

THE FLORIDA DEPARTMENT OF EDUCATION  
CHARTER SCHOOL APPEALS COMMISSION

# Technical Assistance Paper

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APPEAL OF RICHARD MILBURN ACADEMY  
TERMINATION OF CHARTER CONTRACT

APPELLANT: RICHARD MILBURN ACADEMY  
A HILLSBOROUGH COUNTY, FLORIDA CHARTER SCHOOL  
SCHOOL BOARD: HILLSBOROUGH COUNTY SCHOOL BOARD

## INTRODUCTION & HISTORY

On October 19, 1999, the Hillsborough County School Board (hereinafter “School Board”) granted a charter contract (hereinafter, “Charter Contract”) to the Richard Milburn Academy (hereinafter “The School”) to operate Richard Milburn Academy Charter School. The initial term of the charter was July 1, 2000, through June 30, 2005. The School had difficulty securing a facility and did not open for school until fall 2002.

On July 12, 2005, the School Board renewed the Charter Contract (hereinafter “Renewal Contract”) for three years.

On April 25, 2006 the School Board sent a letter to the School stating that the School was identified as a low performing charter school for the 2004 and 2005 school years based upon the School’s FCAT results. A review of the school’s FCAT performance indicated that the school obtained a point value equivalent to an “F” in the state grading system for both years. The letter stated that based upon sustained low performance, the School Board recommends termination of the Renewal Contract effective July 30, 2006.

The letter further stated the School had 14 calendar days after receiving the letter to request an informal hearing before the School Board. The School Board would then conduct an informal hearing within 30 calendar days after receiving a written request from the School.

On May 8, 2006, the School responded in writing to the concerns stated in the letter of April 24, 2006, and confirmed that it requested an informal hearing with the School Board.

On May 24, 2006, the School Board’s Charter School Informal Hearing Committee (hereinafter “Hearing Committee”) held an informal hearing per the School’s request. No decisions were made at the informal hearing due to five of the School Board members and the Superintendent having to leave to attend a prior engagement.

On June 12, 2006, the School received official notice from the Florida Department of Education that it was granted an alternative designation and would receive a “score only” rather than a school grade for the 2005-2006 school year.

On June 16, 2006, the School sent a letter offering information to answer questions that were asked by Hearing Committee members at the informal hearing on May 24, 2006 and to share what the School was doing to respond to Hearing Committee member’s concerns. The letter also informed the School Board of the School’s designation as an alternative school from the Florida Department of Education.

On June 23, 2006, the School sent a letter to the School Board Superintendent analyzing the School’s 2006 Spring FCAT scores with a comparison of the previous year’s scores for all students who were pre/post tested.

On July 12, 2006 the School Board sent the School, via email, a comparison of student test data.

On July 14, 2006 the School sent a response to the School Board, via email.

On July 17, 2006, the School sent the School Board a letter regarding the School Improvement Plan and School Improvement Plan goals.

On July 25, 2006, the School Board unanimously voted to terminate the Charter Contract.

On July 26, 2006, the School Board sent notice of termination to the School (hereinafter, "Notice of Termination").

On August 24, 2006, the School filed a Notice of Appeal of Termination of Charter School Contract with the State Board of Education.

On September 22, 2006, the School Board filed a response to the Appeal with the State Board of Education (hereinafter "Response").

## ISSUE ONE

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

- The School states that the facts concerning the School's low student performance for two consecutive years (2004-2005 and 2005-2006) is based upon the demographics and make-up of the student population. The School's target population of students are "at-risk" students who have been suspended for the remainder of the year, dropped out, need a transitional environment subsequent to incarceration or are deemed significantly at risk of failure for academic or behavioral issues. The School functions as an alternative school. The School operated as such for three years and was subsequently granted a renewal contract. Nine months into the renewal contract, the School received notice recommending termination of the Charter Contract. On July 12, 2006, the School received an official "Alternative" school designation from the Florida Department of Education (Appeal pages 2-3).
- The School states that it is apparent from the transcript of the informal hearing held on May 24, 2006, and the transcript from the School Board meeting held on July 25, 2006, the Hearing Committee and School Board members had prejudiced their judgment to proceed with the recommended termination due to the fact that students and parents were prepared to speak at the hearing and School Board meeting and they were denied the opportunity to be heard and present supporting evidence (Appeal page 3-5).
- The School further states that the School Board ignored its own contractual obligations by terminating the agreement for improper extra-contractual reasons as well as by imposing requirements on the School which were not contained in the Renewal Contract (Appeal page 5 and page 8).
- The School Board states that it provided the School with proper notice of all meetings, evidenced by the fact that the School took advantage of every opportunity to be heard (Response page 2).
- The School Board states that it gave the School numerous opportunities to present viable and reliable information on its behalf (Response page 2).
- The School Board states that School representatives were present and spoke at the informal hearing held on May 24, 2006 as required by F.S. 1002.33(8)(c) (Response page 8-9).

- The School Board states that at the July 25, 2006 School Board meeting, School representatives addressed the School Board but no further evidence was submitted (Response page 2 and page 10).
- The School Board further states that the School is fully aware of the reasons of the termination of the Renewal Contract as stated in its July 27, 2006, letter to the School (Response page 3).
- The pertinent Florida Statute on this issue reads as follows:

F.S. §1002.33 (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).

(c) At least 90 days prior to renewing or terminating a charter, the sponsor shall notify the governing body of the school of the proposed action in writing. The notice shall state in reasonable detail the grounds for the proposed action and stipulate that the school's governing body may, within 14 calendar days after receiving the notice, request an informal hearing before the sponsor. The sponsor shall conduct the informal hearing within 30 calendar days after receiving a written request. The charter school's governing body may, within 14 calendar days after receiving the sponsor's decision to terminate or refuse to renew the charter, appeal the decision pursuant to the procedure established in subsection (6).

ISSUE TWO

**WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO TERMINATE THE CHARTER CONTRACT BASED ON THE FAILURE OF THE CHARTER SCHOOL TO MEET THE REQUIREMENTS FOR STUDENT PERFORMANCE STATED IN THE CHARTER.**

- The School argues that it seeks to educate “at-risk” students who have been suspended for the remainder of the year, dropped out, need a transitional environment subsequent to incarceration

or are deemed significantly at risk of failure for academic or behavioral issues. The School functions as an alternative school and has operated as such for three years. (Appeal pages 2-3).

- Subsequently, the School Board granted a renewal contract to the School fully aware of its school's demographics and operations as such (Appeal page 2).
- On June 12, 2006, the School argues that it also received official notice from the Florida Department of Education that it was granted an alternative designation and would receive a "score only" rather than a school grade for the 2005-2006 school year (Appeal page 3).
- The School further argues that the School Board unduly used school performing grades from the 2004-2005 school year (which was under a previous contract year) and performing scores from the 2005-2006 school year ( under the Renewal Contract) to consider the school low-performing for two consecutive years (Appeals page 9).
- The School also states that according to the Renewal Contract (Part II Section 4): ***If the school earns a grade of F from the DOE or, if the school is not graded and it is determined by the sponsor that the school's grade is equivalent to a grade of "F", the school shall participate in the State's Assistance Plus Program and shall report pupil progress quarterly to the sponsor and state as required by DOE.*** Moreover, such actions were not afforded to the School by the School Board before its decision to terminate the Renewal Contract (Appeal page 9-10).
- The School Board argues that the School failed to meet its student achievement increase requirements as stated in its charter, which failure constitutes cause for termination of a charter pursuant to the provisions of F.S. 1002.33 (8)(a)(1) ( Response page 3-4).
- The School Board argues that according to F.S. 1002.33 (6) (a) (3) it expressly provides that all charter schools applications, and therefore the school themselves, are subject inter alia to the requirement that it: ***contain goals and objectives for improving student learning and measuring that improvement. These goals and objectives must indicate how much academic improvement students are expected to show each year, how success will be evaluated, and the specific results to be attained through instruction- Emphasis added.*** (Response page 4).
- The School Board argues that the School provided no evidence as to satisfactorily meeting goals which are school and student performance based or are based upon an annual progress (Response page 6-7).
- The School Board further argues that the School has presented no basis or material evidence for overturning the decision of the School Board (Response page 6-10).