

**IN THE SUPREME COURT OF FLORIDA**

**CASE NO.: SC07-2402**

**L.T. NOs: 4D07-2378, 4D07-2379**

**THE SCHOOL BOARD OF PALM BEACH  
COUNTY, FLORIDA**

**Petitioner,**

**v.**

**SURVIVORS CHARTER SCHOOLS, INC.,**

**Respondent.**

On Discretionary Review from the District Court of Appeal of Florida,  
Fourth District

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***AMICUS CURIAE BRIEF***  
**of**  
**FLORIDA SCHOOL BOARDS ASSOCIATION, INC.**  
**in support of the Petitioner**

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## **SUMMARY OF THE ARGUMENT**

The Fourth District Court of Appeal erred in holding that the charter termination process, governed solely by section 1002.33, Florida Statutes, is subject to the hearing procedures of the Administrative Procedures Act. The Legislature specifically did not provide for a hearing before the school board in cases of immediate termination under section 1002.33(8)(d), *Florida Statutes*, in the extraordinary circumstances where the health, safety, or welfare of the students is threatened. In its place, the Legislature provided for a temporary solution wherein the school district would assume operation of the school while due process was observed through the channels outlined in the statute.

Adequate due process, under the circumstances, is provided for in an appeal to the State board of Education, which also involves a hearing before the Charter School Appeals Commission and extensive written and oral advocacy. Furthermore, the Respondent received ample notice as part of the due process under sections 1002.33(6) and (8), *Florida Statutes*. Indeed, Respondent was afforded the 24 hours' notice to which it was contractually entitled before the School Board's decision took effect, although the charter schools statute does not require any notice prior to immediate termination. In addition, legislative history supports that only final orders of the State Board of Education were intended to be subject to judicial review in the charter termination process.

Notwithstanding the explicit provisions governing immediate termination of charters, the Respondent waived any alleged right it had to an evidentiary hearing before the School Board by knowingly entering a contractual agreement that interpreted section 1002.33(8)(d) as not providing for an informal hearing. Therefore, this Court should reverse the lower court's decision.

### **STATEMENT OF IDENTITY AND INTEREST**

The Florida School Boards Association is a nonprofit corporation representing all school board members in the 67 school districts in Florida. FSBA has been the collective voice of Florida school districts since 1930 and is closely allied with other educational and community agencies to work toward improvement of education in Florida. FSBA's ultimate mission is to support and assist school boards in shaping and improving education in Florida.

In the instant appeal, the Fourth District Court of Appeal's decision to reverse the Petitioner's termination of two charters of Survivors Charter Schools, Inc. impacts FSBA's goals and mission. FSBA has a direct interest in ensuring that Florida's school boards are allowed to freely exercise their statutory grant of power to immediately terminate charters it has sponsored within its jurisdiction, where good cause is shown and the health, safety, or welfare of the more than 100,000 students in charter schools is threatened. Accordingly, FSBA has a vested interest in the outcome of this matter.

## ARGUMENT

### **II. THE LOWER COURT ERRED IN HOLDING THAT THE DUE PROCESS PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT (APA) APPLY TO THE CHARTER TERMINATION PROCESS OUTLINED IN SECTION 1002.33(8), *FLORIDA STATUTES*.**

#### **a. Standard of Review**

The standard of review for the pure question of law before this Court is *de novo*. See *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000).

#### **b. Decisions regarding immediate termination of charters are subject only to the procedure outlined in section 1002.33, not the APA.**

The Fourth District Court of Appeal's decision under review here erroneously overlooks the statutory process provided in section 1002.33(8)(d), *Florida Statutes* (2006), for the immediate termination of a charter under the narrow circumstances where the health, safety, and welfare of public school children is at issue. Section 1002.33(8)(d) provides, in pertinent part:

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 school district in which the charter school is located shall assume operation of the school under these circumstances.

It is noteworthy that this provision has remained substantially unchanged since its enactment in 1996. § 228.056(10)(d), *Fla. Stat.* (1996) ("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 school district in which the charter school is located shall assume operation of the school under these circumstances.”).

Once a charter school has received notice of the sponsoring school board’s decision to terminate its charter, it may appeal the decision to the State Board of Education within 30 days, for review in accordance with section 1002.33(6), *Florida Statutes*. See § 1002.33(8)(d), *Fla. Stat.* (2006). Review of appeals by applicants whose charter contracts have been terminated is vetted first through the Charter School Appeal Commission (“CSAC”). The CSAC is charged with thoroughly reviewing the materials presented to it; gathering other applicable information regarding the appeal; and making a written recommendation to the Commissioner of the Department of Education. § 1002.33(6)(f), *Fla. Stat.* (2006). Afterwards, “[t]he State Board of Education shall remand the application to the district school board with its written decision that the district school board approve or deny the application. The district school board shall implement the decision of the State Board of Education.” 1002.33(6)(c), *Fla. Stat.* (2006). The lower court’s decision wholly ignores this procedural scheme specifically applicable to charter schools.

With the enactment of subsection (8)(d), the Legislature established a specific law to address instances where the health, safety, or welfare of the students

is threatened by some action or inaction by a charter school. The specific termination procedures established therein are an exception to the general terms of the Administrative Procedure Act (“APA”). Where a specific statute covering a particular subject exists, as in this case, it must control over a more general statute covering the same or other subjects. *See Stoletz v. State*, 875 So. 2d 572, 575 (Fla. 2004). Contrary to the Fourth DCA’s holding, there is nothing in the charter school statute nor its legislative history to suggest that anything less than the plain language provided in the charter school statute should apply to circumstances such as that presented in the instant case.

Since its inception in 1996, the Department of Education and the State Board of Education have consistently interpreted section 1002.33(8)(d) to allow immediate termination followed by due process as provided through the channels outlined in the charter school statute. An agency’s interpretation of a statute that it is charged with enforcing is entitled to great deference. *BellSouth Telecomms., Inc. v. Johnson*, 708 So. 2d 594, 596-97 (Fla. 1998); *Dep’t of Ins. v. Se. Volusia Hosp. Dist.*, 438 So. 2d 815, 820 (Fla. 1983). Further, a court should not depart from the contemporaneous construction of a statute by a state agency charged with its enforcement unless the construction is “clearly erroneous.” *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 283 (Fla. 1988). There is no evidence that the agency’s long-standing interpretations in this case are clearly erroneous. *See Florida Dep’t*



*of Education v. Cooper*, 858 So. 2d 394, 396 (Fla. 1st DCA 2003) (stating that if an agency’s “interpretation is within the range of possible and reasonable interpretations, it is not clearly erroneous and should be affirmed.”)

Moreover, the interpretation consistently followed by the agency and the local school boards is consistent with the clear legislative intent—to provide for *immediacy* in terminating a charter under narrowly-defined circumstances and subsequent review by the State Board of Education. It is the exigent circumstances presented where the health, safety, or welfare of students is threatened that justify foregoing a hearing and terminating a charter immediately. However, due process is not abated, as the Respondent argues. The due process contemplated by the charter school statute is a post-decision appeal to the State Board of Education, which includes an informal hearing before the CSAC, all of which were adequately provided in this case.

The time-consuming procedures required by the APA at the school board level, i.e., full discovery, continuances, subpoenas, post-hearing submittals, recommended orders, exceptions, final orders, etc., wholly circumvent the explicit process established in sections 1002.33(6) and (8) to apply to such exigent circumstances. In fact, the delay of waiting weeks, even months, for a quasi-judicial hearing to conclude could subject the life, health, safety, and welfare of Florida’s more than 100,000 charter school students to undue endangerment, which

is the very effect section 1002.33(8)(d) was intended to protect against. Thus, it can be concluded that it was never the intention of the Legislature to grant a charter school the opportunity to request a quasi-judicial hearing before its sponsor in lieu of the process outlined in sections 1002.33(6) and (8); to conclude otherwise would thwart the clear public policy underlying such provisions.

For all intents and purposes, there is no substantive difference between the final action taken by the State Board of Education in the case *sub judice* and the final action taken by the State Board after a denial of a charter school application, which previously has been upheld on appeal. *See School Board of Osceola County v. UCP of Central Florida*, 905 So. 2d 909, 911 (Fla. 5th DCA 2005); *see also* § 1002.33(6)c), (8)(c) and (d), *Fla. Stat.* (2006). Both situations maintain consistent notification requirements and appeals procedure, and notably, neither explicitly requires the application of the APA. *See* § 1002.33(6), *Florida Statutes*.

Furthermore, a sponsoring school board's preliminary decision to terminate a charter is not final agency action; such status belongs to the final decision handed down by the State Board of Education, pursuant to section 1002.33(6)(d), *Florida Statutes*. The appeal provisions of the APA are not applicable to this final agency action because section 1002.33(6) specifically exempts decisions rendered by the State Board and the CSAC from the provisions of the APA. *See* §§ 1002.33(6)(c) and (f)2., *Fla. Stat.* (2006). Because the Legislature specifically provided for due

process to be afforded in the event of the immediate termination of a charter, the general provisions of the APA do not apply.

- c. Pursuant to its charters contracts, Respondent expressly agreed to the abbreviated review procedure where good cause warrants immediate termination of a charter.**

This Court should enforce the provisions of the charter contracts, as the express intent of the parties, particularly as it relates to the issue at bar. *See Whitley v. Royal Trails Property Owners' Ass'n, Inc.*, 910 So. 2d 381, 383 (Fla. 5th DCA 2006) (“The parties' intention governs contract construction and interpretation; the best evidence of intent is the contract's plain language.”).

The charter contract at issue, like the statute, does not provide for any hearing before the sponsoring school board in cases of immediate termination. To the contrary, the charter explicitly precludes the application of the contract's hearing procedures for regular terminations. (R. 126, 172.) Consistent with section 1002.33(8)(d), Respondent's agreed-upon recourse, where good cause for immediate termination has been demonstrated, is to appeal to the State Board of Education for review of the school board's determination. Thus, Respondent essentially waived any other form of recourse, such as an APA hearing before the school board, which it now seeks.

The evidence supports that the charter contract is in accord with applicable charter school statutes, and was thusly followed by the Petitioner School Board.

Not just an act of mutual agreement, but the termination of Respondent's charter also was a matter of public safety, which is consistent with the policy underlying section 1002.33(8)(d)'s expedited process. Therefore, the Respondent should not be allowed to disavow its express agreement by interjecting the general procedures of the APA into the specific procedures of the charter school statute.

### **CONCLUSION**

Based on the foregoing, the FSBA respectfully requests that this Court reverse the decision of the lower court, and hold that the immediate termination of a charter is not subject to the Administrative Procedures Act.

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and exact copy of the foregoing has been furnished by U.S. Mail on this 28th day of April, 2008, to:

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**CERTIFICATE OF COMPLIANCE WITH FONT RULE**

I hereby certify that this brief uses font size Times New Roman 14 in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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