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2015 Charter School Legal Issues

- A Year of Many Florida Charter Headlines
 - We should never lose sight of what truly matters—educating **All** children well, one at a time.
 - We need to be careful that headlines do not drive policy, while at the same time heeding the “let not your good be evil spoken of” maxim—this requires balancing.
 - The Charter School Sector needs to become more unified around core principles – one charter school can impact the reputation of the sector.



2015 Charter School Legal Issues

- Charter School Closings
- Innovative Charter Schools
- Charter School Student Transportation
- Factoring
- Fiduciary Responsibilities



2015 Charter School Legal Issues

- FDOE Rules

- ☐ Rule on Capital Funding.
- ☐ Revised Charter Applications / Process
- ☐ School Improvement Rating.

- Bonding Requirements?

- Impact of Student Performance.

- Updates on National Charter Issues.



2015 Charter School Legal Issues

■ Charter School Closings

- ☐ Results in Headlines.
- ☐ Can Charters Fail Gracefully?
- ☐ Problems after Closure.
- ☐ Problems with School Year Closures.
- ☐ Pledging FEFP funds for financing.



2015 Charter School Legal Issues

- Innovative Charter Schools.
 - Statutory requirement to be innovative
 - Currently being litigated in the Renaissance Appeal from Palm Beach.
 - Case also raised Constitutionality of the Application Appeal Process
 - What is most innovative about the Charter Schools?

2015 Charter School Legal Issues

□ Palm Beach Appeal Notes.

- Argued ground for denial “the lack of innovative learning methods and the fact that one of the Applicants existing charter schools earned a grade of “D” in the past school year.”
- Case also raised Constitutionality of the Application Appeal Process “The charter application appeal unconstitutionally allows for unbridle discretion as it fails to set any standard for the decision of the State Board of Education. . . exceed the State Board of Education’s powers to provide general supervision of the state system of education . . . conflict with the School Board’s exclusive power to establish public schools.”



2015 Charter School Legal Issues

■ Charter School Student Transportation

- Being litigated in St. Lucie, now on appeal at the 4th DCA
- First DOAH ruling on this, worth looking at specifics
 - Issue was whether a charter school “can be required by the St. Lucie County School Board ("School Board") to offer regular school busing to all eligible charter school students residing more than two miles from the charter school.”



2015 Charter School Legal Issues

- Excerpt from the ruling in DOAH case 14-3267
 - In the instant case, to conclude that Renaissance Charter School at Tradition is required to transport by regular school bus all students residing more than two miles from the charter school would ignore the specific sentence in the charter school transportation statute, section 1002.33(20)(c), which contains the word "through," and the phrase "or parents." Such a conclusion would reduce the sentence to mere surplusage.



2015 Charter School Legal Issues

- Furthermore, to conclude that Renaissance Charter School at Tradition is required by the charter school statute to provide regular school bus transportation to all students residing more than two miles from the charter school would violate one of the fundamental principles of the charter school statute, which is to provide charter schools greater flexibility.
- The Legislature specifically recognized that charter schools should have greater flexibility than traditional public schools. Parents choose to send their children to charter schools, knowing full-well that they may reside more than two miles from the charter school, and that their traditional public school may be located much closer to their residence than the charter school.



2015 Charter School Legal Issues

- Factoring- Selling future FEFP payments
 - High Risk, can cause school closures, was a factor in several closures this year.
 - Can also open school officials up to personal liability.
 - “In addition, the admitted facts include that Maura engaged in willful or reckless conduct in disregard of CSC's property when diverting the FEFP Payment or causing the District Sponsor to refuse to fund the FEFP payments. This establishes her liability under Fla. Stat. 617.0834(1)(b)(3).”
 - Factoring can cost 25% of FEFP payments or more.

2015 Charter School Legal Issues

- Fiduciary Duties of CMO's
- “In a recent and analogous case, a federal district court in Missouri held that a fiduciary relationship existed between a charter school's board and its operator. *Renaissance Academy for Math & Science of Missouri, Inc. v. Imagine Schools, Inc.*, W.D.Mo. No. 4:13–CV–00645–NKL, 2014 WL 7267033 (Dec. 18, 2014). Applying that state's test for determining the existence of a fiduciary duty, the court concluded that a fiduciary relationship existed between the charter school and its operator. The court so held because under the terms of the operating agreement, the charter school's board was required to give the operator virtually all money and property that the board received from taxpayers. *Id.* at *3. And without the board's initial receipt of the money, the operator would not have had access to those funds. *Id.* The court found that the board placed its trust and confidence in its operator to create a successful learning environment and to manage the school's operations. In short, the operator took over the de facto persona of the school's governing authority. *Id.*”

Hope Acad. Broadway Campus v. White Hat Mgt., L.L.C., 2015-Ohio-3716, ¶ 44

- Ohio Supreme Court went on to find that a fiduciary duty also existed in the Ohio case.



2015 Charter School Legal Issues

■ FDOE Rules

- Really useful site, DOE rule changes posted <https://app1.fldoe.org/rules/default.aspx>
- Important to have input into rules, this is one of the areas charters can be effective when they are unified.
- Information about rule workshops and comment periods.

2015 Charter School Legal Issues

□ Model Application

- Significant changes and added requirements- everyone should make sure to read and provide comments.
- I'm concerned some language may be difficult to advise clients how to comply.
 - Example: "Identify any existing relationships that could pose actual or **perceived conflicts** if the application is approved. Discuss specific steps that the board will take to avoid any actual conflicts and to **mitigate perceived** conflicts."



2015 Charter School Legal Issues

■ Capital Outlay Funding

□ Rule revision regarding capital outlay 6A-2.0020

- Beginning in the 2016-17 school year and thereafter, a charter school shall not be eligible for capital outlay funding if the most recent annual financial audit reveals that the portion of the school's general fund ending fund balance not classified as restricted, committed, or non-spendable, in accordance with the publication titled "Financial and Program Cost Accounting and Reporting for Florida Schools (Redbook)," which is incorporated by reference in rule 6A-1.001, F.A.C., was below one (1) percent of general fund revenues



2015 Charter School Legal Issues

■ School Improvement Rating

- Rule revision on grading for alternative schools, School Improvement Rating.
 - Statute has changed, so rule will have a new process, but no gains scores were done this year, so hard to model.
 - Many uncertainties in what the final impact on alternative schools will be.



2015 Charter School Legal Issues

■ Bonding requirements

- A charter school applicant, after approval of an application but before the first day of school, must provide verified evidence of a surety bond, loan commitment, or cash reserve in an amount sufficient to cover the financial obligations of the charter school from the first day of school to the October FTE student membership survey. Funds reserved for such purposes shall be held in trust and unused funds at the time of the October FTE student membership survey shall be reserved for the next school year.



2014 Charter School Legal Issues

- Impact of student performance.
 - The sponsor shall make student academic achievement for all students the most important factor when determining whether to renew or terminate the charter.1002.33
 - Teacher Quality is Key. MyFITeacher.com, should be updated soon with 14-15 data.



2015 Charter School Legal Issues

■ Student Performance

- Teacher Quality is key to student performance
 - Advanced degrees don't generally matter.
 - Years of experience after first 3-4 does not matter.
 - Teacher Certification does not matter, unless there are multiple failures "Failure Factories".
- Charters have inherent advantages in obtaining teachers with proven results that can provide a competitive advantage, but only if they opt to do so.

2015 Charter School Legal Issues

■ Other Florida Case of Interest

- Takes 2 “c” grades to lose status as high performing charter, not one.
- Absent any indication of legislative intent to repeal subsection (4), the trial court properly interpreted the criteria of subsection (1)(a) as applying to the initial determination of high-performing charter school status and the criteria of subsection (4) as applying to loss of that status after it was granted. If the legislature actually intended that subsection (5) required disqualification of any high-performing charter school that received a school grade of “C” or lower in a single year, the proper remedy is with the legislature by way of repeal of subsection (4).

Dep't of Educ. v. Educ. Charter Found. of Florida, Inc., 1D15-871, 2015 WL 6689395, at *3 (Fla. 1st DCA 2015)



2015 Charter School Legal Issues

- National Cases To Be Discussed.
 - Washington State SCT held charter schools unconstitutional as not “common schools” in September.



2015 Charter School Legal Issues

- Case just filed in state trial court in Minnesota.
 - “Defendants have also permitted and approved the formation of numerous charter schools segregated by race and socioeconomic status in Minneapolis, Saint Paul, and surrounding suburban communities, which have foreseeably promoted and exacerbated segregation and re-segregation by race and socioeconomic status in the Minneapolis and Saint Paul public schools. The Twin Cities metropolitan area now contains 131 charter schools, over 80 percent of which are segregated by race, socioeconomic status, or both. The tables below show all of the charters that are either more than 95 percent students of color or more than 80 percent white students. Nearly a third (42 of 131) of charters in the Twin Cities are more than 95 percent students of color.”



Wrap Up

- Questions? Other Topics?
- Can contact me at
 - Daniel@woodringlawfirm.com
 - Or 850 567 8445
 - Also, this presentation is posted as a blog post on Fledlaw.com