

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION

Technical Assistance Paper

APPEAL OF WILBESAN CHARTER SCHOOL, INC.
TERMINATION OF CHARTER CONTRACT

APPLICANT: WILBESAN CHARTER SCHOOL, INC.

SCHOOL BOARD: SCHOOL BOARD OF HILLSBOROUGH COUNTY

INTRODUCTION

On April 8, 2003, the District School Board of Hillsborough County (hereinafter, “School Board”) entered into a five-year charter contract with Wilbesan Charter School, Inc. (hereinafter, “Appellant” or “Charter School”). The 2005-2006 school year, which began on August 4, 2005, was to be Wilbesan’s third year of operation under its contract. Appellant notified the School Board on or about May 30, 2005 that it would be relocating to a new facility effective June 1, 2005. The Charter School opened on August 4, 2005 in its new facility, which was part of a church. The Deputy Fire Marshal of Hillsborough County issued a cease and desist order on August 4, 2005 that stated that the location of the Charter School was to “cease and desist.” No activities were specified. The cease and desist order stated that it was based on findings that:

- [Appellant] failed to apply for and obtain proper permitting and plans review due to a change in occupancy and to comply with all plans review comments.
- [Appellant] did not successfully complete an on site fire inspections [sic] by the fire marshal’s office after all permitting and plans review had been applied for and approved.

The Charter School was to remain closed until these violations were corrected and a Certificate of Occupancy inspection was conducted by the Hillsborough County Fire Marshal’s Office. The Fire Marshal predicted that it would take several weeks for the Charter School to become compliant with the governing fire and safety regulations.

On August 4, 2005, the Superintendent of Hillsborough County provided the Charter School with a letter closing the school immediately and stating an intention to recommend that the School Board terminate the charter contract. The stated ground for termination was that the health, safety, and welfare of the students was threatened because of noncompliance with fire safety requirements. The letter cited the violations found in the cease and desist order as the basis for immediate termination.

Appellant filed a motion for an emergency injunction against the School Board on August 9, 2005, to enjoin the School Board from voting to close the Charter School on these grounds. The Court denied the motion, reasoning that the issue was premature since the School Board had not yet made a decision of whether to follow the Superintendent’s recommendation and directed Appellant to follow the procedure set forth in Florida Statute § 1002.33.

At the Superintendent’s recommendation, on August 9, 2005, the School Board voted unanimously to terminate Appellant’s charter effective immediately. Appellant’s counsel was provided an opportunity to argue on behalf of the Charter School. No “denial” letter was sent.

On August 23, 2005, the Charter School filed an appeal with the Florida Department of Education (hereinafter, the “Appeal”). A revised Appeal was filed by the Charter School on August 29, 2005. On September 22, 2005, the School Board filed an answer brief with the Florida Department of Education.

The applicable provision is Florida Statute § 1003.22(8), which provides in relevant part:

(8) Causes for nonrenewal or termination of charter.—

(a) At the end of the term of a charter, the sponsor may choose not to renew the charter for any of the following grounds:

1. Failure to participate in the state's education accountability system created in s. 1008.31, as required in this section, or failure to meet the requirements for student performance stated in the charter.
2. Failure to meet generally accepted standards of fiscal management.
3. Violation of law.
4. Other good cause shown.

(b) During the term of a charter, the sponsor may terminate the charter for any of the grounds listed in paragraph (a).

...

(d) 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. The charter school's governing board may, within 14 days after receiving the sponsor's decision to terminate the charter, appeal the decision pursuant to the procedure established in subsection (6).

There is one issue in dispute. Based upon the available evidence presented by the parties, the following is a summary of the research findings in relation to the issue raised.

ISSUE:

WHETHER THE HEALTH, SAFETY, AND WELFARE OF THE STUDENTS WAS THREATENED, WARRANTING IMMEDIATE TERMINATION OF APPELLANT'S CHARTER CONTRACT.

Appellant

- Appellant states that it complied with or attempted and agreed to timely comply with all fire safety requirements for its new facility.
- Appellant states that the fire inspection report created by the investigator from the Hillsborough County Fire Marshal's Office on August 3, 2005 does not comply with

procedural requirements of Florida Statute § 58.044 and did not find that any of the alleged violations were life-threatening.

- Appellant states that the fire safety deficiencies alleged to be the basis for closing the Charter School do not rise to the level of immediate life threatening or hazardous life safety conditions required for a cease and desist order or charter termination.
- Appellant asserts that the independent investigation performed by a certified Florida safety inspector, formerly with the State Fire Marshal's office, retained by Appellant contradicts the School Board's position and found that the Charter School was "free of fire safety deficiencies."
- Appellant states that the Superintendent's recommendation to the School Board was based on an improper cease and desist order that did not follow the procedural and substantive requirements of Florida Statutes §§ 633.161 and 1013(12) and was not issued by the State Fire Marshal.
- Appellant states that the 2004 fire inspection approved the use of the building, most of which continues to be used as a church, for assembly occupancy, and, there is no need to change the occupancy classification.
- Appellant states that the termination of its charter contract was in retaliation for Appellant's refusal to sign-off on an unauthorized, improper and untimely June 6, 2005 inspection of a former facility that was no longer occupied by the Charter School at that time.

School Board

- School Board states that it had not received annual fire safety reports from any charter schools as of May 23, 2005, at which time the School Board retained a fire safety inspector to conduct the inspections but Appellant did not respond to communications to set up the inspection, thus, the standard inspection form was submitted with a notation that no physical inspection had been performed and no local fire inspection was on file for Appellant's old facility.
- School Board states that the letter from Appellant's independent fire inspector does not meet the requirements for an adequate inspection report to be included in the School Board's State Report.
- School Board states that the occupancy classification must be changed and that the Charter School was warned not to open for school on August 4, 2005 because the Certificate of Occupancy did not authorize using the facility for educational purposes.
- School Board states that the decision to terminate the charter turned on the Charter School's defiance of the directives of the Hillsborough County Fire Marshal's Office and

unwillingness to comply with the corrective actions proposed by the Fire Marshal.

- School Board states that the violations created a dangerous environment for the children.
- School Board states that the totality of the circumstances warranted immediate termination of the charter.
- School Board states that it could not predict the number of deficiencies or code violations the inspectors would find when the proper permitting and plans were submitted, and, therefore, the School Board had to err on the side of caution and permanently close the school.
- School Board disputes Appellant's contention that there are procedural deficiencies in the inspection report and issuance of the cease and desist order, but states, regardless, this is not the proper forum for such assertions.
- School Board states that Appellant was in violation of the Florida Fire Prevention Code and Florida Statute § 1013.12.