan.

Section 5 Facilities

- A. The contract should require that the Sponsor may access the facilities any time and that relocation requires a contract amendment since under Section 1002.33(7), F.S., charter school location is a material term of the contract.
- B. The contract should require that if the school is operating under a sublease, the master lease must also be submitted.

Section 6 Transportation

- A. The contract must require the school to reimburse parents for parent-provided transportation, if the student is eligible to receive transportation.
- B. The contract should also address requirements for transporting homeless students.

Section 9 Governance

- A. The contract should require that any changes to the management agreement be provided to the Sponsor prior to execution in order for the Sponsor to perform its monitoring duties.
- B. The contract should also state that a change in Management Company or ESP may require a charter contract amendment.
- C. The contract should state that the school is subject to sunshine and public records laws.
- D. The contract should include the requirement to maintain a website within the statutorily required information. See Section 1002.33(9)(p), F.S.

Section 11 Miscellaneous

- A. Section F – The contract already includes certain provisions for the opportunity to cure. There should be no blanket provision like this. Sometimes the default or breach is so egregious that there should be no opportunity to cure and not 30 days. This provision should simply say that non-compliance with the contract constitutes good cause for termination.

FDOE Agency Clerk
Revisions to 2nd Draft of Rule 6A-6.0786, F.A.C.
August 12, 2014
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Should you have any questions or require additional information, please do not hesitate to reach out to me at 305-995-1403 or tpauline@dadeschools.net.

Sincerely,



Tiffanie A. Pauline, Assistant Superintendent
Charter School Support

TP:mm
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Attachments

cc: Mrs. Valtena G. Brown
Ms. Melinda L. McNichols
Ms. Nicki L. Brisson
Mr. Adam Miller, FDOE, IEPC (Adam.Miller@fldoe.org)
Mr. Adam Emerson, FDOE, Charter Schools (Adam.Emerson@fldoe.org)