

Office of School Board Attorney
JulieAnn Rico, School Board Attorney

SUBJECT: APPROVAL OF SPECIFIED ACTIONS REGARDING THE STATE BOARD OF EDUCATION'S DENIAL OF THE SCHOOL BOARD'S APPLICATION TO BE THE EXCLUSIVE AUTHORIZER OF CHARTER SCHOOLS IN MIAMI-DADE COUNTY

COMMITTEE: INSTRUCTIONAL EXCELLENCE AND COMMUNITY ENGAGEMENT

In 2006, the Florida Legislature created the Florida Schools of Excellence Commission ("FSE"), an independent, state-level charter school authorizing entity. This Commission can, not only authorize charter schools anywhere in the state, but can also approve municipalities, universities and educational consortia as co-sponsors of charter schools. However, the legislation establishing the FSE contained a provision for school districts to apply to the State Board of Education ("SBE") for "exclusive authority" to authorize charter schools within their borders for one year. On September 13, 2006, the School Board unanimously resolved to be the exclusive authorizer of charter schools in Miami-Dade County.

Based upon the application, testimony from school district officials and evidence from charter schools, the SBE was to determine whether the school district had treated charter schools in a "fair and equitable" manner over the last four years.

On Tuesday, October 16, 2007, the SBE considered applications from 29 Florida school districts to remain exclusive authorizers of charter schools within their districts. Prior to the SBE meeting, the Florida Department of Education ("DOE") review teams scored the applications based on a rubric with 50 elements that they determined meant that the school district had provided fair and equitable treatment of charter schools for the last four years. Miami-Dade achieved a score of 92%. However, DOE's Commissioner recommended to the SBE that only districts that achieved 100% should be granted exclusivity.

Despite the efforts of staff to convince the SBE that the allegations made by for-profit charter school management companies against Miami-Dade's application lacked any evidentiary basis, the SBE supported the Commissioner's recommendation to grant exclusivity only to Orange, Polk and Sarasota school districts, the districts that had received a 100% score, and denied the other 26 applications. The Final Order was signed on November 2, 2007, and is attached.

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Since that decision was made, 18 charter schools from Miami-Dade County have applied to the FSE for approval. The FSE Executive director, Rudy Rodriguez, anticipates the FSE will make approval decisions on those applications at its January meeting. Also, on October 17, 2007, the day after the decision by the SBE, the FSE approved the City of Hialeah as a co-sponsor of charter schools. The City may begin accepting applications for charter schools in August, 2008.

You may recall from previous memoranda that in December 2006, the Florida School Boards Association ("FSBA") had filed a lawsuit with nine school district plaintiffs challenging the constitutionality of the FSE since it usurps the powers and duties of elected school boards and violates Article IX, Section 4 of the Florida Constitution which says that only "school boards shall operate, control, and supervise all free public schools within the school district..." The Miami-Dade County School Board was not a party to that lawsuit. After the DOE filed a Motion to dismiss the lawsuit, the judge presiding over the case verbally indicated that he would be inclined to dismiss the case as being premature. The Court reasoned that no district had yet been denied exclusivity and, therefore, had not been harmed by the law. At that time, the school districts involved in the lawsuit voluntarily withdrew the complaint rather than receive an adverse ruling.

On November 5, 2007, attorneys and representatives of at least 15 school districts that have been denied exclusivity met with the FSBA to discuss legal options. Counsel from the School Board Attorney's office represented the District at this meeting. It was decided that because each district has a different set of facts upon which they were denied exclusivity, each district would determine whether to file an appeal of the ruling against it and include the constitutional challenge in its appeal. Should a district choose this avenue, the FSBA would seek to file an amicus brief supporting the constitutional challenge. The District has 30 days from the date of the Final Order to file a Notice of Appeal (by December 3, 2007). Some districts expressed interest in filing an action solely challenging the constitutionality of the FSE, in which case any other district could seek to file an amicus brief supporting that position. To date, several school districts have voted to appeal the denial and challenge the constitutionality of the FSE. At least ten other districts are currently considering the issue.

Should the School Board of Miami-Dade County choose to appeal the Final Order, challenge the constitutionality of the FSE, or both, the litigation can be handled by the Board Attorney's office.

Finally, exclusivity is granted only on a yearly basis. The applications for exclusivity for next year are due by March 1, 2008. If the Board wishes to pursue exclusivity for next year, it must pass a resolution at the December Board meeting in order to give staff the necessary time to prepare the application.

RECOMMENDED:

That the School Board of Miami-Dade County, Florida, take any of the following actions, as appropriate, in the matter of the State Board of Education's denial of the School Board's application for exclusive authority to authorize charter schools in Miami-Dade County:

1. Authorize the Board Attorney to:
 - a. appeal the State Board of Education's denial of exclusive authority only; or
 - b. appeal the State Board of Education's denial of exclusive authority and challenge the constitutionality of the FSE; or
 - c. challenge the constitutionality of the FSE only by filing an original action; or
 - d. file as amicus in support of any other district's challenge of the constitutionality of the FSE; and/or
2. Request that the Superintendent prepare a Resolution seeking exclusive authority for the next school year to be placed on the December School Board agenda.

STATE OF FLORIDA
STATE BOARD OF EDUCATION FILED AGENCY CLERK

IN THE MATTER OF DISTRICT SCHOOL
BOARD OF MIAMI-DADE COUNTY'S APPLICATION
TO RETAIN EXCLUSIVE AUTHORITY
_____ /

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TALLAHASSEE FLA

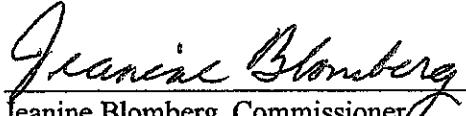
FINAL ORDER

The District School Board of Miami-Dade County filed a timely application with the State Board of Education to retain exclusive authority to authorize charter schools within its geographic boundaries from July 1, 2007, through June 30, 2008. The application included the required resolution adopted by the district school board indicating the board's intent to retain exclusive authority to authorize charter schools.

Pursuant to section 1002.335(5)(e) of the Florida Statutes, the State Board of Education is directed to grant a district school board the exclusive authority to authorize charter schools within the geographic boundaries of the school district if the State Board determines, after adequate notice, in a public hearing, and after receiving input from any charter school authorized by the district school board, that the district school board has provided fair and equitable treatment to its charter schools during the four years prior to the district school board's submission of the resolution.

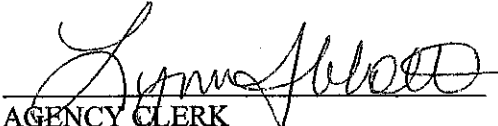
After reviewing and considering the evidence, the State Board of Education at its meeting on October 16, 2007, DENIED the District School Board of Miami-Dade County's request to retain exclusive authority to authorize charter schools in its geographic boundaries from July 1, 2007, through June 30, 2008.

CERTIFIED as the true and correct order of the State Board of Education this 2 day of November, 2007.


Jeanine Blomberg, Commissioner
Florida Department of Education
On behalf of the State Board of Education Chair

FILED with the Agency Clerk of the Department of Education this 2 day of November, 2007.

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MDCSB-ATTORNEY'S OFFICE


AGENCY CLERK

NOTICE OF RIGHTS

Any party to this order has the right to seek judicial review of this Final Order pursuant to Florida Rules of Appellate Procedure 9.030(b)(1)(c) and 9.110. The notice of appeal must be filed pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Agency Clerk, Department of Education, Suite 1514, 325 West Gaines Street, Tallahassee, Florida, 32399-0400. Additionally, a second copy of the notice of appeal, accompanied by the applicable filing fees, must be filed with the appropriate Florida District Court of Appeal. The notice must be filed within 30 days of the day this Final Order is filed with the Agency Clerk of the Department of Education. Failure to make a timely appeal will result in waiver of the right of judicial review in this matter.

Additionally, a charter school may challenge the grant of exclusive authority by filing with the Agency Clerk, Department of Education, Suite 1514, 325 West Gaines Street, Tallahassee, Florida, 32399-0400, a notice of challenge within 30 days after the day this Final Order is filed with the Agency Clerk. The notice shall be accompanied by a specific written description of the basis for the challenge. The charter school, at the time of filing notice with the Agency Clerk, shall provide a copy of the notice of challenge to the district school board that has been granted exclusive authority. Failure to timely file such a challenge will result in waiver of such right in this matter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 2 day of November, 2007, to:

Rudolph Crew, Superintendent
School District of Miami-Dade County
1450 Northeast 2nd Avenue, #912
Miami, Florida 33132

Ana Cordal, Principal
Renaissance Elementary Charter School
8360 Northwest 33rd Street
Miami, Florida 33122-1938

Agustin Barrera, Chairperson
School Board of Miami-Dade County
1450 Northeast 2nd Avenue, #912
Miami, Florida 33132

Ana Cordal, Principal
Renaissance Charter Middle School
8360 Northwest 33rd Street
Miami, Florida 33122-1938

Michael Bell, Assistant Superintendent
School District of Miami-Dade County
1450 Northeast 2nd Avenue, #912
Miami, Florida 33132

Candance Chewning, Principal
Downtown Miami Charter School
305 Northwest 3rd Avenue
Miami, Florida 33128

Kim Guilarte, Principal
Mater Academy Charter School
7700 Northwest 98th Street
Hialeah Gardens, Florida 33016

Suzette Ruiz, Principal
Somerset Academy Charter School
18491 Southwest 134th Avenue
Miami, Florida 33177

Richard Page, Vice President of Operations
Charter Schools USA
6245 North Federal Highway, 5th Floor
Ft. Lauderdale, Florida 33308

Ilena Gomez, Principal
Doral Academy Charter School
2450 Northwest 97th Avenue
Miami, Florida 33172

Jose Baca, Principal
Doral Academy Charter Middle School
2901 Northwest 112th Avenue
Miami, Florida 33172

William Hefferman, Chairman
Doctor's Charter School of Miami Shores
11301 Northwest 5th Avenue
Miami Shores, Florida 33168

Lourdes Marrero, Principal
Mater Gardens Academy
9010 Northwest 178th Lane
Miami, Florida 33108

Elenora Cuesta, Principal
Doral Performing Arts & Entertainment
Academy
11100 Northwest 27th Street
Doral, Florida 33172

Francisco Jimenez, Principal
Doral Academy Charter High School
11100 NW 27th Street
Doral, Florida 33172

Victoria Larrauri, Principal
Pinecrest Academy Charter School
South Campus
15130 Southwest 80th Street
Miami, Florida 33193

Victoriano Rodriguez, Principal
International Studies Charter High School
396 Alhambra Circle, 4th Floor
Coral Gables, Florida 33134

Fernando Zulueta, President
Academica Schools
6255 Bird Road
Miami, Florida 33155

Judith Marty, Principal
Mater Academy Charter High School
7901 Northwest 103rd Street
Hialeah Gardens, Florida 33016

Kenneth Feria, Principal
Mater Academy Charter Middle School
7901 Northwest 103rd Street
Hialeah Gardens, Florida 33016

Nina Cortina, Principal
Miami Children's Museum Charter School
980 McArthur Causeway
Miami, Florida 33132

Alina Lopez, Principal
Theodore and Thelma Gibson Charter School
450 Southwest 4th Street
Miami, Florida 33130

Ed O'Dell,
Florida Consortium of Public Charter Schools
1607 Village Square Boulevard, Suite 7
Tallahassee, Florida 32309

Juliet King, Principal
Coral Reef Montessori Academy
10853 Southwest 216th Street
Culter Bay, Florida 33170

Beatriz Riera, Principal
Mater Academy East
450 Southwest 4th Street
Miami, Florida 33130



AGENCY CLERK