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July 28, 2014

Ms. Joy Frank
Florida Association of District School Superintendents
208 South Monroe Street
Tallahassee, Florida 32301

Ms. Frank,

Thank you for your June 20, 2014, letter in reference to the proposed standard charter school contract that the Florida Department of Education (department) is currently drafting through the rule development process. The department worked closely with the Florida Association of District School Superintendents (FADSS) in developing the first proposed draft of the standard contract that was delivered to the Legislature on November 1, 2013, and is committed to continuing that collaboration during this rule development process. At the very beginning of this process, the department set out five specific objectives related to the development of a standard charter school contract. Our goal was, and continues to be, to develop a standard charter school contract that:

- Places the interest of students above all else
- Is clear and concise
- Provides for strong outcome-based accountability
- Recognizes and protects charter school autonomy and flexibility
- Provides districts with the tools necessary to conduct meaningful and focused oversight and monitoring

As you know, the department hosted four rule development workshops throughout the state to provide all stakeholders ample opportunity to provide feedback, comments and suggestions on the department's initial draft of the standard contract. The first round of workshops is now complete and the department is reviewing the comments that were provided. Upon completion of the review, the department will make revisions to the initial draft, send out the revised draft and schedule a second round of rule development workshops. The department plans to present the standard contract to the State Board of Education for adoption at the September State Board of Education meeting.

While the ongoing rule development process may result in revisions that allay the concerns expressed in your June 20 letter, I would like to take this opportunity to address some of the specific suggestions provided in your letter. It is important to note that many of the provisions suggested in your June 20 letter are already explicitly provided for in statute and are therefore not repeated in the standard contract. It is also important to note that notwithstanding the comments below, all of the suggestions included in your

June 20 letter and provided to the department through the rule development process will be carefully reviewed and considered. As to your specific recommendations:

- 1. The rule should clearly establish the process for negotiation of the contract. It should be clearly stated that the applicant and sponsor are able to negotiate the terms and conditions of the contract. If language is to be maintained that varies from the language contained in 1002.33(7), F.S., such language should be clarified.*

There is nothing in statute or this proposed rule that precludes the sponsor and applicant from negotiating the terms of the contract. In fact, the law explicitly provides that the contract be negotiated. Section 1002.33(6)(h), Florida Statutes, provides, “The sponsor has 30 days after approval of the application to provide an initial proposed charter contract to the charter school. The applicant and the sponsor have 40 days thereafter to negotiate and notice the charter contract for final approval by the sponsor unless both parties agree to an extension.”

- 2. The contract states that the application is attached as Appendix 1 and constitutes a part of the contract or charter. Also, in the event of any conflict between the application and the contract or charter, the charter controls. However, in several sections of the proposed contract, the application appears to control and would supersede the contract/charter. For example, section 1C-1,2, and 5 and Section 2. The references to application need to be removed.*

Section 1.A. of the draft standard contract provides, “The Application is approved by the Sponsor. A copy of the Application is attached hereto as Appendix 1 and constitutes a part of this contract. In the event of any conflict between the application and any other provision of this Charter, the Charter provision shall control.”

It is common practice to incorporate the approved application as part of the contract. Otherwise, it would be impossible to hold a charter school accountable for delivering the educational, financial and governance model approved by the Sponsor, unless large portions of every application were written into every contract.

- 3. There should be a provision requiring the charter school to give notice if it intends to submit an application to renew or if it intends to non-renew or terminate the existing contract.*

Section 1.D.4. of the draft standard contract provides, “If the School elects to terminate or non-renew the Charter, it shall provide reasonable prior notice of the election to the Sponsor indicating the final date of operation as voted by the governing board in a publicly noticed meeting. A board resolution signed by the School's governing board chair and secretary, indicating support of this action, shall accompany the written notification provided to the Sponsor. The School agrees that such notification shall be considered a voluntary termination by the governing board and a waiver of its right to a hearing or appeal.”

4. *The contract should include additional bases for termination. They should include: failure to correct deficiencies noted in the corrective action plan within one year of notice of the deficiencies; failure to comply with maximum class size requirements; two consecutive school grades of “F”, and spending greater than \$10,000 after notice of termination without sponsor approval. These are specific bases for termination in statute or relate to specific accountability responsibilities established in statute.*

I will respond to each of the suggested inclusions individually.

- Failure to correct deficiencies noted in the corrective action plan within one year of notice of the deficiencies
 - Section 1002.345(6), Florida Statutes explicitly provides that a charter school’s failure to correct deficiencies noted in the corrective action plan within one year of notice is a reason for termination or non-renewal.
 - Two consecutive school grades of “F”
 - Section 1002.33(9), Florida Statutes explicitly addresses this issue and provides for the termination of a charter school that receives two consecutive grades of “F”, unless the school meets one of three exceptions.
 - Spending greater than \$10,000 after notice of termination without sponsor approval
 - Section 1002.33(9)(o)1., Florida Statutes, provides, “Upon initial notification of nonrenewal, closure, or termination of its charter, a charter school may not expend more than \$10,000 per expenditure without prior written approval from the sponsor unless such expenditure was included within the annual budget submitted to the sponsor pursuant to the charter contract, is for reasonable attorney fees and costs during the pendency of any appeal, or is for reasonable fees and costs to conduct an independent audit.” As such, violation of this provision would constitute a violation of law and a reason for termination under Section 1002.33(8)(a)3., Florida Statutes.
 - Failure to comply with maximum class size requirements
 - As you are aware, the consequences for failing to meet the maximum class size requirements are provided for in Section 1003.03(4), Florida Statutes.
5. *Page 10, paragraph 3A, and on page 11, paragraph 3D2, the contract should require the school to specify enrollment preferences it intends to implement rather than just state it may implement those allowed by law.*

Section 13.C. of the model charter school application requires an applicant to describe the enrollment preferences it will provide. As you are aware, the application must be reviewed and approved by the Sponsor and becomes incorporated into the contract. Additionally, section 3.D.2 of the draft standard contract provides, “The School shall clearly indicate in its Policies and Procedures the lottery procedures, and any/all enrollment preferences the school will utilize.”

6. *Page 12, paragraph 3D6, a sentence should be added to state, “A student may not be transferred to another charter school or other school in the district without written parental consent. This is a requirement of statute.”*

As you indicated in your suggestion, this is already explicitly provided for in statute. Section 1002.33(22)(b), Florida Statutes, provides, “A charter school may not transfer an enrolled student to another charter school having a separate Master School Identification Number without first obtaining the written approval of the student’s parent.”

7. *The last sentence of paragraph E on page 12 is inconsistent with Section 1002.33(10)(h), Florida Statutes. The annual capacity is to be established by the governing board of the charter school and the sponsor. Once established this is the annual capacity.*

The last sentence of paragraph E on page 12 does not address annual capacity, but instead provides for preliminary enrollment projections for planning purposes. Annual enrollment capacity is addressed in Section 3.G. of the proposed standard contract. Specifically, it states, “The enrollment capacity shall be annually determined by the Governing Board in conjunction with the Sponsor based on the factors set forth in Section 1002.33(10), Florida Statutes.” This language mirrors the language in Section 1002.33(10)(h), Florida Statutes.

8. *Paragraph F on page 12 should include a provision for the school to indemnify the Sponsor from any penalty imposed upon the Sponsor due to the school’s noncompliance with class size mandates.*

The department calculates class size for charter schools separately from traditional public schools; therefore, no penalties are assessed against a district if a charter school exceeds class size maximums.

9. *To ensure students with a disability are given a full opportunity to attend a charter school, a sentence should be added at the end of the next to last paragraph in I3 on page 14 to state: “A student with a disability will be referred for enrollment at a district school only when school and district staff composing of the IEP team agree that the student’s educational needs cannot be met at the school.”*

Page 11, paragraph 3B, a sentence should be included stating: “The school will not deny admission to, nor withdraw, a student with a disability based on a finding that the student needs a service delivery model not presently in existence at the school.” This is a requirement of Lee County School District’s 2005 OCR resolution agreement.

The draft standard contract provides, “Those students, whose needs cannot be adequately addressed at the School, **as determined by the IEP team**, will be referred to an appropriate placement within the District. Parents of students with disabilities will be afforded procedural safeguards in their native language, consistent with the manner that those safeguards are provided

in the District's traditional schools or using the District's materials. Unless the School is specifically for students with disabilities, **the School shall not request through the School's application a student's IEP or other information regarding a student's special needs, nor shall the school access such information prior to the enrollment lottery.**

Upon enrollment, or notice of acceptance sent to the student, the School may request from the District information related to the student's program and needs, including the student's most recent IEP, which shall be provided within 10 days. **If the School believes, upon review of the IEP, that the student's needs cannot be met at the School an IEP meeting shall be convened within 30 days. The Sponsor shall be invited to and may attend the meeting, at which time the IEP team shall determine whether the School is an appropriate placement for the student.**

A representative of the Sponsor shall be invited to participate in all IEP meetings. The Sponsor retains the right to determine whether or not to send a representative to such meetings."

10. The contract should contain a section addressing services to 504 students.

The draft standard contract includes the following provisions related to students with a Section 504 plan.

- If an IEP, **504 Plan**, and/or an EP for a student indicates accommodations or an alternate assessment for participation in a State assessment, or District assessment, as applicable, the School will facilitate the accommodations or alternate assessment and comply with State reporting procedures.
- Exceptional students shall be provided with programs implemented in accordance with applicable Federal, state and local policies and procedures; and, specifically, the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, Sections 1000.05 and 1001.42(4) (l) of the Florida Statutes, and Chapter 6A-6 of the Florida Administrative Code. (Section 3.I.)
- A student, parent, or guardian who indicates at an IEP, EP, or 504 meeting that they wish to file for a due process hearing pursuant to State law and rules shall be given the appropriate forms by the School. These forms shall also be provided upon request at any other time. (Section 3.E.I.4)

If FADSS has additional suggested language to further strengthen the protections afforded to students with 504 plans, please provide and we will review.

11. The last sentence in Section L, page 16 should read: "The school may not withdraw a student involuntarily for poor academic performance or for student disciplinary infractions except as may be provided for in the district's Code of Student Conduct. The school will ensure that no pressure, coercion, negotiation, or other inappropriate inducement may be used to attempt to have parents/guardians withdraw students from the School. The school will provide sufficient training and oversight to staff members to prevent improper withdrawals. The school shall promptly readmit and reenroll any student who has been inadvertently or improperly withdrawn."

The draft standard contract provides, “The School may not withdraw a student involuntarily for poor academic performance.” As you are aware, Florida Statutes explicitly provides, “The sponsor shall not apply its policies to a charter school unless mutually agreed to by both the sponsor and the charter school.” (Section 1002.33(5)(b)1.d., Florida Statutes). Therefore, it would be inappropriate to require a charter school to adopt the Sponsor’s Code of Conduct. Additionally, it is important to note that the Sponsor reviews the charter school’s Code of Conduct during the application review (Section 8.B. of the model application). The draft standard contract incorporates the approved application (including the code of conduct reviewed by the Sponsor).

The department will review and consider the suggested language relating to coercion and mandatory training.

- 12. Section 4 of the contract should contain a provision allowing the sponsor access to school financial records. This is needed for the sponsor to perform its duty to monitor the school's financial condition. Section 1002.33(5)(b)1.b., Florida Statutes.*

Sections 1002.345 and 1002.33(9)(g)3., Florida Statutes, require charter schools to submit monthly financial statements to the Sponsor. Sections 1002.345(2) and 218.39, Florida Statutes, require charter schools to have an annual audit completed by an independent Certified Public Accountant and to submit that audit to the Sponsor. Additionally, all financial records maintained by the charter school are public record and open to inspection, pursuant to 1002.33(16)(b)3.2., Florida Statutes and Section 3.H.7. of the draft standard contract.

- 13. The date in paragraph iv., on page 25, should be September 1, rather than November 1. State Board of Education Rule 6A-1.0071 requires the district to submit its annual financial report to the Commissioner by September 11. As a school of the district, the charter school's information must be included. The information is needed by September 1 for inclusion in the district report by September 11.*

The department will include in its revised draft, based on comments from the four rule development workshops, a due date of September 30 for the annual audit. The report you refer to in the above comment is the annual program cost report (due September 11). The draft standard contract provides, “The School agrees to deliver to the Sponsor its annual cost report in a form and manner consistent with generally accepted governmental accounting standard in Florida, no later than the last business day in August.” (Section 4.H.3.iii)

- 14. Section 4 of the contract should also contain provisions addressing procedures and responsibilities in the event of the need for a financial recovery or corrective action plan, or expedited review.*

The procedures and responsibilities relating to financial corrective action plans and financial recovery plans are explicitly addressed in Section 1002.345, Florida Statutes and State Board of Education Rule 6A-1.0081, F.A.C.

15. Section 5- there should be provisions requiring sponsor access to inspect the school facility, and notice in the event of relocation.

The draft standard contract includes a provision that requires the school to provide to the Sponsor reasonable access to facilities (Section 9.D). The department plans to include additional language related to access in the revised draft.

16. Page 32, paragraph K1 -the certificate of insurance submission requirement should be 30 days before the school opens, rather than July 15, since districts start school on different dates.

Section 8.F. of the draft contract provides, “No later than 30 days prior to the opening of school, the School shall furnish the District with fully completed certificates of all insurance policies, signed by an authorized representative of the insurer(s) confirming the coverage begins by July 1.” The July 15 reference on page 32 will be changed to be consistent with the 30 day requirement stated above.

17. Section 9A, page 32- there should be a provision addressing school compliance with the public records law.

Section 3.H. of the draft standard contract provides, “The School will comply with all other public record retention requirements for non-student related records in a manner consistent with applicable Florida law. The School shall comply with Fla. Stat. Chapter 119 (the Public Records Act) and all other applicable statutes pertaining to public records.” Additionally, Section 1002.33(16), Florida Statutes explicitly requires charter schools to comply with the public records laws (Chapter 119).

18. Page 34 - the contract should include additional governing board duties of: reporting annual progress as required by Section 1002.33(9)(k), Florida Statutes, and adopting policies establishing ethical standards of conduct for its employees as required by Section 1002.33(12)(g)3.

As you indicated in your suggestion, these provisions are already explicitly addressed in statute and do not need to be repeated in the contract.

19. Page 35, paragraph E.6.- the contract should require that any changes to the management contract be provided to the district in advance of execution. Providing notice after the changes have been executed does not enable the district to perform its monitoring duties. Section 9D should also contain a provision requiring notice if the governing board decides to change management companies and a requirement for the management contract to include an agreement that the company will perform its duties in compliance with the charter contract.

The department will address this concern in the revised draft.

20. The proposed contract provides no section related to a School Web site, which is an essential means of communicating with parents and the community, and which optionally provides a simple means for Schools to provide necessary information to Sponsors. A new section should be

created that provides that: "The school shall maintain a Web site which displays information regarding the school including the following minimum requirements:

- *The school's academic performance including the Florida School Grade or rating for each year of the school's' operation;*
- *The names, telephone numbers and e-mail addresses of the governing board members;*
- *The name, telephone number and e-mail address of the local representative of the governing board;*
- *The academic and extracurricular programs at the school;*
- *Any management companies, service providers, or education management corporations associated with the school;*
- *The school's annual budget;*
- *The school's independent financial audit;*
- *The school's accreditation status;*
- *Historical and current minutes of governing board meetings.*

This information shall be provided in a publicly accessible portion of the school's Web site, such that access to this information shall not require creation of a school or Web site account, use of a password or any other limiting factor.

Section 1002.33(9)(p), Florida Statutes provides, "Each charter school shall maintain a website that enables the public to obtain information regarding the school; the school's academic performance; the names of the governing board members; the programs at the school; any management companies, service providers, or education management corporations associated with the school; the school's annual budget and its annual independent fiscal audit; the school's grade pursuant to s. 1008.34; and, on a quarterly basis, the minutes of governing board meetings."

I greatly appreciate the careful and thoughtful review of the initial draft of the standard charter school contract and look forward to continuing this important discussion. In working together with our district and charter school partners, I am confident that the final version of the standard charter school contract will fully meet the five objectives that we set out to achieve. Thank you for your continued focus on our students.

Regards,



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Office of Independent Education & Parental Choice

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The draft standard contract includes a provision that requires the school to provide to the Sponsor reasonable access to facilities (Section 9.D). The department plans to include additional language related to access in the revised draft.

16. Page 32, paragraph K1 -the certificate of insurance submission requirement should be 30 days before the school opens, rather than July 15, since districts start school on different dates.

Section 8.F. of the draft contract provides, “No later than 30 days prior to the opening of school, the School shall furnish the District with fully completed certificates of all insurance policies, signed by an authorized representative of the insurer(s) confirming the coverage begins by July 1.” The July 15 reference on page 32 will be changed to be consistent with the 30 day requirement stated above.

17. Section 9A, page 32- there should be a provision addressing school compliance with the public records law.

Section 3.H. of the draft standard contract provides, “The School will comply with all other public record retention requirements for non-student related records in a manner consistent with applicable Florida law. The School shall comply with Fla. Stat. Chapter 119 (the Public Records Act) and all other applicable statutes pertaining to public records.” Additionally, Section 1002.33(16), Florida Statutes explicitly requires charter schools to comply with the public records laws (Chapter 119).

18. Page 34 - the contract should include additional governing board duties of: reporting annual progress as required by Section 1002.33(9)(k), Florida Statutes, and adopting policies establishing ethical standards of conduct for its employees as required by Section 1002.33(12)(g)3.

As you indicated in your suggestion, these provisions are already explicitly addressed in statute and do not need to be repeated in the contract.

19. Page 35, paragraph E.6.- the contract should require that any changes to the management contract be provided to the district in advance of execution. Providing notice after the changes have been executed does not enable the district to perform its monitoring duties. Section 9D should also contain a provision requiring notice if the governing board decides to change management companies and a requirement for the management contract to include an agreement that the company will perform its duties in compliance with the charter contract.

The department will address this concern in the revised draft.

20. The proposed contract provides no section related to a School Web site, which is an essential means of communicating with parents and the community, and which optionally provides a simple means for Schools to provide necessary information to Sponsors. A new section should be

created that provides that: "The school shall maintain a Web site which displays information regarding the school including the following minimum requirements:

- *The school's academic performance including the Florida School Grade or rating for each year of the school's' operation;*
- *The names, telephone numbers and e-mail addresses of the governing board members;*
- *The name, telephone number and e-mail address of the local representative of the governing board;*
- *The academic and extracurricular programs at the school;*
- *Any management companies, service providers, or education management corporations associated with the school;*
- *The school's annual budget;*
- *The school's independent financial audit;*
- *The school's accreditation status;*
- *Historical and current minutes of governing board meetings.*

This information shall be provided in a publicly accessible portion of the school's Web site, such that access to this information shall not require creation of a school or Web site account, use of a password or any other limiting factor.

Section 1002.33(9)(p), Florida Statutes provides, "Each charter school shall maintain a website that enables the public to obtain information regarding the school; the school's academic performance; the names of the governing board members; the programs at the school; any management companies, service providers, or education management corporations associated with the school; the school's annual budget and its annual independent fiscal audit; the school's grade pursuant to s. 1008.34; and, on a quarterly basis, the minutes of governing board meetings."

I greatly appreciate the careful and thoughtful review of the initial draft of the standard charter school contract and look forward to continuing this important discussion. In working together with our district and charter school partners, I am confident that the final version of the standard charter school contract will fully meet the five objectives that we set out to achieve. Thank you for your continued focus on our students.

Regards,



Adam Miller, Executive Director
Office of Independent Education & Parental Choice

From: [Jody A. Perry](#)
To: [Miller, Adam](#); [Emerson, Adam](#)
Cc: [Leslie M. Brown](#); [JoAnn T. DiLallo](#); [Anitra F. Hayes-Collins](#); [Rhonda L. Stephanik](#)
Subject: Contract language changes
Date: Wednesday, July 30, 2014 4:48:36 PM
Attachments: [72213_22517_3.jpg](#)
[Proposed Standard Contract Final \(5\).pdf](#)

Good Afternoon Gentlemen,

Thank you for a great meeting. I always like to hear the variety of perspectives on this very important issue. Attached for your review is a second copy of the draft contract that was jointly crafted by representatives of the Florida Consortium of Public Charter Schools and representatives of this district. While neither entity has approved the document, we feel that it is a great starting point for conversation.

Mr. Miller you specifically asked for language suggestions for records retention, please see pages 19 and 20.

For specific language regarding notice of district policy changes, please see page 49.

Thank you for your continued support.

Jody Perry
Director,
Charter Schools Management/Support
The School Board of Broward County, Florida
600 SE 3rd Avenue
12th Floor
Ft. Lauderdale, FL 33301
Tel: (754) 321-2135
Fax: (754) 321-2138
jody.perry@browardschools.com



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