

Dr. Lawrence Feldman, Board Vice-Chair

**SUBJECT: SCHOOL BOARD ARTICLE IX AUTHORITY LEGAL
CHALLENGE**

**COMMITTEE: INNOVATION, EFFICIENCY & GOVERNMENTAL
RELATIONS**

**LINK TO STRATEGIC
FRAMEWORK: SCHOOL/DISTRICT LEADERSHIP**

Article IX, Section 4(b), Florida Constitution provides that "the school board shall operate, control and supervise all free public schools within the school district." However, since charter schools are governed by non-elected non-profit entities, they are not subject to the control of the elected school board in the same manner as other public schools. The school board does exert some control over charter schools through a charter performance contract that is negotiated with the non-profit charter corporation. See Section 1002.33(6).

F.S. Section 1002.33(7), F.S., requires that these contracts follow basic contract parameters addressing financial and academic performance expectations. The parties negotiate many other terms of the contract that are specific to the school district, the type of charter, local zoning requirements, contract implementation, and many other issues. In a 2010 appellate challenge to the state's authority to overturn school board denial of a charter application, the Court specifically stated that the school board's constitutional authority to operate all public schools was preserved because the board still had the right to negotiate a performance contract with the charter school. See *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186 (Fla. 5th DCA 2008).

The 2013 Florida Legislature amended the statute, however, to mandate that school districts and charter schools use a "standard contract" developed by the Florida Department of Education. This "standard charter contract", developed by the state, which every school district would be required to use, could leave little control by district over charter schools and may violate Article IX(4) of the Florida Constitution.

Article IX, Section 1(a), Florida Constitution, also requires that the state make adequate provision for a "uniform, efficient, safe, secure, and high quality system of free public schools." The more differences there are in treatment between charter schools and other public schools, such as the different application of the class-size amendment to charter schools, the closer they may be to forming a separate, unequal school system that could violate this Constitutional provision. See also *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006) (public vouchers for private schools fostered "plural, non-uniform systems of education in direct violation of the constitutional mandate for a uniform system of free public schools.").

The standard contract mandate and related provisions that treat charters differently may impermissibly encroach on the school board's constitutional authority to supervise and operate all public schools and may also violate the constitutional uniformity provision. The member school boards of the Greater Florida Consortium of School Boards, comprised of eleven (11) South Florida school boards including Miami-Dade, decided at the August 2013 Consortium meeting to pursue the possibility of seeking legal relief against the encroachment of school board constitutional authority by discussing the issue with their boards. Several other school boards are currently considering legal action to challenge this mandate as well as other provisions of the charter school law that may be unconstitutional.

This item requests authority for the School Board Attorney to explore all possible legal challenges against the encroachment of school board constitutional authority and to the standard charter contract mandate and related statutory provisions, including but not limited to, joining with other plaintiffs, school boards and/or any other statewide organizations such as the Florida School Boards Associations or Florida Association of District School Superintendents, and provide a report to the Board.

**ACTION PROPOSED BY
DR. LAWRENCE FELDMAN:**

That The School Board of Miami-County, Florida, authorize the School Board Attorney to explore all possible legal challenges against the encroachment of school board constitutional authority and to the standard charter contract mandate and related statutory provisions, including but not limited to, joining with other plaintiffs, school boards and/or any other statewide organizations such as the Florida School Boards Associations or Florida Association of District School Superintendents, and provide a report to the Board.