

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TAMPA SCHOOL DEVELOPMENT CORP.,)
d/b/a TRINITY SCHOOL FOR)
CHILDREN,)
)
Petitioner,)
)
vs.) Case No. 11-2183
)
HILLSBOROUGH COUNTY SCHOOL)
BOARD,)
)
Respondent.)
_____)

CORRECTED FINAL ORDER

Pursuant to notice, a hearing was held in this case on August 17, 2011, by video teleconference in Tallahassee and Tampa, Florida, before Thomas P. Crapps, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

Whether Respondent, Hillsborough County School Board (School Board), erred in denying the Petitioner's request to consolidate its two charter contracts into one charter agreement.

PRELIMINARY STATEMENT

On April 11, 2011, Petitioner, Tampa School Development Corporation doing business as Trinity School for Children (Trinity School), pursuant to section 1002.33(6)(h), Florida Statutes (2010), filed with the Division of Administrative Hearings (DOAH) an Amended Notice/Request for Initiation of Proceedings.^{1/} The issue set out in the Amended Notice/Request of Initiation of Proceedings is "[w]hether the Trinity School for Children should be allowed to consolidate or combine the Upper School and the Lower School into one for purposes of the controlling charter contract, audit and financial reporting, and/or for other purposes?"

On June 8, 2011, the instant case was assigned to Administrative Law Judge Thomas Crapps, and the undersigned scheduled a final hearing for August 17, 2011.

On August 3, 2011, the School Board filed a Motion to Dismiss for Lack of Jurisdiction, arguing that DOAH lacked subject matter jurisdiction. On August 5, 2011, Trinity School filed a Motion for Continuance of Final Hearing, and Request for a Telephonic Hearing on the Respondent's Motion to Dismiss for Lack of Jurisdiction.

On August 17, 2011, the undersigned denied Trinity School's Motion to Continue, and began the scheduled final hearing with the School Board's Motion to Dismiss. The undersigned retained jurisdiction to rule upon the School Board's motion, and directed the parties to proceed with the scheduled final hearing.

Trinity School presented the testimonies of Madeline O'Dea, Ph.D (Dr. O'Dea) and Mindy Difranco (Ms. Difranco). Petitioner's Exhibits 1, 2, 3, 7, 9, 13 and 19 were admitted into evidence. The School Board presented the testimony of Jenna Hodgens (Ms. Hodgens). Respondent's Exhibits 3 and 9 were admitted into evidence. The parties stipulated facts which the undersigned incorporated into the findings of facts.

A one-volume Transcript of the hearing was filed with the DOAH on August 31, 2011. On September 12, 2011, the School Board filed an unopposed motion for extension to file proposed final orders. The School Board's motion was granted, and the parties submitted proposed final orders on September 26, 2011.

The undersigned has considered the proposed final orders in preparing this Final Order.

FINDINGS OF FACT

1. Trinity School is a Florida corporation that owns and operates two charter schools in Hillsborough County, Florida. The two charter schools are known as Trinity Lower School for Children and Trinity Upper School. Trinity Lower School for Children provides education for 425 students in kindergarten through fifth grade. Trinity Upper School serves 225 students in sixth through eighth grades.

2. The School Board is constitutionally and statutorily charged with the operation and supervision of all K through 12 public schools in Hillsborough County, Florida. Art. IX, § 4(b), Fla. Const.; §§ 1001.32(2) and 1003.02. The two Trinity charter schools are part of the public school system and are sponsored by the School Board. § 1002.33.

3. Trinity School was formed by a group of educators and parents of children who had attended a private Roman Catholic School that was closing. In 1999, Trinity School submitted its application to form a K through eighth grade charter school. The application was approved by the School Board, and Trinity began operation in 1999.

4. Trinity School's population grew steadily from its inception and in 2003, Trinity School sought to purchase a

building across the street from its campus. Dr. O'Dea, the founder, principal, chief executive, and educational officer for Trinity School, explained that Trinity School learned that it would be eligible for additional federal start-up money, if Trinity School divided its charter into two separate charters. By dividing the original charter and creating a new charter school for the middle school, Trinity School was able to obtain at least \$450,000.00, in federal start-up funds which was used to help purchase a building across the street from the original school, grow the number of classes, as well as increase the number of programs and teachers.

5. In 2003, Trinity School applied for a charter for the Trinity Upper School, which would serve sixth through eighth grades. The School Board approved the charter for the Upper School, and Trinity School was able to receive the federal start-up money. The Trinity Upper School began operating under its own charter in 2004.

6. Although two separate charters, both Trinity Schools are operated by the same parent corporation, follow the same Bank Street School principles of educational development, and are located in the same location. Further, the record showed through the testimony of Ms. Difranco, Trinity School's director of finance, that the two charter schools "actually function as

one school[,] [w]e share buildings; we share a media center; we share staff; we use one accounting system."

7. On April 3, 2008, Trinity School wrote the School Board's representative to request a change in Trinity School's financial reporting to the school district. Trinity School's letter recognized that both schools operated "under the fiscal umbrella of The Tampa School Development Cooperation [sic], but the schools' finances are reported to the district separately." Trinity School advised the School Board representative that combining the schools' financial reports would benefit "both our accounting practices and the school district."

8. On May 15, 2008, Ms. Hodgens, the School Board's supervisor of charter schools, wrote Dr. O'Dea:

After consulting with the Department of Education regarding your request to combine Trinity School for Children and Trinity Upper School, the district has been advised that you are able to combine the two schools. I will present your request to the Hillsborough County School Board regarding the combination of the two schools during your schools' contract renewal process.

9. On March 15, 2010, the School Board wrote Dr. O'Dea concerning the renewal of the charters. The School Board informed Dr. O'Dea that "Trinity School for Children/Trinity Upper is scheduled for Contract Renewal Review[,]" and requested that a list of materials be provided for the review.

10. On June 28, 2010, Ms. Hodgens, referencing her earlier letter dated May 15, 2008, wrote Dr. O'Dea concerning Trinity School's request to combine the charters during the contract renewal period. Specifically, Ms. Hodgens wrote:

After several conversations with district staff, there is no educational benefit for students by combining the two schools. Due to this fact, the Superintendent will not be making this recommendation to the School Board at the time of your contract renewal.

11. Trinity School and the School Board brought their consolidation dispute before the Department of Education under section 1002.33(6)(h). On March 30, 2011, Dr. Eric Smith, the Florida Commissioner of Education, entered a Mediation Report of Impasse, stating that the parties had reached an impasse and that the matter could not be settled through mediation, pursuant to section 1002.33(6)(h).

12. Ms. Difranco, who has been Trinity Schools' director of finance for the past two years, credibly testified that both schools functioned administratively as one school, but were required to file separate fiscal reports. Furthermore, she credibly testified that creating the two separate fiscal reports for each school, results in Trinity School's accountants and personnel having to perform additional duties of separating the relevant data by school. Ms. Difranco credibly testified that she had conducted a cost analysis comparing the costs of

treating the two schools as separate charters with an estimated cost of operating under one charter. According to Ms. Difrancio, the savings to Trinity School would be approximately \$123,000.00, a year. The largest bulk of the savings would come from a reduction in the administrative fee Trinity School pays to the School Board to administer the charter schools. Ms. Difrancio estimated that the administrative fee paid to the School Board would reduce by approximately \$65,000.00, a year.

13. The reason for the reduction in administrative fees received by the School Board is the legislature's enactment of section 1002.33(20)(a), Florida Statutes (2011). Section 1002.33(20)(a), in part, changed the formula used to calculate the administrative fee charged to charter schools by district school boards. This change in the formula for funding results in a reduction of the amount of money that the School Board will receive as administrative fees from Trinity School if the two charters are combined into one charter.

14. The School Board, in making its decision about whether or not to grant the request to combine the two charters into one charter, considered the fact that it would receive less money from the administrative fees, if the two charters were combined.

15. Both Trinity Schools have received from the State of Florida "A" ratings and are respected charter schools. Trinity Schools, however, have not been designated as "high-performing"

charter schools by the Commissioner of Education, as defined by section 1002.331, Florida Statutes (2011). The reason that Trinity Schools' two charters do not meet the statutory definition of "high-performing" charter school under section 1002.331 is due to past negative fund balances. The record, however, showed that Trinity Schools are on the verge of eliminating the financial difficulties. Specifically, the testimony showed that in 2009-2010 school year, Trinity Schools had a negative fund balance. However, the testimony showed through Ms. Difranco that for school years 2010-2011, and the current school year 2011-2012, that Trinity Schools have met the fiscal requirements.

CONCLUSIONS OF LAW

16. DOAH has jurisdiction pursuant to section 1002.33(6)(h). The conditions precedent under section 1002.33(6)(h), for invoking DOAH jurisdiction have been met.^{2/}

17. Section 1002.33(6)(h), provides that the instant case is an appeal and that "the Administrative Law Judge may 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 to 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 . . .". The legislature's language sets out the

scope of the appeal and issues that may be considered in this case.

18. Because this "appeal" comes to the Administrative Law Judge without a record, the undersigned concluded that it was proper to conduct an evidentiary hearing concerning Trinity's request to combine the two charters. Trinity School as the petitioner seeking relief had the burden of proof of establishing facts that show its entitlement to relief by a preponderance of the evidence. See § 120.57(1)(j), Fla. Stat.; and Fla. Dep't of Transp. v. J.W.C., Inc., 396 So. 2d 778, 781 (Fla. 1st DCA 1981). Section 1002.33(6)(h) does not contain an express appellate standard of review or finding, or deference for a decision made by the sponsor. As such, the undersigned determined that the scope of issues set out by the legislature in section 1002.33(6)(h) provides for a de novo review by the Administrative Law Judge. In an abundance of caution, the undersigned also has reviewed the School Board's decision not to grant Trinity School's request to combine the two charters under an abuse of discretion standard.^{3/}

19. The legislature in enacting the charter school statute, set out guiding principles and the purpose for the legislation. Expressly, charter schools are to be guided by the following principles:

1. Meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state's public school system.

2. Promote enhanced academic success and financial efficiency by aligning responsibility with accountability.

3. Provide parents with sufficient information on whether their child is reading at grade level and whether the child gains at least a year's worth of learning for every year spent in the charter school.
§ 1002.33(2)(a)1 through 3.

20 In the instant case, Trinity School is seeking to combine two existing charter schools into one charter, pursuant to section 1002.33(7)(c) in order to promote financial efficiency. The facts clearly showed that both of the charter schools operate and function as one school, sharing many of the same resources. Further, it was undisputed that both Trinity School charters provide an excellent education for their students and that combining the two charters into one charter will result in efficiency of resources and save the charter schools approximately \$125,000.00 a year. One of the legislature's express guiding principles is that charter schools "[p]romote enhanced academic success and financial efficiency by aligning responsibility with accountability." Clearly, if Trinity Schools can operate more efficiently by consolidating its administrative expenses and reduce the amount paid in

administrative fees to the School Board, then the charter schools have more money to do what these schools do best, educate their students.

21. Trinity School met its evidentiary burden of proof of showing by a preponderance of evidence that its request to combine the two charter schools into one charter is appropriate and consistent with the flexibility that the legislature has provided to charter schools, and meets the express guides for charter schools.

22. The School Board's argument that the newly enacted section 1002.331, Florida Statutes (2011), shows that the legislature intended that only "high-performing charter schools" are allowed to consolidate existing charters and that Trinity School does not meet the statutory definition of a "high-performing charter school" is flawed. A reading of section 1002.331 does not show that the legislature intended that only "high-performing charter schools" may consolidate existing charters. Section 1002.331 allows a charter school that meets the statutory definition of "high-performing" with the benefit of being able to consolidate existing high-performing charters without having to obtain a sponsor's approval. Section 1002.331 does not preclude a charter school from seeking a modification of its charter under section 1002.33(7)(c) to allow a consolidation. The chief difference between the two instances

is that the charter school seeking a modification under section 1002.33(7)(c) is required to obtain its sponsor's approval. If the charter school and its sponsor cannot agree on the modification, then the procedure for review, outlined in section 1002.33(6)(h) becomes appropriate. In contrast, a "high-performing" charter school can obtain consolidation without a sponsor approval or subsequent appeal to DOAH. Consequently, the legislative enactment of section 1002.331 does not evidence a legislative intent limiting the consolidation of charters to schools to high-performing charter schools.

23. The record clearly and undisputedly showed that allowing Trinity School to combine the two charter schools into one charter will save approximately \$123,000.00, a year. These savings will be in the reduction of duplication of reports and staff resources. Ironically, the School Board argues that Trinity is not entitled to consolidation of the two charters, which will save money, because Trinity has had past financial difficulties. Consequently, even viewing the School Board's actions under an abuse of discretion standard, it is clear that no reasonable person would deny the consolidation of the two charters.

24. Section 1002.33(6)(h) provides that the Administrative Law Judge shall award reasonable attorneys' fees and costs to the prevailing party, and administrative costs. Because the

undersigned finds that Trinity School has met its burden, it is the prevailing party and is entitled to an award of reasonable attorneys' fees and costs under the statute.

Therefore, based on the foregoing, it is ORDERED that:

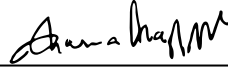
1) Tampa School Development Corporation be allowed to consolidate its two charters for the Trinity Lower School for Children and Trinity Upper School into one charter for all purposes;

2) Tampa School Development Corporation be awarded attorney's fees and costs in bringing the administrative proceedings that shall be paid by the Hillsborough County School Board;

3) The Hillsborough County School Board shall pay the costs of the administrative hearing as required by section 1002.33(6)(h); and

4) The parties are directed, within 20 days of the date on this Final Order, to meet and, if able to agree, provide a stipulation concerning reasonable attorneys' fees and costs for the administrative proceeding. If parties are unable to reach an agreement as to reasonable attorney's fees and costs, then the parties shall inform the undersigned and the undersigned shall set an evidentiary hearing on the disputed issue.

DONE AND ORDERED this 25th day of October, 2011, in
Tallahassee, Leon County, Florida.



THOMAS P. CRAPPS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of October, 2011.

ENDNOTES

^{1/} Pending the appeal before DOAH, the legislature amended section 1002.33, with the amendments effective July 1, 2011. These amendments did not change or edit the appeal contained in section 1002.33(6)(h). Because the instant case involves a statute which provides an appeal right and scope of review, the undersigned will use the 2010 version of the statute. See Fogg v. Southeast Bank, N.A., 473 So. 2d 1352, 1353-54 (Fla. 4th DCA 1985) ("Generally, statutes operate only prospectively as they might otherwise impinge upon vested rights or create new liabilities. On the other hand, statutes relating to remedies or procedure and including forfeitures operate retrospectively in the sense that all pending proceedings, including matters on appeal, are determined under the law in effect at the time of decision rather than that in effect when the cause of action arose or some earlier time. In either event, whether the statutory change is substantive or procedural, a clear statement of legislative intent may, under appropriate circumstances, determine whether the amendment is to have retroactive effect." Here there is no legislative statement that the amendments to section 1002.33, would be applied retroactively to enactment. Therefore, all references to section 1002.33, shall be to the 2010 version of the statute.

^{2/} Generally, an appellate court will not review a case that is not ripe for review. In the instant case, the record shows that the Superintendent for the School Board informed Trinity School that the superintendent would not recommend the consolidation to the School Board. Trinity School initiated the mediation procedure set out in section 1002.33(6)(h,) with the Commissioner of Education. After conducting the mediation, the Commissioner entered an impasse between the parties. Trinity School initiated the appeal to DOAH. The record here does not show that the School Board made a final decision denying Trinity School's request to consolidate the two charters. Consequently, it appears that there is no final decision to "appeal" and the issue is not ripe for review. The statute, however, is not clear, and it allows an "appeal" from the dispute without requiring a final decision by the School Board. As a result, the "appeal" comes to DOAH without a factual record to review, or a final decision. The School Board's position before DOAH has been consistent that it has discretion to deny the consolidation. Based on its defense in DOAH, it would appear that the School Board would be consistent and deny Trinity's request to consolidation, if the request were formally submitted to the School Board. Therefore, based on the parties' conduct the undersigned treats the case as ripe for the review as set out in section 1002.33(6)(h).

^{3/} The School Board has challenged the constitutionality of section 1002.33(6)(h), as violating Article IX, section 4(b) of the Florida Constitution. Because the constitutionality of the statute may not be addressed in an administrative proceeding, the undersigned does not address this issue. See Key Haven Associated Enterprises, Inc. v. Bd. of Trustees Internal Trust Fund, 427 So. 2d 153 (Fla. 1983).

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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 one copy of a Notice of Administrative Appeal with the agency clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the appellate district where the party resides. The Notice of Administrative Appeal must be filed within 30 days of rendition of the order to be reviewed.