

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION

Technical Assistance Paper

APPEAL OF SURVIVORS CHARTER SCHOOL OF WEST PALM BEACH AND
SURVIVORS CHARTER SCHOOL OF BOYNTON BEACH
TERMINATION OF CHARTER CONTRACTS

APPELLANT: SURVIVORS CHARTER SCHOOL, INC.

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

INTRODUCTION & HISTORY

On July 1, 2001 a ten (10) year charter agreement became effective between the School Board of Palm Beach County, Florida (hereinafter, "School Board") and Survivors Charter School, Inc (hereinafter, "SCSI") to open and operate the Survivors Charter School of West Palm Beach (hereinafter, "Survivors – WPB").

On July 1, 2003 a ten (10) year charter agreement became effective between the School Board and SCSI to open and operate the Survivors Charter School of Boynton Beach (hereinafter, "Survivors – Boynton Beach").

On January 24, 2006 the Superintendent of the School Board (hereinafter "Superintendent") notified SCSI in two separate letters addressed to each school that he would make a formal recommendation to the School Board on January 25, 2006 that the charter contracts with both Survivors – WPB and Survivors – Boynton Beach be terminated immediately due to the severity of audit findings.

On January 25, 2006 the School Board held a special meeting during which they voted to immediately terminate the charter contracts for both Survivors – WPB and Survivors – Boynton Beach.

On January 25, 2006 the School Board notified SCSI in two separate letters addressed to each school that their charter contracts had been terminated and that the School Board would be assuming control of both schools on January 26, 2006.

On January 26, 2006 the School Board assumed control of Survivors – WPB and Survivors – Boynton Beach.

On February 27, 2006 the Florida Department of Education received from Survivors Charter School, Inc a single appeal covering the termination of the charter contracts for both Survivors – WPB and Survivors – Boynton Beach (hereinafter, "Appeal"). Attached to the Appeal were both a tabbed Appendix of Exhibits and Table of Authorities totaling approximately 500 pages.

On April 7, 2006 the Florida Department of Education received from the School Board a single Reply Brief, 33 pages in length responding to the Appeal (hereinafter "Reply Brief"). Attached to the Reply Brief was an un-tabbed Appendix totaling approximately 750 pages.

ISSUE ONE:

WHETHER THE SCHOOL BOARD VIOLATED SCSI'S DUE PROCESS RIGHTS DURING THE CHARTER CONTRACT TERMINATION PROCEEDINGS.

- SCSI argues that the notice given by the School Board of the termination meeting was insufficient in that it did not give them enough information about the issues to be properly prepared for the meeting (Appeal page 7).

- SCSI asserts that its due process rights were violated by the School Board when SCSI was not afforded a reasonable opportunity to present evidence, cross-examine witnesses and speak on its own behalf at a hearing prior to the termination vote. During the termination hearing, comment from SCSI and its supporters was limited to three (3) minutes for each speaker. SCSI was not allowed to question School Board personnel, including the audit committee chair (Appeal page 7).
- SCSI claims that it never received a final copy of the School Board’s audit report including its conclusions prior to, during or immediately after the termination meeting (Appeal page 7).
- The School Board states that SCSI has no right to a due process hearing prior to the School Board assuming control of the charter schools. While not required to do so, the School Board afforded SCSI its due process rights nonetheless (Reply Brief page 20).
- The School Board states that there had been an ongoing dialogue between itself and SCSI, and that SCSI should have been well aware of the issues relating to the audits. SCSI officials were present at the School Board meeting on January 18, 2006 where the results of the audit were presented. The School Board asserts that due process is satisfied if a party is not “surprised” by the actions against it (Reply Brief pages 21 - 23).
- The School Board claims that SCSI received a draft copy of the audit report on December 22, 2005 which was virtually identical to the final, approved report. The School Board states it released the final audit report to the public on January 9, 2006. The audit committee approved the report at a meeting on January 13, 2006. The School Board claims that SCSI was invited to attend the January 13th audit committee meeting but did not attend (Reply Brief page 9).
- ANALYSIS: It is a question of fact whether or not the issues claimed by the School Board meet the level necessary for immediate termination of a charter contract. If it is found that immediate termination was justified, then the law allows the School Board to terminate and assume control of the school immediately and grants the charter school 14 days following the termination in which to appeal the action.
- The pertinent Florida Statute on this issue reads as follows (emphasis added):

§1002.33(8): CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.

(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).

ISSUE TWO:

WHETHER THE SCHOOL BOARD IMPROPERLY TREATED SURVIVORS-WPB AND SURVIVORS – BOYNTON BEACH AS A SINGLE ENTITY DURING THE TERMINATION PROCESS.

- SCSI argues that Survivors – WPB was “found guilty by association” with Survivors – Boynton Beach. SCSI asserts that the list of financial deficiencies presented to the School Board prior to their vote did not all apply to both of the schools and that in fact only a few applied to Survivors – WPB. They further state that Survivors – WPB had already taken action in response to its deficiencies (Appeal page 10).
- The School Board states that both schools were operated by the same governing board and that the principals of both schools engaged in financial mismanagement (Reply Brief page 28).
- ANALYSIS: It is unclear from the record as to whether the Schools were operated as separate entities although both schools had separate staffs, teachers, campuses, and principals.

ISSUE THREE:

[NOTE: UNDER THE ADMINISTRATIVE PROCEDURE ACT THE CHARTER SCHOOL APPEAL COMMISSION DOES NOT HAVE JURISDICTION TO RENDER A DECISION AS TO THIS ALLEGED VIOLATION]

WHETHER THE SCHOOL BOARD VIOLATED THE FLORIDA ADMINISTRATIVE PROCEDURES ACT DURING THE CHARTER CONTRACT TERMINATION PROCEEDINGS.

- SCSI asserts that under the Florida Administrative Procedure Act (§120.569 F.S. and §120.525(3) F.S. The text of both sections is available in SCSI’s Table of Authorities under Tabs B and C) the School Board was required to hold a public meeting to factually determine that an emergency existed prior to holding a meeting where a hearing and vote on the immediate termination could be taken (Appeal page 13).
- School Board does not respond specifically to this issue; rather, the School Board directs the reader to the Reply Brief as a whole where they argue that SCSI’s due process rights were not violated (Reply Brief page 28).
- ANALYSIS: The Administrative Procedure Act defines the steps to be taken prior to an emergency meeting and how the meeting should be held. The statute provides that the agency must publish the specific facts and reasons for finding an immediate danger to the public health, safety or welfare and its reasons for concluding that the procedure used is

fair under the circumstances. The statute states that this may be done at the time of the action.

- The pertinent Florida Statute on this issue reads as follows:

§120.525: MEETINGS, HEARINGS AND WORKSHOPS:

(3) If an agency finds that an immediate danger to the public health, safety, or welfare requires immediate action, the agency may hold an emergency public meeting and give notice of such meeting by any procedure that is fair under the circumstances and necessary to protect the public interest, if:

(a) The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.

(b) The agency takes only that action necessary to protect the public interest under the emergency procedure.

(c) The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

ISSUE FOUR:

WHETHER THE SCHOOL BOARD VIOLATED THE CHARTER CONTRACT BY NOT UTILIZING AN ALTERNATIVE DISPUTE RESOLUTION PROCESS PRIOR TO THE IMMEDIATE TERMINATION.

- SCSJ states that the charter contracts for both schools include a required alternative dispute resolution (hereinafter, “ADR”) process that the School Board did not follow in terminating the charter contracts (Appeal page 18).
- The School Board states that the use of ADR is an option, not a requirement, under the charter contract for both schools (Reply Brief page 30).
- ANALYSIS: Section 31 of both charter contracts state that in the case of disputes that cannot be resolved informally, the ADR process as defined in Section 32 of both charter contracts “shall” be used. In contradiction to this, Section 32 of both charter contracts which describes the mechanics of the ADR process states that the specific ADR process “may” be used [The sections of the charter contracts in question may be found in Appeal Appendix of Exhibits Tab 1 pages 31 - 33 and Tab 2 pages 41 – 42].

ISSUE FIVE:

WHETHER UNDER FLORIDA LAW THE “GOOD CAUSE” STANDARD FOR IMMEDIATE TERMINATION OF A LONG-TERM CHARTER CONTRACT (10 YEARS OR MORE) IS DIFFERENT THAN THAT USED IN THE IMMEDIATE TERMINATION OF A CHARTER CONTRACT OF LESS THAN 10 YEARS.

- SCSI argues that F.S. §1002.33(7)(a)(12) provides that immediate termination of a long-term charter contract requires “specific good cause” to be shown, and “specific good cause” is a higher standard than “good cause shown” (Appeal pages 18-19).
- The School Board argues that “good cause” requires that specific reasons for good cause be shown and that this standard has been met (Reply Brief page 30).
- ANALYSIS: The section of the Florida Statute that speaks to the termination of long-term charter contracts cross-references the section on causes for non-renewal or termination of a charter. There doesn’t appear to be any inconsistency in the statute on this matter.
- The pertinent Florida Statutes on this issue reads as follows (emphasis added):

§1002.33(7)(a)(12) --The term of the charter which shall provide for cancellation of the charter if insufficient progress has been made in attaining the student achievement objectives of the charter and if it is not likely that such objectives can be achieved before expiration of the charter. The initial term of a charter shall be for 3, 4, or 5 years. In order to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a municipality or other public entity as provided by law are eligible for up to a 15-year charter, subject to approval by the district school board. A charter lab school is eligible for a charter for a term of up to 15 years. In addition, to facilitate access to long-term financial resources for charter school construction, charter schools that are operated by a private, not-for-profit, s. 501(c)(3) status corporation are eligible for up to a 10-year charter, subject to approval by the district school board. *Such long-term charters remain subject to annual review and may be terminated during the term of the charter, but only for specific good cause according to the provisions set forth in subsection (8).*

§1002.33(8) -- CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER

(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).

ISSUE SIX:

WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO IMMEDIATELY TERMINATE THE CHARTER CONTRACTS BASED ON THE SEVERITY OF THE AUDIT FINDINGS.

- School Board representatives conducted an audit of both schools and listed 14 items of concern in the audit. The concerns included nepotism, uncertified teachers, unauthorized cash expenditures of public funds, inappropriate locations for public meetings, co-mingling of public and private funds, inappropriate expenditures of public funds, incomplete employee records and background checks, inappropriate business practices, and poor financial oversight by the governing board (Reply Brief pages 10 – 14).
- SCSI claims that all of the issues in the audit were past issues that had either already been corrected or were in the process of being corrected. By the time the audit committee issued the final audit, (which triggered the immediate termination recommendation by the Superintendent) there was no reason or need for such action (Appeal pages 1 and 16).
- ANALYSIS: The question presented is not whether there was sufficient reason to terminate the charter contracts, but whether there was an immediate threat which would justify the School Board taking immediate action and assuming control of the schools rather than issuing SCSI a 90-day notice of non-compliance and the opportunity to cure the problems stated.

The full text of the audit and the written responses by SCSI's governing board and each of the school's principals may be found in the Appeal's Appendix of Exhibits under Tab 6. It should be noted that the executive summary of the audit which was prepared by the School Board does not provide complete summaries of the schools' responses to the findings and that the reader should review the actual responses which appear beginning on page 4 of the audit.

- The pertinent Florida Statutes on this issue reads as follows (emphasis added):

§1002.33(8): CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.

(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).