

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC07-_____

Lower Tribunal Nos.: 4D06-2378 & 4D06-2379 (Consolidated)

THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA,

Petitioner,

vs.

SURVIVORS CHARTER SCHOOLS, INC.,

Respondent.

ON REVIEW FROM THE DISTRICT COURT OF APPEAL,
FOURTH DISTRICT, STATE OF FLORIDA

**JURISDICTIONAL BRIEF OF PETITIONER,
THE SCHOOL BOARD OF PALM BEACH COUNTY**

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PREFACE

The 2005 statutes were in effect at the time of the State Board of Education's final orders that were appealed to the Fourth District. The following abbreviations and designations are used in this brief:

- “App.” refers to the Appendix containing a conformed copy of the decision.
- “CSAC” refers to the Charter School Appeal Commission, an advisory commission appointed by the state Commissioner of Education, established to review documentation and make recommendations to the State Board of Education about charter actions under § 1002.33(6)(d), (e), Fla. Stat. (2005).
- “SBE” refers to the State Board of Education, which issues the final orders in charter terminations under § 1002.33(8)(d), (6)(d), Fla. Stat. (2005).
- “School Board” or “Board” or “Sponsor” refers to the Petitioner, The School Board of Palm Beach County, Florida, which serves as the “sponsor” of dozens of charter schools in Palm Beach County and has the statutory duty to provide certain administrative and educational services to charter schools and to monitor their finances and other areas of compliance.
- “Survivors” refers to Survivors Charter School, Inc., whose governing board had entered charter contracts with the School Board to operate charter schools in West Palm Beach (in 2001 under § 228.056, Fla. Stat.) and Boynton Beach (in 2003 under § 1002.33).

STATEMENT OF THE CASE AND OF THE FACTS

A. Nature of the Case.-- This case involves the security of public funds and implicates the safety of students in charter schools—public schools funded with public money, but operated privately under a contract with a district school board. The case arose from Survivors’ challenge to the immediate termination of its two charter contracts due to the severity of audit findings of systemic financial mismanagement and alarming deficiencies in fiscal controls.¹ App. 4.

The School Board conducted the audit after Survivors’ own CPA exposed abuses so serious that Survivors’ own lawyer referred to “errors in judgment, some monumental,” a “public scandal,” and a “crisis”—and warned that the violations had “the potential for destroying everything [the founders] had worked for.”

¹ Space limitations do not permit reciting the numerous violations discovered, but *just a few examples* included: the school principals were using public resources for personal gain; public monies were used inappropriately for large purchases such as a \$1,691-per-month lease reimbursement for a principal’s BMW, a principal’s personal credit card purchases, a sizeable auto allowance for the bookkeeper (a principal’s father), and a 10-year contract for season tickets to professional football games; a principal’s son received over \$6,000 in public money through unauthorized ATM withdrawals, facilitated by a lack of proper fiscal controls and with no proof of repayment; and other public funds were deposited into bank accounts of private for-profit corporations controlled by the school principals. The complete list of violations covers several pages. In sum, numerous, serious abuses were discovered, along with deficient internal controls to safeguard public funds or detect fraud or accounting errors. There were other kinds of violations, as well, such as hiring several educators who were not certified teachers, failing to conduct mandatory criminal background screening on one or more employees, and failing to comply with personnel and payroll procedures and fiscal reporting requirements.

Survivors provided responses to the audit findings. School District staff had met with Survivors several times to discuss the crisis, but Survivors' governing body seemed recalcitrant. The Board gave notice that it would consider immediate termination under the charter school law and contracts, due to the severity of the audit findings. App. 3. The Board heard argument by Survivors' lawyer and others at a special meeting on January 25, 2006, before deciding immediate termination was necessary. App. 3. The Board then provided the contractual 24-hours' notice of termination. App. 3. The District assumed operation of the schools as required by § 1002.33(8)(d) while Survivors appealed to the State Board of Education.

B. Course of Proceedings in the Lower Tribunal.-- Pursuant to § 1002.33(6)(e), Fla. Stat. (2005), the State Board of Education ("SBE") first referred the parties' briefs and documentation for review by the Charter School Appeal Commission ("CSAC"). *Cf.* App. 3. The CSAC devoted over six hours to the "fair and impartial review" mandated by § 1002.33(6)(e)1, Fla. Stat. (2005). Survivors' lawyer had the opportunity for some hours of argument and presentation of documentation. *Cf.* App. 3. The SBE then considered the CSAC's recommendations, along with independently reviewing the voluminous documentation and hearing further argument of Survivors' lawyer and a school principal. *Cf.* App. 4.

C. Disposition in the Lower Tribunal.-- On May 16, 2006, the State Board of Education found that the severity of the audit findings constituted good cause

for immediate termination of Survivors’ charters. The SBE issued final orders approving and finalizing the terminations. App. 4. Survivors appealed to the Fourth DCA, where the basic underlying issue was whether the Legislature really meant that the sponsoring school board may terminate a charter “*immediately* if the sponsor determines that good cause has been shown or if the health, safety, or welfare of the students is threatened.” § 1002.33(8)(d), Fla. Stat. (2005) (e.s.).

The Fourth District surprisingly held that immediate termination of a charter contract is subject to the notice and quasi-judicial hearing procedures of the Administrative Procedure Act (“APA”), and remanded the case for such proceedings. *Survivors Charter Schools, Inc. v. School Bd. of Palm Beach County*, 968 So. 2d 39, 46 (Fla. 4th DCA 2007), *reh’g, etc., denied* Dec. 4, 2007.

Since 1996 school boards have been able to terminate charter contracts right away to protect the students or for other urgent good cause. *See* § 228.056(10)(d) (1996). But under the Fourth District’s decision, school boards can no longer terminate a charter even to halt *gross mismanagement, abuse of public funds, or threats to students’ health, safety, or welfare*, until after quasi-judicial proceedings have taken their course for “something less than *ninety days*.”² Ironically, that is what the decision called “immediate.” 968 So. 2d at 45 (e.s.).

² The kind of quasi-judicial proceedings to which the decision apparently refers can realistically consume several months, as the Uniform Rules of Procedure under the APA provide for pleadings, motion practice, discovery, quasi-judicial hearing, post-hearing submittals, a final order, etc. *See* Chapter 28-106, Fla. Admin. Code.

SUMMARY OF THE ARGUMENT

The *Survivors* decision expressly affects a class of constitutional officers: it constricts the rights and expands the duties of the 67 district school boards and the 355 school board members in this State under Art. IX, § 4(b), Fla. Const., who have the statutory authority to decide to terminate a charter contract immediately and assume operation of the charter school while the school’s governing body appeals to the State Board of Education under § 1002.33(8)(d), Fla. Stat.

The decision also expressly and directly conflicts with the decisions of other appellate courts. It was largely predicated upon an incorrect statement of the law—that “[t]he APA does not provide for an abbreviated procedure in cases of emergency.” That statement directly contradicts § 120.569(2)(n), Fla. Stat., and Fla. Admin. Code R. 28-106.501(1) (which specifically provide for immediate final orders in cases of emergency), and thus directly and expressly conflicts with the numerous decisions of the First, Second, Third, and Fifth Districts that explicitly recognize and apply § 120.569(2)(n) or its predecessor, § 120.59(3).

In sum, the decision substantially alters the rights and duties of constitutional officers, conflicts with other decisions, disregards the long-standing interpretation of school boards and the State Board of Education, and may place children and public funds at risk by greatly delaying the immediate termination of charter contracts in emergencies and other exigent circumstances.

ARGUMENT

I. Jurisdiction Should Be Accepted Because the Decision Expressly Affects a Class of Constitutional Officers.

The Fourth DCA's decision expressly affects school boards, which have the statutory authority to determine to immediately terminate a charter contract for urgent good cause or to protect students, and to assume operation of the charter school while the school's governing body appeals to the State Board of Education under § 1002.33(8)(d).

The Fourth DCA decision does much “more than simply modify or construe or add to the case law which comprises much of the substantive and procedural law of this state,” as it will “[d]irectly and, in some way, [e]xclusively affect the *duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state officers.*” *Spradley v. State*, 293 So. 2d 697, 701 (Fla. 1974) (e.s.). The decision directly constricts the rights, and adds to the duties, of all 67 district school boards, which are a class of constitutional officers under Art. IX, § 4(b), *cf. Florida State Bd. of Health v. Lewis*, 149 So. 2d 41, 43 (Fla. 1963), as well as the 355 school board members who are constitutional officers under Art. IX, § 4(b), Fla. Const. *See Kane v. Robbins*, 556 So. 2d 1381, 1382 (Fla. 1989).

Thus, the Court may accept discretionary jurisdiction under Art. V, § 3(b)(3), Fla. Const., and Fla.R.App.P. 9.030(a)(2)(A)(iii). The issues are so important, and the results of the current decision will be so momentous, that jurisdiction should be

accepted. *Cf. Sarasota Classified/Teachers Ass'n v. Sarasota County School Dist.*, 630 So. 2d 1095, 1096 (Fla. 1994) (Kogan, J., dissenting) (a school board's case was "sufficiently important to warrant review in this Court").

As charter-contract termination determinations must be made "after considering recommendations submitted by the district school superintendent," § 1001.41, Fla. Stat. (2007), the decision also directly affects the rights and duties of Florida's 67 district school superintendents under Art. IX, § 5, Fla. Const. Additionally, the decision directly affects the State Board of Education under Art. IX, § 2, Fla. Const. (to which the charter school may appeal the termination decision and which takes final action and issues the final order on immediate termination under §§ 1002.33(8)(d) and 1002.33(6)(c), (e) (2007)).³

Furthermore, the decision will directly affect the Florida Schools of Excellence ("FSE") Commission under § 1002.335(4)(a)1, 3, Fla. Stat. (2007) (which, according to that statute, can sponsor charter schools anywhere in Florida and can immediately terminate the charter contracts of those schools under § 1002.33(8)(d), Fla. Stat.). As the statute gives the FSE Commission the same powers as district school boards regarding charter termination, the decision will

³ As another indication of the importance and far-reaching impact of the decision, it also affects the Charter School Appeal Commission under § 1002.33(6), Fla. Stat. (2007) (which reviews documentation from the school board and charter school and conducts an informal but lengthy hearing where the charter schools and the district school board are represented by counsel, and makes a recommendation to the State Board of Education concerning the termination).

directly constrict the rights of the FSE Commission and impose new duties upon it, which may endanger students' health, safety, and welfare and place public funds at risk in the same way the decision will affect school districts.

The rights and duties of all of these constitutional and state officers are expressly affected by eliminating their statutory right to take instant action to terminate charter contracts in emergencies or other urgent good-cause situations, and by creating additional procedural requirements: imposing a new duty to give 14 days' notice and conduct a quasi-judicial hearing for "something less than ninety days" before deciding to immediately terminate a charter contract.

This is an issue of first impression, and the decision disturbs the longstanding interpretation of the Florida Department of Education and State Board of Education,⁴ which should receive great deference as the interpretation of the state agency charged with administration of the charter school law. *See, e.g. Florida Dep't of Educ. v. Cooper*, 858 So. 2d 394, 396 (Fla. 1st DCA 2003). Jurisdiction should be accepted to clarify the rights and duties of public officers.

⁴ *See Charter School Appeal Commission Guidelines* at 4, 17 (available at <http://www.floridacharters.org/CSTerminationAppealGuidelines.doc>) issued by the Florida Department of Education, and adopted by the State Board of Education on August 19, 2003 ("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.*" *Id.* at 4 (e.s.); and the "good cause . . . [for] an immediate termination . . . [may depend on] . . . the immediacy of the District's concerns, the extent of those concerns," *inter alia*, which "will justify the District's decision to *forego* . . . [a] *hearing and terminate immediately.*" *Id.* at 17 (e.s.)). Thus, due process is afforded through the ability to appeal to the SBE.

II. Jurisdiction Should Be Accepted Because the Decision Expressly and Directly Conflicts with the Decisions of Other District Courts on the Same Important Point of Law.

The decision was largely based upon an incorrect statement of the law—that “[t]he APA does not provide for an abbreviated procedure in cases of emergency.” That statement directly contradicts § 120.569(2)(n), Fla. Stat. (specifically providing for immediate agency orders in cases of emergency), and thus directly and expressly conflicts with the numerous decisions of the First, Second, Third, and Fifth Districts that explicitly recognize and apply § 120.569(2)(n) or its predecessor, § 120.59(3). *E.g.*, *State v. Sun Gardens Citrus, LLP*, 780 So. 2d 922 (Fla. 2d DCA 2001), *inter alia*. Thus, the Court may accept jurisdiction under Art. V, § 3(b)(3), Fla. Const., and Fla.R.App.P. 9.030(a)(2)(A)(iv).

In direct contradiction to the Fourth District’s opinion, section 120.569(2)(n) expressly provides for an “immediate final order” when “an agency head finds that an immediate danger to the public health, safety, or welfare” requires one. Likewise, Fla. Admin. Code R. 28-106.501(1) provides: “If the agency finds that immediate danger to the public health, safety, or welfare requires emergency action, the agency shall enter an emergency order summarily . . . taking . . . such emergency . . . action as is authorized by law.” One of those “action[s] . . . authorized by law” is the immediate charter termination authorized by § 1002.33(8)(d), which uses language almost identical to the emergency language in

§ 120.569(2)(n) and Rule 28-106.501(1). That rule makes it clear that due process is satisfied through an appeal, such as the appeal to the State Board of Education as provided in § 1002.33(8)(d). If the APA applies at all to charter terminations—although there are many cogent reasons why it should not—then the immediate order provisions of § 120.569(2)(n) should apply, to give effect to the immediacy of action provided in the charter school statute. Jurisdiction should be accepted to resolve the conflict concerning immediate, emergency action under the APA.

CONCLUSION

The state has a “paramount duty” to provide for a “safe, secure” public school system. Art. IX, § 1(a), Fla. Const. The safety of students and security of public funds can be preserved if this Honorable Court accepts jurisdiction to resolve the confusion over the right of school boards to terminate a charter contract “*immediately* if the sponsor determines that *good cause* has been shown or if the *health, safety, or welfare* of the students is threatened.” § 1002.33(8)(d), Fla. Stat.

WHEREFORE, the School Board respectfully requests that this Honorable Court accept jurisdiction to review this case involving issues of great importance directly affecting the rights and duties of Florida’s 67 district school boards, 355 school board members, and 67 district school superintendents, as well as the Florida Schools of Excellence Commission, the security of public funds, and the health, safety, and welfare of Florida’s charter school students.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Brief has been served by U.S. Mail this 26th day of December, 2007, upon:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief complies with the font requirements (14-point Times New Roman) of Fla. R. App. P. Rule 9.210(a)(2).

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