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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

EDUCATIONAL CHARTER FOUNDATION
OF FLORIDA, INC.,
d/b/a Imagine Schools at South Lake,
a Florida non-profit corporation,

Plaintiff,

CASE NO.: 2014-CA-002766
Civil Division: J. George S. Reynolds, III

v.

THE FLORIDA DEPARTMENT OF EDUCATION,
an agency of the State of Florida,

Defendant.
_____/

RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
and
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant, the Florida Department of Education, by and through the undersigned attorney, and respectfully requests that the Court deny Plaintiff's Motion For Summary Judgment, and enter Final Summary Judgment in favor of Defendant because:

1. The Department concurs with the Plaintiff that there is no genuine issue as to any material fact.

2. Although the Court indicated at the hearing on Plaintiff's Motion for Temporary Injunction that the Court agreed with Plaintiff's interpretation of section 1002.331, Fla. Stat. (2014), the Department respectfully requests that the Court reconsider, deny the Motion for Summary Judgment, and enter Final Summary Judgment dismissing the Complaint with prejudice. Plaintiff asks this Court to interpret section 1002.331 in a manner which: ignores the most recent expression of legislative will, is not supported by the legislative history of the most recent amendment to the statute, and is contrary to the construction of the statute by the agency charged with administration of the statute.

3. Subsection 1002.331(1), as originally enacted in 2011 and as it presently exists, provides three criteria for designation of a charter school as high-performing:

> (1) A charter school is a high-performing charter school if it:
>
> (a) Received at least two school grades of "A" and no school grade below "B," pursuant to s. 1008.34, during each of the previous 3 school years.
>
> (b) Received an unqualified opinion on each annual financial audit required under s. 218.39 in the most recent 3 fiscal years for which such audits are available.
>
> (c) Did not receive a financial audit that revealed one or more of the financial emergency conditions set forth in s. 218.503(1) in the most recent 3 fiscal years for which such audits are available. However, this requirement is deemed met for a charter school-in-the-workplace if there is a finding in an audit that the school has the monetary resources available to cover any reported deficiency or that the deficiency does not result in a deteriorating financial condition pursuant to s. 1002.345(1)(a)3.

4. Subsection 1002.331(5) requires the Commissioner of Education to designate high-performing charter schools which meet the three criteria in subsection (1), and to declassify charter schools which no longer meet the high-performing criteria.

> (5) The Commissioner of Education, upon request by a charter school, shall verify that the charter school meets the criteria in subsection (1) and provide a letter to the charter school and the sponsor stating that the charter school is a high-performing charter school pursuant to this section. <u>The commissioner shall annually determine whether a high-performing charter school under subsection (1) continues to meet the criteria in that subsection. Such high-performing charter school shall maintain its high-performing status unless the commissioner determines that the charter school no longer meets the criteria in subsection (1), at which time the commissioner shall send a letter providing notification of its declassification as a high-performing charter school.</u>

As the Plaintiff noted in paragraph 23 of the Complaint and on pages 3 - 4 of its Motion, the underlined sentences of subsection 1002.331(5) were added by Section 3 of Chapter 2013-250, Laws of Florida.

5. As Plaintiff conceded in paragraph 25 of the Complaint and on page 4 of its Motion, the Plaintiff's charter school no longer meets the first criterion in subsection (1) of receiving at least two school grades of "A" and no grade below "B" during each of the previous three school years. And as Plaintiff stated in paragraph 8 of the Complaint and on page 4 of its Motion, the Commissioner of Education complied with the directive in subsection 1002.331(5)

by issuing a letter which provided notification of the declassification of Plaintiff's charter school as high-performing.

6. Plaintiff argues that since Plaintiff's charter school has not received two school grades of "C" or below, its' charter school should retain high-performing status by operation of subsection (4). Plaintiff is incorrect; subsection (5) directed the Commissioner to declassify Plaintiff's charter school as high-performing.

7. At the hearing on Plaintiff's Motion for Temporary Injunction, it became clear that subsections (4) and (5) are positively repugnant to each other. Subsection (5) requires the Commissioner to annually determine whether a charter school continues to meet the three criteria in subsection (1). In order to give effect to subsection (4), the Court ruled that the Commissioner must not determine whether a charter school continues to meet the first of the three criteria. Since subsections (4) and (5) are positively repugnant to each other, the later promulgated statute on the subject should prevail as the last expression of legislative intent. De Coningh v. City of Daytona Beach, 103 So. 2d 233, 236 (Fla. 1st DCA 1958); State v. Scriber, 991 So. 2d 969 (Fla. 4th DCA 2008). "[W]hen two statutes are in conflict, the later promulgated statute should prevail as the last expression of legislative intent." McKendry v. State, 641 So. 2d 45, 46 (Fla. 1994). See also, Fla. Virtual Sch. v. K12, Inc., __ So. 3d __, 2014 WL 4638694 (Fla. 2014); and J.M. v. Fla. Agency For Persons With Disabilities, 938 So. 2d 535 (Fla. 1st DCA 2006). As stated in paragraph 23 of the Complaint, and as demonstrated by section 3 of Chapter 2013-250, subsection (5) is the later expression of legislative will, and should prevail over subsection (4).

8. If the Legislature had been in agreement with Petitioner's interpretation of section 1002.331, there would have been no need to amend subsection (5) in 2013. Lifemark Hosp. of Fla. V. Afonso, 4 So. 3d 764, 768 (Fla. 3d DCA 2009). "When the Legislature makes a substantial and material change in the language of a statute, it is presumed to have intended some specific objective or alteration of law, unless a contrary indication is clear." Mangold v. Rainforest Golf Sports Ctr., 675 So. 2d 639, 642 (Fla. 1st DCA 1996). "It is presumed that in adopting an amendment, the legislature intends to *change* the meaning of a statute unless a contrary intention is clearly expressed." Equity Corp Holdings, Inc. v. Dep't. of Banking and Finance, 772 So. 2d 588, 590 (Fla. 1st DCA 2000) (emphasis in original).

9. The legislative history of Chapter 2013-250, Laws of Florida, supports the Department's construction of section 1002.331. The several legislative staff analyses for House Bill 7009[1], which eventually became Chapter 2013-250, state:

> **High-Performing Charter Schools and Charter School Systems**
>
> Present Situation
>
> * * *
>
> In order to receive "high-performing" status, a charter school or charter school system must request verification by the Commissioner of Education that the school meets the eligibility requirements. The law provides for removal of a charter school's "high-performing" status if it receives a school grade of "C" in any two years during the term of the 15-year charter. The law does not provide a process for annually reviewing a charter school's, or charter school system's, continued eligibility for "high-performing" status. Nor does it specify a process for removing the status if a school or system is no longer eligible.
>
> Effect of Proposed Changes
>
> The bill requires the commissioner to annually determine a charter school's, or charter school system's, continued eligibility for "high-performing" status….
>
> A high-performing charter school or charter school system may maintain its "high-performing" status, unless the commissioner determines that the charter school or system no longer meets the eligibility criteria enumerated in law. If a high-performing charter school or system fails to meet the eligibility criteria, the commissioner must notify the school or system of its declassification as "high-performing." These changes establish explicit standards for reviewing continued eligibility for "high-performing" status and for declassifying high-performing charter schools and systems that fail to meet eligibility criteria.

"While not determinative of legislative intent, legislative staff analyses are 'one touchstone of the collective legislative will.'" Stivers v. Ford Motor Credit Co., 777 So. 2d 1023, 1025 (Fla. 4th DCA 2001), and White v. State, 714 So. 2d 440 (1998). "In fact, since 1982 this [Florida Supreme] Court has on numerous occasions looked to legislative history and staff analysis to discern legislative intent." Am. Home Assurance Co. v. Plaza Materials Corp., 908 So. 2d 360, 369 (Fla. 2005).

10. The staff analyses for HB 7009 recognized that subsection (4) already provided for the removal of high-performing status if the school received two "C" grades. However, the staff analyses identified a problem (the pre-2013 statute did not specify a process for removing

[1] Available on-line at http://www.myfloridahouse.gov/Sections/Bills/bills.aspx.

the high-performing status if a school is no longer eligible), and described the solution that was ultimately enacted (requiring the Commissioner to annually determine continued eligibility). The staff analyses concluded that,

> These changes establish explicit standards for reviewing continued eligibility for "high-performing" status and for declassifying high-performing charter schools and systems that fail to meet eligibility standards.

The eligibility standards are all three criteria in subsection (1). The staff analyses for HB 7009 demonstrate that the Legislature intended that the Commissioner take the action in this case that the Plaintiff would have this Court enjoin.

11. "An agency's interpretation of a statute that it is charged with enforcing is entitled to great deference and will be approved by this Court unless it is clearly erroneous." Bellsouth Telecomm., Inc. v. Johnson, 708 So. 2d 594, 596 (Fla. 1998); Dept. of Prof'l. Reg. v. Durrani, 455 So. 2d 515 (Fla. 1st DCA 1984). "If the agency's interpretation is within the range of possible and reasonable interpretations, it is not clearly erroneous and should be affirmed." Fla. Dept. of Ed. v. Cooper, 858 So. 2d 394 (Fla. 1st DCA 2003). The Department's interpretation of subsection (5), that the Commissioner must issue a letter declassifying a charter school from high-performing status if the school no longer meets all three high-performing criteria in subsection (1), is well within the range of reasonable interpretations.

WHEREFORE, Defendant Florida Department of Education respectfully requests that the Court deny Plaintiff's Motion for Summary Judgment, and grant Final Summary Judgment dismissing the Complaint with prejudice.

By: /S/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by electronic mail to Shawn Arnold, Esq., sarnold@arnoldlawfirmllc.com and stacey@arnoldlawfirmllc.com, this 19th day of December, 2014.

By: _____/S/_____
David L. Jordan, Assistant General Counsel