

Freddie Woodson, Deputy Superintendent  
District/School Operations

**SUBJECT: REQUEST SCHOOL BOARD APPROVAL OF THE TERMINATION OF THE CHARTER SCHOOL CONTRACTUAL AGREEMENT WITH THE EXCEL ACADEMY, INC., ON BEHALF OF EXCEL ACADEMY CHARTER SCHOOL, NORTH**

**COMMITTEE: INSTRUCTIONAL EXCELLENCE AND COMMUNITY ENGAGEMENT**

**LINK TO STRATEGIC FRAMEWORK: STUDENT, PARENT, AND COMMUNITY ENGAGEMENT**

Section 1002.33(8), Florida Statutes, and the contract between the charter school and the School Board, provide guidelines for the termination of a charter school contract and for the dissolution of a charter school.

### History & Overview

The initial charter school contractual agreement for The EXcel Academy, Inc., on behalf of EXcel Academy Charter School, North (EXcel North or School), was approved by The School Board of Miami-Dade County, Florida (School Board), on July 12, 2006, for a term of five years, commencing with the 2007-2008 school year. The School Board subsequently approved a contract amendment to defer the opening of the school to the 2008-2009 school year and to change the School's location to 780 Fisherman Street, 2<sup>nd</sup> Floor, Opa-Locka, Florida 33054.

Under the current contractual agreement, EXcel North is authorized to serve a maximum of 400 students in kindergarten through grade five, through June 30, 2012. EXcel North currently serves approximately 108 students in kindergarten through grade five.

### Good Cause Basis for Immediate Termination of Contract

Section 1002.33(8)(d), Florida Statutes, provides that a sponsor may terminate a charter school for any of the following: (1) failure to meet the requirements for student performance stated in the charter, (2) failure to meet generally accepted standards of fiscal management, (3) violation of law, and/or (4) other good cause shown. Section 1002.33(8)(d), Florida Statutes, also provides that a charter may be terminated immediately "if the sponsor determines that good cause has been shown or if the health, safety, or welfare of the students is threatened." Here, the School Board may immediately terminate this charter school contractual agreement with EXcel North, for all of these reasons including the following good cause:

**C-31**

**A. Fraud or Material Misrepresentation**

The governing board of The EXcel Academy, Inc. incorporated a new legal entity, EXcel Academy Charter School North, Inc., to operate the School for the sole purpose of avoiding liens, claims and obligations incurred by The EXcel Academy, Inc. This was an impermissible transfer of the contract to an entity not approved by the Sponsor and an illegal unilateral modification of the contract. (Part IX, section (E) of the Contract prohibits the assignment of the charter contract without the Sponsor's approval. Additionally, Fla. Stat. §1002.33(7)(c) and Part IX, Section (B) of the Contract prohibit modification of the charter without the Sponsor's approval.)

**B. Poor Academic Performance**

For the 2008-2009 school year, EXcel North was ineligible to be graded under Florida's System of School Improvement and Accountability as it did not meet the threshold of serving at least 30 students with valid FCAT scores in Reading and Mathematics, pursuant to State Board of Education Rule 6A-1.0998. The School did not meet AYP. The following table delineates recorded student achievement levels in Reading and Mathematics on the FCAT, Level 1 and Level 2, for the first year of operation:

<b>Spring 2009</b>		
<b>Percentage of Students Performing at FCAT Level 1 and Level 2</b>		
<b>Grade Level</b>	<b>FCAT Reading SSS</b>	<b>FCAT Mathematics SSS</b>
3	89%	89%
4	100%	50%
5	71%	86%

For the 2009-2010 school year, based on the results of the District's 2010 Winter Interim Assessment, the following table delineates current student achievement levels for those students performing below state mastery levels.

<b>Winter 2010</b>		
<b>Percentage of Students Performing at FCAT Level 1 and Level 2</b>		
<b>Grade Level</b>	<b>Interim Assessment Reading</b>	<b>Interim Assessment Mathematics</b>
3	61%	75%
4	76%	100%
5	92%	100%

While a few of these numbers show minimal improvement, the levels of student performance remain far below acceptable standards. The School has undergone two site visits by staff from the Florida Department of Education and twelve (12) visits from District staff since the school opened in the 2008-2009 school year. In

addition, District staff has met with various members of the School's governing board and principal on more than ten occasions to discuss issues and provide assistance with the school's governance, financial accountability, curriculum and daily school operations. Four instructional reviews indicate that EXcel North has not made any significant progress in implementing corrective action plans required by the District or in meeting any of the applicable additional requirements necessary to achieve the academic goals as stated in its approved charter, the School Improvement Plan, and state academic standards.

### **C. Poor Financial Performance**

FY 2009: the School's audited financial statements revealed a net asset fund balance of \$34,511 and a cash balance of \$14,306. The independent auditors issued a qualified opinion on the financial statements for the year ended June 30, 2009, based on their inability to examine evidence pertaining to \$348,644 of General Fund Expenditures. Although the Management Company provided allocations for questionable expenses, there was still insufficient information to determine the basis of the allocations and if the allocations were consistently applied. Also cited in the audit was a lack of internal controls and proper recordkeeping.

FY 2010: As of February 28, 2010, the financial condition of the School has improved solely because of the award of a non-recurring federal grant, Public Charter School Grant Implementation, in the amount of \$200,000, which is earmarked for specific expenditures. Inability of the school to remain a going concern is likely because when the grant funds have been fully expended, the School's revenue will rely solely on FEFP. Based on next year's budget revenue projections, the current level of expenditures, and current level of enrollment, the School is vulnerable to financial instability that will result in a deteriorating financial condition or the determination of financial emergency.

A formal review of the School's financials by District staff February 26, 2010, determined that there is no evidence of improvement in the internal controls and record keeping as required by Generally Accepted Accounting Principles (GAAP). Expenditures were not classified correctly using FLDOE Redbook standards making it extremely difficult to differentiate between grant expenses and general fund expenses. It was also determined that a former governing board chairperson had made purchases without governing board approval. These purchases included office furniture with an estimated value of \$4,000. This same former governing board chairperson, without governing board approval, also entered into an agreement with the landlord of the school's facility to lease additional office space, thereby increasing monthly lease expense by \$5,000/month.

### **D. Instability of the Governing Board and School Leader**

Both the governing board and principal have failed to provide guidance for the implementation of the instructional programs and oversight in the day to day operations of the school as outlined in the contractual agreement. Specifically, since the inception of the school in the 2008-2009 school year, the School has been in a constant state of flux as evidenced by the following:

- Three changes of principal;
- A lack of stability within the governing board (not one member of the founding governing board remains);
- The governing board minutes reflect minimal to non-existent parental input and/or support;
- An attempt by a rogue governing board to assume operation of the School, control of the School's finances, and access to the School's bank account;
- The governing board leadership has changed three times since the inception of the school; and,
- An inability of the current governing board to seat more than two active members who have successfully passed the background screening process pursuant to Fla. Stat. §1002.33(12)(g); and,
- An inability of the governing board to maintain the minimal number of members as required by the governing board by-laws.

#### **E. Violation of Law or Breach of Charter School Contract**

Pursuant to Part IX, Section (E), non-compliance with any of the terms and conditions of this Contract shall constitute good cause for termination. Listed below are breaches in the charter school contractual agreement or violations of the Florida Statute.

- (1) Failure to implement and follow the District's Acceptable Use Policy relative to the use of employee and student use of technology. [Part I, Section I]
- (2) Failure to implement a reading curriculum that is consistent with effective teaching strategies grounded in scientifically-based reading research. [Part II, Section D(1)]
- (3) Substantially inadequate student performance. [Part II, Section D (2)]
- (4) The School or its representatives are found to have committed a material fraud on the Sponsor or made a material misrepresentation, either willfully or recklessly, in the application. [Part II, Section D (5)]
- (5) Failure to implement a Corrective Action Plan required by the Sponsor. [Part II, Section D (6)]
- (6) Failure to make progress toward the stated mission of the School pursuant to the charter school application and this contract. [Part II, Section D (7)]
- (7) Failure to deliver the instructional programs or curricula identified in the application. [Part II, Section D (8)]

- (8) Failure to have an acceptable annual audit and timely submit financial reports or other reports required by Fla. Stat. §1002.33(9) or by this Contract. [Part II, Section D (12)]
- (9) Failure to meet Generally Accepted Accounting Principles (GAAP). [Part II, Section D (13)]
- (10) Failure to manage public funds in a prudent or legal manner. [Part II, Section D (14)]
- (11) Failure to timely submit quarterly financial reports. [Part II, Section D (18)(a)]
- (12) Failure to comply with the timely submission of the annual report to the Sponsor. [Part II, Section D (18)(d)]
- (13) Failure to submit the School Improvement Plan according to the guidelines provided by Miami-Dade County Public Schools by the date according to State and/or the Sponsor's requirements. [Part II, Section D (18)(e)]
- (14) Failure to provide Special Education (SPED) students and English Language Learners (ELL) with programs and services in accordance with federal, state, and local policies. [Part II, Section D (18)(k)]
- (15) Failure to submit benchmarks in a timely manner as identified in the Charter School Compliance Monitoring System (CSCMS) as delineated in the chart below. [Part III, Section AA, BB]

<b>Record of Required Benchmark Submission to Date (2008-09, 2009-10)</b>	
Total Benchmarks Due	105
Benchmarks Submitted on Time	48
Benchmarks Submitted Late	21
Benchmarks Submitted Missing Documentation	9
Did Not Comply with Submission of Benchmark	9
Benchmarks Exempt from Submission	18

- (16) Failure to maintain the minimal number of governing board members. [Part VI, Section A]
- (17) Failure to fingerprint board members appointed to the governing board after the approval of the School's Contract within thirty (30) days of their appointment. [Part VI, Section G]
- (18) Failure to convene an Educational Excellence School Advisory Council (EESAC) consistent with Fla. Stat. § 1001.452 to facilitate achievement of the mission of the school, and to ensure that the School meets the needs of the children and community it is developed to serve. [Part VI, Section I]
- (19) Failure to conduct employee screening as required by Fla. Stat. §§ 1012.32 (2)(a), 1012.465 and 435.04 and School Board Rule 6Gx13- 4-c 1.021 and 6Gx13- 4-1.05. [Part VIII, Section A (10)(11)]
- (20) Violation of Chapter 6B- 1.001, Code of Ethics of the Education Profession in Florida, and Chapter 6B-1.006, Principals of Professional Conduct. [Section VIII, Section A(13)]
- (21) Modification of the charter without the Sponsor's approval. [Fla. Stat. §1002.33(7)(c) and Part IX, Section B]

- (22) Assignment of charter contract from EXcel Academy, Inc. to EXcel Academy Charter School North, Inc., without the Sponsor's approval. [Part IX, Section E]
- (23) Failure to comply with maximum class size requirements, pursuant to Fla. Stat. §1003.03 and the Florida Constitution Article IX, §§ (1)(2)(3).
- (24) Inadequate materials, equipment, and training to equip students and instructional staff with the tools necessary to achieve the School's mission, objectives and the guiding principles of charter schools, pursuant to Fla. Stat. § 1002.33(2) and to support approved curriculum and academic plan. Such deficiencies include, but are not limited to:
  - a. Lack of lesson plans for all levels of instruction;
  - b. Failure to align existing lesson plans with the Sunshine State Standards;
  - c. Insufficient and/or inadequate textbooks and instructional materials; and,
  - d. Insufficient remedial instruction provided to students performing below grade level.

**F. Inability to Cure and/or Make Significant Progress Towards Improvement**

Section 1002.33(20)(a), Florida Statutes, details the services that districts must provide charter schools as a function of the administrative fee retained by the District. The District not only complied with the minimum requirements, but also exceeded the level of support afforded based on the performance based needs of the School. District staff has assisted EXcel Academy Charter School, North, on numerous occasions, with its issues/concerns and provided technical assistance by telephone or in person. Summarized below is the frequency of meetings and/or conferences at which technical assistance was provided:

<u>Type of Technical Assistance</u>	<u>Frequency (Minimally)</u>	
General Operations/Education	Conference calls	68
	Meetings	39
	Emails	190
Financial/Funding and Governance	Conference calls	17
	Meetings	7
	Emails	20

**Additional Letters of Non-Compliance**

Four letters of non-compliance were issued to EXcel North on the following dates: October 3, 2008, October 23, 2008, November 3, 2009, and February 25, 2010. Issues of non-compliance included one or more of the following:

- Action Plan for Compliance Review from School Year 2008-2009;
- Emergency Contact Information (2009 and 2010);
- Conflict Resolution Contact Person (2009 and 2010);
- Governing Board Members (2010);

- Certificate of Occupancy, Certificate of Use, Occupational License (2010);
- Parent/Student Handbook (2009);
- Transportation (2009);
- School Calendar (2009);
- Management Company/Educational Service Provider (2010);
- Annual Budget (2009 and 2010);
- Contract Verifying Charter School Staff not M-DCPS Employees (2009 and 2010);
- Application Accountability Report (2009 and 2010);
- Emergency Evacuation (2009 and 2010);
- Child Study Team (2009 and 2010);
- School Improvement Plan (SIP) (2009 and 2010);
- Safety and Emergency Plan and Staff Training (2010);
- Emergency Evacuation Drill (2010);
- Current Emergency Contact Information (2009 and 2010);
- Payroll Roster for July, August, and September (2008 and 2009);
- First Quarterly Financial Statement (2009 and 2010);
- Property Inventory (2009 and 2010);
- Audited Financial Statements(2009 and 2010);
- Governing Board Minutes (2010);
- ACES DOE Survey (2009); and,
- Contractual requirements relative to employee screening.

### **Compliance Reviews**

On November 17, 2008, the Florida Department of Education conducted a Curriculum Instructional Review and deficiencies were noted in the following areas: Reading, Curriculum and Instruction, and Assessment. Specific concerns included a lack of educational materials and resources, ineffective teaching methodologies, lack of data to drive instruction, lack of sufficient lesson plans and administrative review of plans, lack of reading and writing across the curriculum, and a lack of leadership. The office of Charter School Operations (CSO) conducted an annual compliance review on May 5, 2009, and February 23-24, 2010, which revealed significant deficiencies in the following areas: Reading, Student Services, Curriculum and Instruction, Assessment, Personnel, Governance, Facilities, Transportation, Finance, and Special Education. The Corrective Action Plan, required for submission to CSO, was submitted late and missing information. To date, there has been no significant improvement on the deficiencies noted in the 2008-09 Curriculum and Compliance Review. Many of the deficiencies noted in the 2008-09 Curriculum Review, have also been noted as deficiencies in the 2009-10 Curriculum and Compliance Review. Because of the level of deficiencies, District administrators have conducted countless meetings to review the results, offer corrective action guidance, and various other technical assistance and resources including a District-funded Reading Coach. To date, there remains a significant lack of progress.

**Effect of Immediate Termination**

Under the statutory and contractual provisions governing immediate termination, the School Board must assume the operation of the School. The School Board may not assume any of the debts of the School.

EXcel North's governing board and principal were noticed on May 5, 2010, of the intent to recommend immediate termination to the School Board. Should the Board approve this recommendation, the governing board may, within 30 days after receiving the School Board's decision to terminate the charter school contractual agreement, appeal the decision pursuant to the procedure established in section 1002.33(6)(f), Florida Statutes (2008). Should the School not appeal or should an appeal be unsuccessful, District staff will work with the parents and/or guardians of the School's students to minimize the impact of this situation by transitioning the students, at the end of this academic year, into other quality educational programs provided by M-DCPS.

Copies of the notice of termination will be transmitted to the School Board Members under separate cover and will be available for inspection by the public in the Office of Board Recording Secretary, Room 924, and in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

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**RECOMMENDED:** That The School Board of Miami-Dade County, Florida approve the immediate termination for good cause of the charter school contractual agreement with The EXcel Academy, Inc., on behalf of EXcel Academy Charter School, North.

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