

Office of Superintendent of Schools
Board Meeting of January 14, 2009

January 12, 2009

Office of School Board Attorney
Luis M. Garcia, Interim School Board Attorney

**SUBJECT: DENIAL OF EXCEL ACADEMY MIDDLE CHARTER SCHOOL'S
PETITION FOR HEARING INVOLVING DISPUTED ISSUES OF
MATERIAL FACT AND DISMISSAL OF MOTION TO DISMISS OR
STRIKE**

Sections 1002.33(6)(c) and 1002.33(8), Florida Statutes (2008), provide the appellate procedures for a sponsor's immediate termination of a charter school contract. Upon receiving notice of the School Board's termination, the charter school may file an appeal with the State Board of Education ("SBE"). The appeal is initially referred to the Charter School Appeals Commission ("Commission") which schedules a hearing on the appeal. Both the charter school and the school district are permitted to submit written documentation and arguments to the Commission. Following presentations by both parties at the hearing, the Commission makes a recommendation to the SBE to either approve or deny the charter school appeal. That recommendation is then placed on the SBE's agenda for its next regular meeting. Both parties are given the opportunity to speak to the Commission's recommendation at the SBE meeting. The SBE makes a final decision that can then be appealed to the appropriate district appellate court. The statute specifically states that "[t]he decision of the State Board of Education is not subject to the provisions of the Administrative Procedures Act, chapter 120." *See* Section 1002.33(6)(c).

Additionally, section 1002.33(8) provides that when a charter is terminated immediately, the sponsor shall notify the charter school's governing body in writing and "shall clearly identify the specific issues that resulted in the immediate termination and provide evidence of prior notification of issues resulting in the immediate termination when appropriate."

On November 10 and November 13, 2008, the Superintendent delivered letters to the Excel Academy Charter School governing board stating that he would be recommending immediate termination of the charter school contract at the Board's November 18, 2008, regular meeting and detailing the reasons for the recommendation. The letter also provided the procedures for speaking at the School Board meeting and included a sign-up sheet. At its November 18, 2008, regular meeting, after hearing multiple speakers on the item, the School Board voted to

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immediately terminate its contract for good cause with Excel Academy, Inc., for the operation of Excel Academy Middle Charter School, based on numerous academic and financial violations of the contract. Pursuant to that decision, on November 26, 2008, the Superintendent delivered to the Excel Academy Middle Charter School governing board a Notice of Termination letter detailing the reasons for the termination, identifying the incidents of prior notification to the charter school and informing the school of the appeal procedures provided in Sections 1002.33(6)(c) and 1002.33(8), Florida Statutes.

On December 23, 2008, Excel Academy, Inc., on behalf of Excel Academy Middle Charter School, filed with the School Board clerk a Petition for Hearing Involving Disputed Issues of Material Facts, alleging that it is entitled to an administrative hearing on the termination before the Division of Administrative Hearings ("DOAH"), pursuant to chapter 120, Florida Statutes, and a "Motion to Dismiss or Strike" the termination on the basis that the Notice of Termination letter is legally insufficient. The school additionally filed with the clerk of the State Board of Education an "Appeal, Motion for Abatement and Motion to Dismiss," repeating the same issues raised in the documents filed with the School Board.

There are no provisions in Florida statutes affording a charter school with an administrative hearing on an immediate termination. Additionally, the November 26, 2008 Notice of Termination letter sent to the school was legally sufficient. Furthermore, any issues related to the sufficiency of the notice are more appropriately decided by the Commission and the SBE. Since the charter school has filed an appeal of the termination with the SBE as provided in the statute, the charter school's Petition for Hearing Involving Disputed Issues of Material Facts should be denied and its Motion to Dismiss or Strike should be dismissed.

The purpose of this item is to recommend a final disposition of these requests. A proposed Final Order will be submitted to the Board under separate cover recommending denial of the Petition because the School Board has no jurisdiction to afford the requested relief (an administrative hearing) and that the motion should be dismissed because the Notice of Termination letter was legally sufficient and the issue is more appropriately addressed by the Commission and the SBE.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, enter a Final Order denying Excel Academy Middle Charter School's Petition for Hearing Involving Disputed Issues of Material Facts and Dismissing its Motion to Dismiss or Strike the termination.