2017 WL 3000491 (Fla.Div.Admin.Hrgs.)

Division of Administrative Hearings

State of Florida

RENAISSANCE CHARTER SCHOOL, INC., Petitioner
v.
THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, Respondent

Case Nos. 16-5126, 16-5157RX
July 11, 2017

FINAL ORDER

***1** Pursuant to notice, a final hearing was conducted in this case on January 25, 2017, by video teleconference at sites in West Palm Beach and Tallahassee, Florida, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings.

APPEARANCES

For Petitioner:

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For Respondent:

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STATEMENT OF THE ISSUES

Whether the School Board lacked the delegated legislative authority to promulgate School Board Policy 2.57.

Whether the challenged portions of School Board Policy 2.57 violate certain provisions of the charter school statute, section 1002.33, Florida Statutes, and State Board Rules, as outlined in Petitioner's Amended Rule Challenge Petitions.

Whether the Innovative Rubric Policy 2.57 should be invalidated for enlarging, modifying, and/or contravening the charter statute and also the adopted State Board Education rule(s) and form(s).

Whether the budget worksheet referenced in School Board Policy 2.57 is an unadopted rule because it was not attached or incorporated into School Board Policy 2.57 and/or was never specifically adopted by rule.

Whether certain provisions of School Board Policy 2.57 violate section 1002.33(6)(h) as outlined in Petitioner's Amended Rule Challenge and Charter Petitions.

Whether the prevailing party is entitled to attorneys' fees and costs pursuant to section 1002.33(6)(h) and/or section 120.595, Florida Statutes.

PRELIMINARY STATEMENT

This proceeding was initiated on September 7, 2016, when Renaissance Charter School, Inc. ("Renaissance" or "Petitioner"), filed two petitions within one document, one under section 120.56(3) and the other under section 1002.33(6)(h) against The School Board of Palm Beach County, Florida ("School Board" or "Respondent"). The cases were opened as separate files at the Division of Administrative Hearings ("DOAH"). By Order dated September 28, 2016, the cases were consolidated.

On December 9, 2016, a telephonic hearing was held on the School Board's motion to dismiss the petition brought pursuant to section 1002.33(6)(h), which the undersigned denied by Order dated December 9, 2016.

Renaissance subsequently sought leave to amend its petitions, which the undersigned granted by Order dated December 9, 2016. The operative pleading in this case is now Renaissance's Amended Petition Seeking an Administrative Determination that Adopted School Board Policy 2.57 is Void for Lack of Delegated Legislative Authority and/or Enlarging, Modifying, and/or Contravening the Charter Statute and Amended Petition Under Sec[tion] 1002.33(6)(h), Florida Statutes, filed on December 19, 2016. Renaissance's amended petition contains a Rule Challenge Petition ("Rule Challenge") brought under section 120.56(3), and an Amended Petition/Notice/Request for Initiation of Proceedings under Section 1002.33(6)(h) of the Charter Statute ("Charter Petition"). The School Board filed its Answer to Petitioner's Amended Petition and Incorporated Memorandum of Law on January 13, 2017.

***2** On January 20, 2017, the parties filed a Joint Pre-hearing Stipulation. After being continued several times at the request of the parties, the matter proceeded to a final hearing on January 25, 2017. The parties agreed that they would not call any witnesses and would present only documentary evidence and argument. The undersigned admitted Renaissance's Exhibits 1 through 11 and 15, and the School Board's Exhibits 2 through 4. The undersigned also took official recognition of the current version of Florida Administrative Code Rule 6A-6.0786 and three State Board of Education's incorporated forms (IEPC-M1, IEPC-M2, and IEPC-SC).

The Transcript of the final hearing was filed with DOAH on February 15, 2017. The parties originally agreed to multiple stages of post-hearing briefing, but later revised the schedule so that they would only submit proposed orders by April 15, 2017, (which was a Saturday, meaning the proposed orders were due on April 17, 2017), with the option to file amended proposed orders within 10 days thereafter, or by April 27, 2017, subsequently extended through May 1, 2017. The parties' proposed final orders were timely filed and have been considered in the preparation of this Final Order.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2016 Florida Statutes.

FINDINGS OF FACT

1. Renaissance is a not-for-profit Florida corporation.

2. Renaissance currently operates six charter schools in the School District of Palm Beach County ("School District") pursuant to charters issued by the School Board: (1) Renaissance Charter School at Central Palm; (2) Renaissance Charter School at Cypress; (3) Renaissance Charter School at Palms West; (4)Renaissance Charter School at Summit; (5) Renaissance Charter School at Wellington; and (6) Renaissance Charter School at West Palm Beach.

3. The School Board is the "sponsor" of the six schools operated by Renaissance in the School District for purposes of section 1002.33.

4. The six schools operated by Renaissance are public schools, by virtue of their status as charter schools, under section 1002.33(1).

5. Charter Schools USA serves as the education services provider or management company for all six of Renaissance's schools in the School District.

6. On April 1, 2015, the School Board held a public workshop on the subject of charter schools, including proposed revisions to School Board Policy 2.57 ("Policy 2.57") entitled "Charter Schools."

7. After the workshop, the School Board reviewed proposed revisions to the rule, Policy 2.57, at a noticed public meeting on April 22, 2015, and approved development of the policy.

8. On May 27, 2015, at a noticed public meeting, the School Board approved adoption of revised Policy 2.57.

9. The May 27, 2015, amendments to Policy 2.57 required, among other things, that charter schools meet a standard beyond the status quo for "innovative learning methods," mandated that every charter contract contain a provision requiring 51 percent of the charter school governing board members to reside within Palm Beach County, and mandated that every charter contract contain a provision precluding new charter schools from being located in the vicinity of a district-operated school that has the same grade levels and programs.

***3** 10. The May 27, 2015, amendments to Policy 2.57 also included an attached Innovative Policy Rubric 2.57, which contained the innovative definition and additional standards of innovation which charter school applicants must satisfy.

11. The May 27, 2015, amendments to Policy 2.57 also required a completed budget worksheet in the format prescribed by the School Board from each charter school applicant.

12. The "budget worksheet" referenced in Policy 2.57 is the "Budget Template Tool" developed by the Florida Charter Support Unit.

13. The "budget worksheet" referenced in Policy 2.57 was not specifically identified in Policy 2.57 or attached thereto when it was adopted.

14. The School District requires use of the Budget Template Tool in order to provide charter school applicants notice about everything that is required to prepare a budget and to ensure that the budget includes all necessary information.

15. Charter school applicants who do not use the Budget Template Tool often fail to provide all of the information required to be included in the budget.

16. The School District will review an applicant's budget even if it is not submitted using the Budget Template Tool.

17. Failure to use the Budget Template Tool, in and of itself, will not be a factor in the rating of the "Budget" section of an application or the overall recommendation on an application.

18. On August 3, 2015, Renaissance submitted its application for Renaissance Charter High School of Palm Beach to the District's Charter Schools Department.

19. The application for Renaissance Charter High School of Palm Beach is the only charter application Renaissance has filed in the School District since the revised Policy 2.57 was adopted on May 27, 2015.

20. On or around August 18, 2015, Renaissance requested that the Florida Department of Education ("FDOE") mediate its dispute over the amendments to Policy 2.57.

21. The School Board declined FDOE's request to mediate the dispute.

22. On September 8, 2015, Commissioner of Education Pam Stewart issued a letter to both Renaissance and the School Board confirming that the dispute could not be settled through mediation and providing Renaissance with permission to bring its dispute to DOAH.

23. The District Superintendent recommended that the application for Renaissance Charter High School of Palm Beach be denied and placed it on the consent agenda for the School Board's November 4, 2015, public meeting, with one of the reasons being that the application "failed to meet indicators of School Board Policy 2.57 innovative rubric."

24. At the November 4, 2015, meeting, after deliberation, the School Board voted to deny the application.

25. In its letter dated November 13, 2015, denying the charter application of the proposed Renaissance Charter High School of Palm Beach, the School Board relied, in part, on Policy 2.57 as grounds for denial.

***4** 26. On September 7, 2016, Petitioner filed a consolidated challenge that was amended on December 20, 2016. Petitioner is challenging the School Board's adoption and amendments of May 27, 2015, to Policy 2.57 in the Rule Challenge and asserting a violation of the flexibility granted to charter schools for the amended provisions in the Charter Petition.

CONCLUSIONS OF LAW

27. DOAH has jurisdiction over the subject matter of this consolidated proceeding and of the parties thereto pursuant to sections 120.56(3) and 1002.33(6)(h), Florida Statutes (2016).

28. The first part of this consolidated proceeding is a challenge to existing Policy 2.57. In a challenge to an existing rule, the "petitioner has [the] burden of proving by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative authority as to the objections raised." § 120.56(3)(a), Fla. Stat. The standard of review is de novo. § 120.56(1)(e), Fla. Stat.

29. The starting point for determining whether an existing rule is invalid is section 120.52(8), in which the legislature defined the term "invalid exercise of delegated legislative authority." Pertinent to this case are the following provisions Petitioner alleges were deficiencies for the Rule Challenge:
A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

* * *

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

§ 120.52(8), Fla. Stat.

30. The term "law implemented" is defined to mean "the language of the enabling statute being carried out or interpreted by an agency through rulemaking." § 120.52(9), Fla. Stat.

Whether the School Board Exceeded Its Authority

31. Policy 2.57 establishes standards and criteria for charter schools. Renaissance contends that Policy 2.57 is an invalid exercise of legislative authority because the School Board lacks requisite statutory authority. Renaissance further asserts that the School Board exceeded its authority delegated by the Florida legislature with Policy 2.57. Renaissance also maintains that school boards only have a consultation role in recommending which charter school rules should be passed by the State Board of Education because section 1002.33(28) provides the State Board of Education exclusive authority to adopt rules for charter schools.

32. Section 1002.33(28) provides:

> (28) RULEMAKING.-The Department of Education, after consultation with school districts and charter school directors, shall recommend that the State Board of Education adopt rules to implement specific subsections of this section. Such rules shall require minimum paperwork and shall not limit charter school flexibility authorized by statute. The State Board of Education shall adopt rules, pursuant to ss. 120.536(1) and 120.54, to implement a charter model application form, standard evaluation instrument, and standard charter and charter renewal contracts in accordance with this section.

***5** 33. Contrary to Petitioner's position that the State Board of Education has exclusive rulemaking authority for charter schools, the undersigned is not persuaded that section 1002.33(28) limits all rulemaking for charter schools to the State Board of Education. When the language of the statute is clear and unambiguous, the statute must be given its plain and obvious meaning. Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984). Section 1002.33(28) places restrictions on the State Board of Education's authority to adopt rules and limits the implementation only to "specific subsections of this section" and does not allow rulemaking for all subsections. Additionally, the provision provides the State Board of Education three distinct areas to implement: charter model application forms, standard evaluation instruments, and standard charter and charter renewal contracts by rule.

34. The Fourth District delineated the hierarchy for school districts in School Board of Palm Beach County v. Florida Charter Education Foundation, Inc., 213 So. 3d 356, (Fla. 4th DCA 2017). In Charter Education Foundation, the court outlined that the Florida Constitution creates a hierarchy under which a school board has local control, but the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a school board's local powers, but such infringement is expressly contemplated--and in fact encouraged by the very nature of supervision--by the Florida Constitution. Id. at 360.

35. The legislature outlined where charter schools fit in the organizational scheme in which a school board has local control. "All charter schools in Florida are public schools." § 1002.33(1), Fla. Stat. District school boards operate, control, and supervise all public schools. § 1001.32(2), Fla. Stat. Additionally, charter schools are "sponsored" by the district school board in the county in which the district school board has jurisdiction. § 1002.33(5)(a), Fla. Stat.

36. Renaissance contends that the School Board has exceeded its grant of rulemaking authority required by sections 120.54(3)(a)1. and 120.52(8)(b). The term "rulemaking authority means statutory language that explicitly authorizes or

requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term 'rule' § 120.52(17), Fla. Stat.

37. Sections 1001.41(1) and (2), Florida Statutes, are the statutory authority listed for Policy 2.57. It is important to note that Policy 2.57 was promulgated, listing statutory authority, unlike agency rules that typically list rulemaking authority. The undersigned is not convinced that the definition and test for "rulemaking authority," under section 120.52(17), is applicable in this proceeding since rulemaking is not referenced as the authority for Policy 2.57.

38. The School Board counterargues that section 1001.41(2) grants general powers, which include broad rulemaking authority to determine policies deemed necessary and adoption of rules to supplement State Board of Education rules for the district.

***6** 39. Sections 1001.41(1) and (2) provide:
1001.41 General powers of district school board.-The district school board, after considering recommendations submitted by the district school superintendent, shall exercise the following general powers:

(1) Determine policies and programs consistent with state law and rule deemed necessary by it for the efficient operation and general improvement of the district school system.

(2) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it to supplement those prescribed by the State Board of Education and the Commissioner of Education. (Emphasis added).

40. At hearing and in the School Board's Proposed Final Order, Respondent contends that the School Board's power is only restricted if "expressly prohibited by the State Constitution or general law." § 1001.32(2), Fla. Stat. Respondent maintains that the challenged Policy 2.57 was promulgated pursuant to its broad home rule powers to "operate, control and supervise" local schools under Article IX, section 4(b) the Florida Constitution, because charter schools are public schools within a school district subject to the School Board's constitutional authority and duties.

41. Section 1001.32(2) is a statutory grant for school boards coextensive with its constitutional power and provides:

> (2) DISTRICT SCHOOL BOARD.-In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.

42. The School Board further maintains that a school board is not a state executive-branch agency, but a constitutional entity and general law, section 1001.41, provides a valid exercise of authority to adopt charter school rules since no express prohibition to adopt charter school rules exists.

43. Petitioner correctly points out in its Proposed Final Order that Article IX, section 4(b), was not listed as authority when Policy 2.57 was adopted. Renaissance also accurately categorizes the School Board as an educational unit pursuant to section 120.52(6) and asserts that it is therefore subject to the APA. It has long been established that school boards are "subject to the operation of Chapter 120." Witgenstein v. Sch. Bd. of Leon Cnty., 347 So 2d. 1069, 1073 (Fla. 1st DCA 1977).

44. Section 120.81(1) is entitled Exceptions and special requirements, references educational units, and provides:
(1) EDUCATIONAL UNITS.-

(a) Notwithstanding s. 120.536(1) and the flush left provisions of s. 120.52(8), district school boards may adopt rules to implement their general powers under s. 1001.41.

45. Notwithstanding is defined as "in spite of." "Notwithstanding." Dictionary.com, 2017. http://www.dictionary.com/browse/notwithstanding (6 July 2017). It follows that the legislature created powers regardless of sections 120.536 and 120.52(8) for school boards as educational units to adopt "rules to implement their general powers, such as those contained in section 1001.41." At the same time, the legislature provided a school board broad powers to adopt rules "to implement the provisions of the law conferring duties upon it to supplement those prescribed by the State Board of Education and Commissioners of Education." § 1001.41(2), Fla. Stat.

***7** 46. In this matter, Renaissance also maintains Policy 2.57 is invalid because of the School Board's reliance on section 1001.41 and 1001.42 as statutory authority when section 1002.33(16)(a) provides that "[a] charter school shall operate in accordance with its charter and shall be exempt from all statutes in chapters 1000-1013" with exceptions not at issue here. Petitioner asserts the exemption language demonstrates that the School Board has exceeded its grant of rulemaking authority because charter schools are exempt from the statutes relied on. Renaissance's dependence on section 1002.33(16)(a) is misplaced because the exemption ensures that only the charter agreement can control the charter school and prohibits the other statutes from interfering with the school's operations. The legislature excluded chapters 1000-1013 to emphasize "its charter" was the only provision that needed to be followed. Therefore, the exemption provision is limiting what statutes the charter school must follow while operating.

47. Respondent accurately claims that its general powers provide distinct responsibilities for charter schools and can be found in numerous statutory provisions. The School Board identifies the statutory language "[t]he sponsor [[school board] may not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals" to demonstrate that the legislature provided the school board authority for charter school rules. § 1002.33(6)(h), Fla. Stat.

48. Respondent also relies on the following statutes that provide school boards the duty and authority to: receive, review, and decide upon charter school applications, section 1002.33(6)(b); negotiate charter contracts, id. section 1002.33(6)(h) and (7)(a); and decide whether to renew, non-renew, or terminate charters, id. Section 1002.33(7)(b), (8)(a), and (8)(d) to support its position that Policy 2.57 is a valid exercise of legislative authority. Moreover, the School Board counters that since no express prohibition exists in the State Constitution or general law, school boards have rulemaking authority for charter schools under its general law, section 1001.41.

49. After a thorough review, the undersigned is not persuaded that Renaissance met its burden to demonstrate that the School Board exceeded its legislative authority and violated section 120.52(8)(b). The legislature provided school boards authority over public schools, which includes charter schools. In this proceeding, the record fails to show that the State Board of Education has exclusive authority over rulemaking for charter schools. Instead, the evidence demonstrates the School Board has broad powers, which include rulemaking for charter schools, not just a consultation role to the State Board of Education. Moreover, no evidence was presented to show any express prohibition in either the Florida Constitution or general law for school boards to adopt charter school rules as mandated by section 1001.32(2). Accordingly, the School Board has statutory authority to promulgate rules pertaining to charter schools and it was not shown that Policy 2.57 is an invalid exercise of delegated legislative authority.

***8** 50. In the Rule Challenge, Renaissance also asserts that several amendments to Policy 2.57, adopted on May 27, 2015, violate certain provisions of the charter school statute, section 1002.33, and illegally enlarge, modify and contravene the charter school law in violation of section 120.52(8)(c).

Residency Provision

51. Renaissance contests the residency provision, Policy 2.57¶6.e., and contends that it enlarges, modifies and contravenes section 1002.33(9)(p) 2. of the charter school law in violation of section 120.52(8)(c).

52. Policy 2.57¶6.e. provides:

> New, amended and renewal charter agreements, subject to negotiations, will contain provision that at least fifty-one percent of the Governing Board members must reside in Palm Beach County, Florida.

53. Section 1002.33(9)(p) 2. provides:

> Each charter school's governing board must appoint a representative to facilitate parental involvement, provide access to information, assist parents and others with questions and concerns, and resolve disputes. The representative must reside in the school district in which the charter school is located and may be a governing board member, a charter school employee, or an individual contracted to represent the governing board. If the governing board oversees multiple charter schools in the same school district, the governing board must appoint a separate representative for each charter school in the district. The representative's contact information must be provided annually in writing to parents and posted prominently on the charter school's website. The sponsor may not require governing board members to reside in the school district in which the charter school is located if the charter school complies with this subparagraph.

54. The School Board's counterargument that Policy 2.57¶6.e. does not contain a mandatory contract term, but is only proposing an additional provision regarding residency to be included in the charter agreement negotiation process, is not persuasive to the undersigned. Section 1002.33 is law implemented for Policy 2.57. Moreover, section 1002.33(9)(p) 2. prohibits a residency requirement for the governing board with the express language, ""sponsor may not require," if the charter school is complying with the criteria of section 1002.33(9)(p) 2. Adding the language, "subject to negotiation," still requires 51 percent residency if the remainder of section 1002.33(9)(p) 2. terms are met.

55. Even though it has been established that School Board has broad powers, the legislature never intended to provide school boards unbridled reign to do whatever they wanted through rulemaking. If school boards had such unbridled power, interpretation of section 1002.33(9) and numerous other statutes would be meaningless. The crux of this issue is that existing statutes cannot be ignored. It is apparent section 120.81(1)(a) provides a limited exemption to educational units. However, the provision does not allow the School Board's general authority to determine policy that modifies, enlarges, or contravenes law under section 1001.41(1). Instead, section 1001.41(1) specifically limits the School Board's policies to those "consistent with state law and rule." For this reason, section 120.52(8)(c) is applicable in this proceeding. Accordingly, Policy 2.57¶6.e. is inconsistent with state law, contravenes section 1002.33(9)(p) 2. by requiring 51 percent residency, and is invalid in violation of section 120.52(8)(c).

Vicinity Clause

***9** 56. Renaissance also challenges the vicinity provision, Policy 2.57 ¶6.f., as contravening, enlarging, or modifying the charter school law section 1002.33(7)(a) 13. in violation of section 120.52(8)(c).

57. Policy 2.57¶6.f. provides:

> Additionally, these agreements, subject to negotiations, shall contain a provision that the charter school Facility cannot be located in the vicinity of a District-operated school that has the same grade levels and programs.

58. Section 1002.33(7)(a) 13. provides:
(7) CHARTER.-The major issues involving the operation of a charter school shall be considered in advance and written into the charter. The charter shall be signed by the governing board of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address and criteria for approval of the charter shall be based on:

* * *

13. The facilities to be used and their location. The sponsor may not require a charter school to have a certificate of occupancy or a temporary certificate of occupancy for such a facility earlier than 15 calendar days before the first day of school.

59. The School Board maintains the vicinity provision is also a proposed contract term to be negotiated based on the language "subject to negotiations." The School Board further contends that it can propose additional terms to the standard charter school contract under section 1002.33(5)(b)1.d. and any terms a charter school does not want can be stricken during negotiations if the charter school does not agree.

60. The undersigned rejects the School Board's position because charter schools are only required to inform the sponsor of the location for the facility pursuant to section 1002.33(7)(a) 13. There is no authority for a sponsor to tell a charter school where the facility shall be located because charter schools have the freedom to choose its location in the district. Even rule 6A-6.0786, Form IEPC-MI, Model Application Section 16, specifies flexibility for charter school sites by only requesting charter schools provide either the "proposed facility, including location, size, and layout" or an explanation of "school's facility needs, including desired location, size, and layout of space." Accordingly, Policy 2.57¶6.f. is inconsistent with state law by contravening section 1002.33(7)(a) 13. and is invalid in violation of section 120.52(8)(c).

Budget Worksheet

61. Renaissance also challenges the budget worksheet, Policy 2.57¶3.d.ii.A., as an unadopted rule because it was neither attached nor incorporated into Policy 2.57 when adopted. Petitioner claims that the budget worksheet should have been adopted separately because it is a form that meets the definition of a rule. Section 120.52(16) defines a rule to "include any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule."

***10** 62. Policy 2.57¶3.d.ii.A. provides that a charter school applicant is required to include "[a] completed budget worksheet in the format prescribed by the District."

63. Section 1002.33(6)(a) 5. and (6)(b)2. provides:
(6) APPLICATION PROCESS AND REVIEW.-Charter school applications are subject to the following requirements:

(a) A person or entity seeking to open a charter school shall prepare and submit an application on a model application form prepared by the Department of Education which:

* * *

5. Contains an annual financial plan for each year requested by the charter for operation of the school for up to 5 years. This plan must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends.

6. Discloses the name of each applicant, governing board member, and all proposed education services providers; the name and sponsor of any charter school operated by each applicant, each governing board member, and each proposed education services provider that has closed and the reasons for the closure; and the academic and financial history of such charter schools, which the sponsor shall consider in deciding whether to approve or deny the application.

* * *

(b)2. In order to ensure fiscal responsibility, an application for a charter school shall include a full accounting of expected assets, a projection of expected sources and amounts of income, including income derived from projected student enrollments and from community support, and an expense projection that includes full accounting of the costs of operation, including start-up costs.

64. No dispute exists that the budget worksheet referenced in Policy 2.57 was neither specifically identified in Policy 2.57 nor attached when adopted. However, the School Board justifies the budget worksheet in Policy 2.57 as a helpful tool prepared by Florida Charter Support Unit to notify applicants and ensure applicants provide all the necessary information required. The School Board further refutes that the budget worksheet imposes any new requirements or solicits any information not specifically required by section 1002.33(6), existing rule 6A-6.0786, or Form IEPC-M1, Model Application Section 20. Additionally, section 1002.33(6), rule 6A-6.0786, and Form IEPC-M1, request necessary information to complete a budget such as revenues, expenses, anticipated fund balances and an explanation of the budget. As such, the School Board asserts that the Model Application Section 20: budget section also requires information from an applicant regarding its budget that is included in the budget worksheet.

65. Here, Renaissance has not identified that the budget worksheet imposes any requirement or solicits any information not specifically required by a statute or existing rule. Accordingly, Renaissance has failed to meet its burden to show the budget worksheet is a "form" within the definition of rule which requires adoption pursuant to rulemaking procedures or requirements of the APA.

Innovative

***11** 66. Petitioner also challenges Policy 2.57¶3.d.ii.D., and contends that it sets a definition and requires the standard, "beyond the status quo," that is not contained in section 1002.33 and that such a modification violates section 120.52(8)(c).

67. Policy 2.572.57¶3.d.ii.D. provides:
D. A detailed and specific description of how it encourages and implements innovative learning methods and measurement tools that are innovative.

The School Board defines innovative as introducing or using new ideas or methods or having new ideas about how learning methods can be performed in this School District. Being innovative is about looking beyond what is currently done well, identifying the great ideas of yesterday and/or tomorrow and putting them into practice. True innovative learning methods are those products, processes, strategies and approaches that improve significantly upon the status

quo within this geographical area of the School District, and result in heightened qualities and outcomes of teaching and learning. The criteria for making this determination are set forth on the document that is attached hereto.

68. Section 1002.33(2)(b) 3., 4., and (c)1. provides:

(2) GUIDING PRINCIPLES; PURPOSE.--

* * *

(b) Charter schools shall fulfill the following purposes:

* * *

3. Encourage the use of innovative learning methods

4. Require the measurement of learning outcomes.

* * *

(c) Charter schools may fulfill the following purposes:

1. Create innovative measurement tools.

* * *

(5) SPONSOR; DUTIES.-

* * *

(b) Sponsor duties.-

* * *

1.e. The sponsor shall ensure that the charter is innovative and consistent with the state education goals established by s. 1000.03(5).

* * *

4. A Florida College System institution may work with the school district or school districts in its designated service area to develop charter schools that offer secondary education. These charter schools must include an option for students to receive an associate degree upon high school graduation. If a Florida College System institution operates an approved teacher preparation program under s. 1004.04 or s. 1004.85, the institution may operate no more than one charter

school that serves students in kindergarten through grade 12. In kindergarten through grade 8, the charter school shall implement innovative blended learning instructional models in which, for a given course, a student learns in part through online delivery of content and instruction with some element of student control over time, place, path, or pace and in part at a supervised brick-and-mortar location away from home. A student in a blended learning course must be a full-time student of the charter school and receive the online instruction in a classroom setting at the charter school. District school boards shall cooperate with and assist the Florida College System institution on the charter application. Florida College System institution applications for charter schools are not subject to the time deadlines outlined in subsection (6) and may be approved by the district school board at any time during the year. Florida College System institutions may not report FTE for any students who receive FTE funding through the Florida Education Finance Program.

***12** 69. The School Board contends that the sponsor's duty is to ensure that the charter school is innovative and to require that an applicant actually demonstrate that its proposed school will use innovative learning methods and therefore Policy 2.57¶3.d.ii.D. is not invalid for requiring a description of how the proposed charter school will implement innovative learning methods. Additionally, the School Board relies on sections 1002.33(2)(b) 1. and 2., 1002.33(5)(b)1.e., and 1002.33(5)(b)4. and contends that the entire statutory scheme must be read together to decipher all the purposes of charter schools because the legislative intent is a high standard for charter schools, which includes the requirement that an applicant's innovative learning methods "improve significantly upon the status quo." The School Board also asserts that The Model Application supports such authority because it requires applicants to describe how the school will meet the prescribed purposes for a charter school found in section 1002.33(2)(b) 3., such as "encourage[ing] the use of innovative learning methods."

70. The School Board further contends that it has properly clarified the standard in a written policy by defining innovative and providing criteria for how a response will be evaluated in Policy 2.57¶3.d.ii.D. and that section 1002.33(6)(a) 7. [1] allows the School Board to request additional information as an addendum to the application for such a purpose.

71. Contrary to the School Board's position, Policy 2.57¶3.d.ii.D. enlarges section 1002.33(2)(b) 4. and (c)1. in that the charter statute's threshold is only to "encourage" the use of innovative learning methods, not mandate a standard. Section 1002.33(2)(b) 4. and (c)1. specifically provides a choice for applicants by using "may" when deciding whether to "create innovative measurement tools." However, Policy 2.57¶3.d.ii.D. adds new requirements inconsistent with state law, which modify the terms with the standard mandate, "improve significantly upon the status quo," and contravene the charter statute in violation of section 120.52(8)(c).

Innovative Rubric Policy

72. Renaissance also advances that the Innovative Rubric Policy is illegal because it includes the innovation definition and adds the illegal innovative standard from Policy 2.57¶3.d.ii.D addressed in the innovative section above.

73. The School Board maintains that the rubric is justified because the charter statute allows it to ask for additional information from charter school applicants in section 1002(6)(a)7. However, it has already been established in paragraph 71 above that the requirement standard to "improve significantly upon the status quo" is invalid and violates section 120.52(8)(c). Since the rubric includes the standard mandate, the rubric would also add new requirements to the charter statute section 1002.33(2)(b) 4. and (c)1., which are inconsistent with state law and contravene it in violation of section 120.52(8)(c).

Paragraph 12

***13** 74. Petitioner's contention that paragraph 12 of Policy 2.57, the interpretation provision, directly contravenes section 1002.33(5)(b)1.d. is not persuasive.

75. Policy 2.57¶12.
In the event that an existing charter school contract provision is found to be inconsistent with this policy, the contract provision prevails, unless the contract provision is no longer consistent with the law and the contract indicates that its terms change based on changes in the law.

76. Section 1002.33(5)(b)1.d. provides:

> d. The sponsor shall not apply its policies to a charter school unless mutually agreed to by both the sponsor and the charter school. If the sponsor subsequently amends any agreed-upon sponsor policy, the version of the policy in effect at the time of the execution of the charter, or any subsequent modification thereof, shall remain in effect and the sponsor may not hold the charter school responsible for any provision of a newly revised policy until the revised policy is mutually agreed upon.

77. Respondent correctly points out in its Proposed Final Order that the interpretation provision is subject to multiple interpretations. As such, Petitioner failed to meet its burden and demonstrate Policy 2.57¶12. enlarges, modifies or contravenes 1002.33(5)(b)1.d.

Charter Petition

78. Renaissance's Charter Petition challenges various amended provisions of Policy 2.57 and asserts that the provisions restrict the flexibility that the charter statute specifically grants to Florida charter schools. Contrary to the School Board's argument, Renaissance's request in the Charter Petition is not seeking the same relief sought in the Rule Challenge. Instead, Renaissance's effort is not to invalidate the rule but to show that the amended provisions in Policy 2.57 violate flexibility granted to charter schools in section 1002.33.

79. Section 1002.33(6)(h) provides:

> (h) The terms and conditions for the operation of a charter school shall be set forth by the sponsor and the applicant in a written contractual agreement, called a charter. The sponsor may not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals. 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. The proposed charter contract shall be provided to the charter school at least 7 calendar days prior to the date of the meeting at which the charter is scheduled to be voted upon by the sponsor. The Department of Education shall provide mediation services for any dispute regarding this section subsequent to the approval of a charter application and for any dispute relating to the approved charter, except disputes regarding charter school application denials. If the Commissioner of Education determines that the dispute cannot be settled through mediation, the dispute may be appealed to an administrative law judge appointed by the Division of Administrative Hearings. The administrative law judge has final order authority to rule on issues of equitable treatment of the charter school as a public school, whether proposed provisions of the charter violate the intended flexibility granted charter schools by statute, or on any other matter regarding this section except a charter school application denial, a charter termination, or a charter nonrenewal and shall award the prevailing party reasonable attorney's fees and costs incurred to be paid by the losing party. The costs of the administrative hearing shall be paid by the party whom the administrative law judge rules against.

***14** 80. Respondent's motion to dismiss was denied by the undersigned and that matter is not at issue. Procedurally, Petitioner's dispute falls into the category "any other matter regarding this section" pursuant to section 1002.33(6)(h). Therefore, Renaissance has standing to proceed on the grounds alleged in the Charter Petition.

81. Renaissance specifically maintains that the School Board's amendments to Policy 2.57 have been an oppressive action and a method to limit charter schools flexibility by mandating: innovative requirements, governing board residency requirements, and facility location requirements that contradict the express terms of the charter statute. So as not to be duplicative, Renaissance refers to arguments previously made for the Rule Challenge case to further demonstrate the amendments to Policy 2.57 are unfair to charter schools. The undersigned has considered the combined evidence from the consolidated matters for the allegations in the Charter Petition.

82. However, Renaissance has failed to meet its burden and persuade the undersigned. The evidence above shows that the amendments to Policy 2.57 Petitioner is contesting were invalid and either contravened, enlarged, or modified section 1002.33. However, no testimony or evidence was presented to demonstrate how innovative requirements in Policy 2.57¶3.d.ii.D., residency requirements in Policy 2.57¶6.e., and the facility location requirement in Policy 2.57¶6.f. were oppressive or limited the flexibility for charter schools. Moreover, the record lacks evidence of unfair treatment. Therefore, no violation of section 1002.33(6)(h) has been proven by the adoption of the amendments to Policy 2.57 as alleged by Petitioner.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. The section of Policy 2.57¶6.e., which requires "fifty one percent of the Governing Board members must reside in Palm Beach County" constitutes an invalid exercise of delegated legislative authority in violation of section 120.52(8)(c).

2. The section of Policy 2.57¶6.f. which requires a "charter school Facility cannot be located in the vicinity of a District-operated school that has the same grade levels and programs" constitutes an invalid exercise of delegated legislative authority in violation of section 120.52(8)(c).

3. Renaissance's Petition seeking an administrative determination that the budget worksheet is an unadopted rule is hereby DISMISSED.

4. The section of Policy 2.57¶3.d.ii.D., which defines innovative and requires the standard, "beyond the status quo," constitutes an invalid exercise of delegated legislative authority in violation of section 120.52(8)(c).

5. The section of Policy 2.57 which includes the Innovative Rubric Policy constitutes an invalid exercise of delegated legislative authority in violation of section 120.52(8)(c).

6. Policy 2.57¶12. was not shown to be an invalid exercise of delegated legislative authority as defined by section 120.52(8)(c), and the challenge is DISMISSED.

***15** 7. Renaissance failed to demonstrate the School Board exceeded its grant of rulemaking authority because it lacked the delegated legislative authority to promulgate Policy 2.57 on the subject matter of charter schools and the challenge to section 120.52(8)(b) is DISMISSED.

8. Renaissance failed to demonstrate the School Board violated section 1002.33(6)(h) by adopting various provisions of Policy 2.57 and the Charter Petition is DISMISSED.

9. The undersigned retains jurisdiction to consider issues pertaining to attorneys' fees and costs.

DONE AND ORDERED this 11th day of July, 2017, in Tallahassee, Leon County, Florida.

JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Filed with the Clerk of the Division of Administrative Hearings this 11th day of July, 2017.

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.

Footnotes

1 Section 1002.33(6)(a) 7. was previously section 1002.33(6)(a) 6. when Policy 2.57 was last revised.

2017 WL 3000491 (Fla.Div.Admin.Hrgs.)

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