

**IN THE SUPREME COURT OF FLORIDA  
CASE NO.: SC07-2402**

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SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA,

Petitioner,

vs.

SURVIVORS CHARTER SCHOOLS, INC.,

Respondent.

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On Discretionary Review from a Decision of the  
Fourth District Court of Appeal

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**BRIEF OF THE FLORIDA STATE BOARD OF EDUCATION  
AS AMICUS CURIAE IN SUPPORT OF PETITIONER**

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## **INTEREST OF THE AMICUS CURIAE**

The Florida State Board of Education (State Board) respectfully submits this Brief as amicus curiae in support of the Petitioner, School Board of Palm Beach County, Florida (School Board).

The State Board has two important interests in this matter. The first relates to its constitutional role and responsibility to enforce statewide education goals and policies and to promote the welfare of students and schools. *See* Art. IX, § 2, Fla. Const.; § 1001.02(2)(r), Fla. Stat.; § 1001.03(8), Fla. Stat. The State Board seeks to preserve the section 1002.33(8)(d), Florida Statutes (2005), authority of school boards statewide to “immediately” terminate the charter of a charter school operator when urgent circumstances threaten these schools or its schoolchildren.

The State Board’s second interest is to effectuate its own final action in this case. Respondent’s appeal arose from the State Board’s final action affirming the immediate termination of two of its charters.<sup>1</sup> The Fourth District Court reversed the State Board’s final action. Thus, this brief is submitted in support of the School Board’s request for reinstatement of the State Board’s final action.

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<sup>1</sup> The named appellee was the School Board of Palm Beach County, Florida (School Board) – who maintained the charter contracts with Respondent Survivors Charter Schools Inc. and made the initial immediate termination decision.

## **SUMMARY OF ARGUMENT**

The Fourth District Court's underlying decision should be reversed because it misconstrues § 1002.33(8)(d), Florida Statutes (2005), to require Administrative Procedures Act-based notice and procedural requirements.

By requiring 14 days prior notice and other formal procedures, the decision strips the explicit statutory power of school boards to "immediately" terminate a charter and gain control of a charter school in urgent situations. Because this conclusion clearly contradicts the statute's intent to allow "immediate" action to protect charter schoolchildren and schools, it must be reversed.

Moreover, in engrafting contrary APA-based procedures, the district court overlooked section 1002.33(8)(d)'s own procedures. Section 1002.33(8)(d) implicitly allows for school board-level process either before or after an immediate termination decision and prescribes an extensive post-termination State Board review process with a right of appeal to a district court. The district court's decision, however, mandates rigid and extended pre-termination process that requires education officials to stand by idly for weeks while urgencies persist in a charter school.

Finally, the district court reversed the State Board's final action on impermissible grounds. Final action by the State Board with respect to charter

schools “is not subject to the provisions of the Administrative Procedures Act, chapter 120.” § 1002.33(6)(c), Fla. Stat. The district court reversed on exactly these grounds, applying APA-based procedures to the School Board’s underlying notice of immediate termination. But, because the State Board’s final action gave rise to the appeal, the APA cannot be applied to reverse its final action.

For these reasons, the State Board as amicus curiae respectfully requests that this Court reverse the district court’s decision and reinstate the State Board’s final orders or remand to the district court for further consideration in accordance with this Court’s opinion.

## **STANDARD OF REVIEW**

The legal issue presented is subject to *de novo* review. D'Angelo v. Fitzmaurice, 863 So. 2d 311, 314 (Fla. 2003). As the enforcing agency, the State Board's interpretation of section 1002.33(8)(d) is entitled to "great deference and should not be overturned unless clearly erroneous or in conflict with the legislative intent of the statute." Donato v. Am. Tel. & Tel. Co., 767 So.2d 1146, 1153 (Fla. 2000).

## **ARGUMENT**

In authorizing public charter schools and their operation by non-governmental entities in section 1002.33, Florida Statutes (2005), the legislature gives district school boards substantial authority to protect schoolchildren and charter schools from urgent risks of harm. Section 1002.33(8)(d) establishes the school boards' most significant enforcement tool; they may "immediately" terminate a charter and gain control of a school in urgent circumstances.

### **I. The District Court Erred by Engrafting APA-based Procedures into the Immediate Termination Provision of section 1002.33(8)(d).**

The Fourth District's decision to engraft a 14-day prior notice and pre-termination procedures requirement erroneously eliminates education officials' specific statutory authority to act quickly to protect against urgent threats of harm



in charter schools:

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. The sponsor shall notify in writing the charter school's governing body, the charter school principal, and the department if a charter is immediately terminated. The sponsor 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. The school district in which the charter school is located shall assume operation of the school under these circumstances. The charter school's governing board may, within 30 days after receiving the sponsor's decision to terminate the charter, appeal the decision pursuant to the procedure established in subsection (6).

§ 1002.33(8)(d), Fla. Stat. (emphasis added). Because the procedures it mandates contradict the statute, the district court's decision should be reversed.

**A. The APA-based requirements contravene the legislature's explicit intention to give "immediate" termination authority.**

The district court's opinion displaces the school boards' power to terminate a charter immediately under section 1002.33(8)(d). It requires school boards to provide a lengthy prior notice period and proceedings consistent with the

Administrative Procedures Act, chapter 120, Florida Statutes (APA):

immediate termination can only mean termination following a determination of good cause subject to the fourteen-day notice requirement and accompanying APA procedures ... [T]ermination following a determination of good cause can only be so immediate as to afford due process, and due process can only be afforded with fourteen days' notice and a hearing under the APA.

Survivors Charter Sch. Inc. v. Sch. Bd. of Palm Beach County, 968 So. 2d 39, 45 (Fla. 4th DCA 2007). Because this construction of the statute undermines the legislature’s grant of power to school boards to address urgent charter school threats “immediately,” the court’s decision should be reversed.

The insertion of these APA-based procedures by the district court eliminates section 1002.33(8)(d)’s defining characteristic: the ability to terminate a charter immediately; or “without the intervention of another object, cause, or agency ... occurring, acting, or accomplished without the loss of time.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1129 (1981); Donato, 767 So.2d at 1151 (terms must be construed according to their plain and obvious meaning). Nowhere in section 1002.33(8)(d)’s repeated references to “immediately” and “immediate” does it contemplate a 14-day prior notice period or formal APA-based pre-termination proceedings as the district court prescribes. Certainly, the legislature knew how to define an extensive pre-termination notice and hearing requirement; it did so in (8)(a)-(c)’s provisions governing non-immediate terminations. But, instead, in (8)(d) it chose to give school boards the power to terminate a charter “immediately” and to specify only procedures that must follow such a decision. No lawful inference can thus be drawn that the legislature intended the insertion of pre-termination APA procedures into section 1002.33(8)(d). *See* Prewitt Mgmt.

Corp. v. Nikolitis, 795 So. 2d 1001, 1005 (Fla. 4th DCA 2001) (noting the rule of construction that “when a law expressly describes a particular situation where something should apply, an inference must be drawn that what is not included by specific reference was intended to be omitted or excluded.”).

Moreover, other parts of the subsection leave little doubt as to the legislature’s intention to allow termination without extensive preliminary process. Notably, the statute does not even require *prior* notice of the issues that cause a charter to be terminated. § 1002.33(8)(d) (stating only that a school board “shall clearly identify the specific issues that resultedin the immediate termination”) (emphasis added). Also, the statute expects school districts to assume right away the responsibility of operating an affected school. Id.; *see also* Charter School Appeal Commission Guidelines at 4 (adopted Aug. 2003), *available at* [http://www.fldoe.org/board/meetings/Aug\\_19\\_03/CharterSchoolAppealGuidelines.pdf](http://www.fldoe.org/board/meetings/Aug_19_03/CharterSchoolAppealGuidelines.pdf) (last visited Apr. 22, 2008). (“In the case of an Order for Immediate Termination, the District is charged by statute to ‘assume operation’ of the school *while the due process requirements are being satisfied.*”) (emphasis added). Thus, the statute fully supports the State Board’s position that immediate termination may occur without extensive APA pre-termination procedures. *See Donato*, 767 So.2d at 1153 (noting that an agency’s interpretation of a statute it enforces is

entitled to “great deference and should not be overturned unless clearly erroneous or in conflict with the legislative intent of the statute”).

These statutory elements underscore the legislature’s intention that school boards not stand idle while an urgent situation threatens a charter school and its schoolchildren. Again, this provision applies only in extreme circumstances involving a substantial threat to the school or its schoolchildren.<sup>2</sup> Even a few weeks delay – as is required under the district court’s APA-based procedural scheme – stands to defeat the statute’s purpose to empower school boards to “immediately” address an exigent situation. *See Tampa-Hillsborough County Expressway Auth. v. K.E. Morris Alignment Serv. Inc.*, 444 So. 2d 926, 929 (Fla. 1983) (requiring that statutes be construed “in light of the manifest purpose to be achieved by the legislation”).

Because the district court’s adoption of APA-based notice and hearing

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<sup>2</sup> In this case, the School Board found good cause to immediately terminate Survivors’ charters due to an audit report that found gross misuse of public education funds for the personal benefit of school leaders, including: a \$1691 per month BMW lease and other sizable auto allowances, unauthorized personal credit card purchases and ATM withdrawals (including over \$6000 by a principal’s son), and a 10-year contract for season tickets to professional football games. (R. 252-72, 786-97; Pet. Init. Br. at 1) Under such circumstances, affording additional time for pre-termination notice and procedures might put additional state education funds at risk and further penalize schoolchildren for whose educational welfare these funds were appropriated.

procedures contradicts section 1002.33(8)(d)'s provision for "immediate" termination, it should be reversed.

**B. The District Court overlooked the procedural requirements already present in the immediate termination provision.**

The district court apparently engrafted new APA-based procedures into the immediate termination statute because it found that "[t]he statute does not discuss any requirements or timelines for notice or hearings in cases of immediate charter termination." Survivors, 968 So. 2d at 44. But, the statute clearly contains a review process that is fully consistent with its purpose to facilitate immediate termination.

While statutes involving agency decision-making must be construed, "whenever possible *in pari materia* with ... the Administrative Procedures Act," section 1002.33(8)(d) is incompatible with those procedures mandated by the district court. *See* Gopman v. Dep't of Educ., 908 So.2d 1118, 1120 (Fla. 1st DCA 2005)(citation omitted). Therefore, section 1002.33(8)(d)'s own procedures must control over the contrary APA-based ones cited by the district court. Stoletz v. State, 875 So. 2d 572, 575 (Fla. 2004) ("[A] specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms."); Caloosa Property Owners Assoc., Inc. v. Palm Beach County Bd. of County Comm'rs, 429 So. 2d 1260, 1266 (Fla. 1st DCA 1983) (rejecting the application of default APA-based requirements where a statutory

regime provides for something different); *cf.* Big Bend Hospice, Inc. v. Agency for Health Care Admin., 904 So.2d 610, 611 (Fla. 1st DCA 2005) (applying chapter 120 because the statute’s standard of review was “simply a restatement of the standard of review set forth in section 120.68(7)”).

Before detailing section 1002.33(8)(d)’s procedures, however, it is notable that the School Board here provided Survivors with pre-termination notice and a hearing in an expedited proceeding. (R. 340-357); Survivors, 968 So. 2d at 41 (suggesting that the School Board’s hearing was properly noticed). While the statute does not prescribe pre-termination process at the district level, school boards should provide it to charter operators to facilitate fairness and informed decisionmaking so long as it does not interfere with their duty and ability to gain control over an urgent situation at hand. Here, the School Board provided such a pre-termination hearing; it gave Survivors notice and a hearing in a manner consistent with the statute and their charter agreement. Where pre-termination processes are not possible, a school board may give post-termination process.<sup>3</sup>

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<sup>3</sup> Due process considerations do *not* prohibit an agency from revoking a party’s interest before a hearing is given if circumstances so demand. Milton v. State Dept. of Health and Rehab. Serv. Inc., 542 So. 2d 1039 (Fla. 1st DCA 1989); Barry v. Barchi, 443 U.S. 55 (1979); § 120.569(2)(n), Fla. Stat. (allowing an agency head to issue an immediate final order if there is an immediate danger to the public health, safety, or welfare, which is “appealable or enjoicable from the date rendered.”). Evidently, Survivors did not request a post-termination hearing by the School

Either route comports with the statute’s purpose to give school boards immediate termination discretion while honoring procedural rights at the district level and then at the state level via an appeal to the State Board.

Once a school board makes an immediate termination decision, the statute affords an explicit post-termination appeal process. *See* §1002.33(6)(c) & (8)(d), Fla. Stat. Charter operators may seek State Board review “within 30 days ... pursuant to the procedure established in [section 1002.33] subsection (6).” §1002.33(8)(d), Fla. Stat. The State Board must resolve the case within “90 calendar days after an appeal is filed.” § 1002.33(6)(c), Fla. Stat. As part of the State Board’s review, Florida’s Education Commissioner and the Charter School Appeals Commission (CSAC) “study [the appeal] and make a recommendation ... no later than 7 calendar days prior to the date on which the appeal is [heard by the State Board].” *Id.* The CSAC’s review is governed by the procedures set forth in section 1002.33(6)(f). Here, for example, the State Board completed a full state-level review in accordance with the statute. The CSAC held an extended hearing. (R. 1011-1426) It made a recommendation to the State Board. Then, the State Board reviewed the recommendation, afforded a hearing, and took final action in

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Board, but, instead, appealed to the State Board pursuant to section 1002.33(8)(d)’s statutory process. Pet. Init. Br. at 29.

accordance with the statute. (Id.); § 1002.33(6)(c), Fla. Stat. Finally, Survivors appealed to the district court just as the statute allows.<sup>4</sup> § 1002.33(6)(e), Fla. Stat.

Thus, the panel’s conclusion that section 1002.33(8)(d) “does not discuss any requirements or timelines for notice or hearings in cases of immediate termination” overlooks the robust procedures contemplated by the statute.

**C. Section 1002.33 explicitly makes the State Board's final action "not subject" to APA requirements.**

Finally, the district court’s conclusion errs because a final action by the State Board with respect to charter schools “is not subject to the provisions of the Administrative Procedures Act, chapter 120.” § 1002.33(6)(c), Fla. Stat. Here, the district court overturned the State Board’s final action because the APA’s notice and procedures were not applied in Survivors’ case. Survivors, 968 So. 2d at 45.

Survivors’ appeal to the district court presented a curious scenario. While taking an appeal from the *State Board’s* final agency action, Survivors focused its arguments, and the district court reversed, based upon procedural deficiencies at the *school board* level that were effectively supplanted by the State Board’s

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<sup>4</sup> By imposing APA-based requirements on the school board, the district court’s decision raises questions related to the proper course of appellate review. Whereas the APA permits courts to review appeals from school board-level decisions affecting substantial interests (*see* § 120.68(1), Fla. Stat.), the immediate termination statute restricts court access until after the State Board takes final action. §1002.33(6)(c) & (8)(d), Fla. Stat.



review. *See* § 1002.33(6)(e) & (8)(d), Fla. Stat. (requiring only that school boards “notify” the charter sponsor’s governing board, but reserving “final action” authority to the State Board). Once the State Board makes a decision, school boards have no discretion but to implement the decision. § 1002.33(6)(c) & (e), Fla. Stat. (requiring that school boards “shall implement the decision of the State Board” and “shall act upon the decision . . . within 30 days”) (emphasis added). Now, by reversing the State Board’s result, the district court has elevated the School Board’s role and the status of its immediate termination notice, and nullified the State Board’s review and subsequent final action because of the APA.

Because this decision erroneously reverses the statutory hierarchy and overturns the State Board’s decision on impermissible APA-based grounds, this Court should reverse the district court’s decision.

## **CONCLUSION**

For the reasons stated above, the State Board as amicus curiae respectfully requests that this Court reverse the district court's decision and reinstate the State Board's final orders, or, alternatively, remand to the district court for further consideration in accordance with this Court's opinion.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE AND SERVICE**

I HEREBY CERTIFY that pursuant to Fla. R. App. P. 9.210(a)(2), this computer-generated memorandum is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210, Florida Rules of Appellate Procedure, and that the foregoing has been furnished by U.S. Mail this 28<sup>th</sup> day of April, 2008 to:

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