

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

INDIAN RIVER CHARTER HIGH SCHOOL, INC., a Florida Not For Profit Corporation; IMAGINE SCHOOL AT SOUTH INDIAN RIVER COUNTY, LLC, d/b/a IMAGINE SCHOOLS AT SOUTH VERO, a Florida Not For Profit Limited Liability Company; NORTH COUNTY CHARTER SCHOOL, INC., a Florida Not For Profit Corporation; SEBASTIAN CHARTER JUNIOR HIGH, INC., a Florida Not For Profit Corporation; and ST. PETER'S ACADEMY, INC., a Florida Not For Profit Corporation,

CASE NO. 31-2016-CA-000431

Plaintiffs,

v.

SCHOOL BOARD OF INDIAN RIVER COUNTY, FLORIDA,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT FOR
DECLARATORY RELIEF**

This matter came on to be heard on February 28, 2017, on the motions for summary judgment filed by both the plaintiffs and the defendant and the court having reviewed the summary judgment evidence, heard argument of counsel, and making the following findings of act and conclusions of law;

1. The plaintiffs are five charter schools operating within Indian River County and the defendant is their sponsor.
2. On May 8, 2012, the School Board approved a resolution placing the following referendum on the August 14, 2012 election ballot;

Shall the School District 0.60 ad valorem millage be continued for essential operating needs such as teachers, instruction manual, and technology in order to provide all students with high quality educational opportunities beginning July 1, 2013 and ending four (4) years later on June 30, 2017, with annual reporting to the citizenry?

This referendum was passed by the voters.

3. In duly noticed public meetings held on March 27, 2012, April 10, 2012, and May 22, 2012, the School Board discussed school district needs, uses, and allocations for the proceeds of the 2012 Referendum, if approved. During the April 10, 2012 meeting, the School Board determined that they would allocate five (5) percent of the 2012 Referendum proceeds to charter schools.

4. The parties agree that the 2012 Referendum was authorized by Florida Statutes §§1011.71(9) and 1011.73(2).

5. Following the passage of the referendum, the defendant has distributed five (5) percent of the 0.60 yearly millage to the charter schools despite the fact that the five charter schools comprise approximately 12% of the total student population of the district.

6. The dispute between the parties is whether the charter schools are entitled to a proportional share of the funds from the 2012 referendum or whether the district has the discretion to determine how much, if any, of the revenue the charter schools are entitled to receive.

7. The charter schools objected to the district's decision and when mediation between the parties failed and the Florida Division of Administrative Hearings determined it lacked jurisdiction to decide the issues raised by the dispute, the plaintiff's filed the instant complaint seeking declaratory and injunctive relief. In the alternative, they have alleged that the

district breached the respective charter school contracts. The district has asserted the affirmative defenses of the statute of limitation, laches, waiver, estoppel, and unclean hands.

8. Charter schools in Florida are governed by section 1002.33, Florida Statutes, and receive funding as set forth in section 1002.33(17). Section 1002.33(17) as well as other statutes are quoted below with different forms of emphasis supplied by the court to reflect the parties' reliance on different parts of the statute for their respective positions in this matter. The charter schools' text is underscored; the district's text is *italicized*. Section 1002.33 provides in pertinent part:

(17) Funding. – Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district. ...

...

(b) The basis for the agreement for funding students enrolled in a charter school shall be *the sum of the school district's operating funds from the Florida Education Finance Program as provided in s. 1011.62 and the General Appropriations Act, including gross state and local funds, discretionary lottery funds, and funds from the school district's current operating discretionary millage levy; divided by total funded weighted full-time equivalent students in the school district; multiplied by the weighted full-time equivalent students for the charter school*. Charter schools whose students or programs meet the eligibility criteria in law are entitled to their proportionate share of categorical program funds included in the total funds available in the *Florida Education Finance Program* by the Legislature, including transportation, the research-based reading allocation, and the Florida digital classrooms allocation. Total funding for each charter school shall be recalculated during the year to reflect the revised calculations under the *Florida Education Finance Program* by the state and the actual weighted full-time equivalent students reported by the charter school during the full-time equivalent student survey periods designated by the Commissioner of Education.

§ 1002.33(17)(b), Fla. Stat. (emphasis added).

Another part of the Florida Statutes, section 1011.71, addresses additional funding that is available to all public schools by means of discretionary levies. In addition to the “required local

effort” tax levy, school districts may levy, nonvoted and voted discretionary millage. Subsection (1) of the statute provides for a nonvoted operating discretionary millage. Subsection (2) provides that, in addition to the nonvoted operating millage of subsection (1), a school district may levy millage for capital expenses for district schools, “including charter schools at the discretion of the school board ...”. It is undisputed that the millage levied as a result of the 2012 Referendum for operational expense was levied pursuant to subsection (9) of section 1011.71, which provides in pertinent part:

In addition to the maximum millage levied under this section and the General Appropriations Act, a school district may levy, by local referendum or in a general election, additional millage for school operational purposes up to an amount that, when combined with nonvoted millage levied under this section, does not exceed the 10-mill limit established in s. 9(b), Art. VII of the State Constitution. Any such levy shall be for a maximum of 4 years and shall be counted as part of the 10-mill limit established in s. 9(b), Art. VII of the State Constitution. Millage elections conducted under the authority granted pursuant to this section are subject to s. 1011.73. *Funds generated by such additional millage do not become a part of the calculation of the Florida Education Finance Program total potential funds ...*

§ 1011.71, Fla. Stat. (emphasis added).

The plaintiffs focus on the above underscored language of sections 1002.33(17) and 1011.71(9) to support their position that the Legislature intended a charter school to receive funding equal to other public schools in the charter’s district. The parties agree that a charter school receives a pro rata share of the revenue based on the number of each district’s full-time equivalent (FTE) students as provided in section 1002.33(17)(b) but the plaintiffs assert that, under the statute, charter schools’ proportional, pro rata share includes “funds from the school district’s current operating discretionary millage levy,” i.e., the 2012 Referendum.

The district meanwhile maintains the italicized language of sections 1002.33(17) and 1011.71(9) clearly demonstrates that the Legislature intended that charter schools share equally

only in those federal, state, and local operating funds allocated by the Florida Education Finance Program (FEFP). It is the district's position that, pursuant to section 1002.33(17)(b), the only local funding available to charter schools as a matter of law would be local funding which is required by, or included in FEFP. Because the funds for operating expenses derived from the 2012 Referendum are expressly excluded from FEFP pursuant to the italicized language in section 1011.71(9) above, the funds, according to the district, are expressly denied to charter schools "as a matter of right." In the district's view, any local funding for operating expenses of the district – such as that derived from the 2012 Referendum which is not included in FEFP – is available to a charter school only at the discretion of the district.

The court finds that the language of section 1002.33(17)(b), relied upon by the district, is not restrictive in nature. The statute does not, as argued by the district, unequivocally state that the only local funds to which charter schools are entitled or in which they proportionately share are limited to those funds required by or included in the FEFP. Rather, the plain language of the statute affirmatively states that charter schools shall be funded from the sum of a school district's operating funds (plural) available in the FEFP as set forth under section 1011.62 and the General Appropriations Act, as well as the other sources named in the statute, including "funds from the school district's current operating discretionary millage levy..."

Nor does the court agree with the district's argument that section 1002.33(17)(b) operates with section 1011.71(9) to deny charter schools the local funds generated pursuant to the latter statute. Section 1011.71(9) expressly directs that funds generated for a school district's operational purposes from a discretionary millage levy shall not become part of the calculus of the FEFP. Accordingly, such funds derived from a local referendum pursuant to section 1011.71(9) would not be distributed through the FEFP's formulas to any school in a school

district. Beyond this singular prohibition, subsection (9) of the statute is silent as to how such local funds for operating purposes are to be distributed.

The 2012 Referendum funds have been and are being distributed by the district to the public schools, including charter schools, through some method other than through FEFP. The district has concluded that the 2012 Referendum funds may be distributed to the charter schools in its discretion because, according to the State Board of Education, millage levied under section 1011.71(9) for operational purposes should be treated the same as millage levied under section 1011.71(2) for capital expense. Section 1011.71(2) permits a school district to levy additional millage for capital expenses “for district schools, including charter schools at the discretion of the school board ...” However, section 1011.71(9) contains no equivalent language with respect to a levy of additional millage for operational expenses, and the court cannot add words that were not placed there by the Legislature. *State v. Little*, 104 So. 3d 1263, 1265-66 (Fla. 4th DCA 2013); *Esposito v. State*, 891 So. 2d 525, 529 (Fla. 2004). Consequently, the court finds the district’s argument for discretionary distribution pursuant to section 1011.71(9) to be unsupported by the law.

The only other statutory language that supports distribution of the 2012 Referendum funds is, as the plaintiffs maintain, contained in section 1002.33(17)(b), providing that charter schools are entitled to, in addition to a proportional, pro rata share of FEFP funds, funds generated from a school district’s current operating discretionary millage levy – the operating funds were generated by the 2012 Referendum pursuant to section 1011.71(9). Section 1002.33(17)(b) is not silent as to how those funds are to be distributed; they are to be “divided by total funded weighted full-time equivalent students in the school district; multiplied by the weighted full-time equivalent students for the charter school ...”.

9. The court finds that the plain language of the statute supports the plaintiffs' position and they are entitled to summary judgment on their claim for declaratory relief. The plaintiffs are therefore entitled to received funding from the 2012 referendum pursuant to the formula set forth in section 1002.33(17)(b) and not the 5% previously determined by the school board. The defendant's motion for summary judgment is hereby denied.

11. The court finds that the affirmative defenses raised by the defendant of statute of limitation, laches, waiver, estoppel, and unclean hands are not support by the facts or law.

10. The court hereby retains jurisdiction to determine, as to each of the individual plaintiff's, the amount of funding they should have received under the 2012 referendum and to enter an appropriate judgement the amount they are due.

Done and Ordered at Vero Beach, Indian River County, Florida, this 13th day of June, 2017.



PAUL B. KANAREK
Circuit Judge

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