STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RENAISSANCE CHARTER SCHOOL, INC.,

Petitioner,

vs. Case No. 18-6195RU

THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA,

Respondent.
_____/

FINAL ORDER

This case came before Administrative Law Judge ("ALJ") John G. Van Laningham for final hearing by video teleconference at sites in Tallahassee and West Palm Beach, Florida, on January 8, 2019.

APPEARANCES

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STATEMENT OF THE ISSUES

The issues to be decided are: (i) whether Respondent's interpretation of section 1006.12, Florida Statutes——namely, that charter school operators such as Petitioner, rather than school boards and superintendents, are obligated to assign "safe-school officers" to police charter school facilities—— constitutes an unadopted rule; (ii) whether Respondent's form, which solicits information from charter schools regarding their safe-school officers, constitutes an unadopted rule; and (iii) whether Respondent's denial of Petitioner's request for the assignment of safe-school officers to its charter schools constitutes inequitable treatment of charter schools as public schools.

PRELIMINARY STATEMENT

On November 19, 2018, Petitioner Renaissance Charter School, Inc., filed with the Division of Administrative Hearings ("DOAH") its Petition to Invalidate Agency Action Based on Unadopted School Board Rules and/or for Contravening the Charter Statute Under §§ 1002.33(7)(b) & 20(b), Florida Statutes. Traveling under section 120.56(4), Florida Statutes, Petitioner alleges that Respondent The School Board of Palm Beach County, Florida, has violated section 120.54(1)(a) by unlawfully applying as rules (i) an agency statement of general applicability to the effect that section 1006.12 requires charter schools to establish self-

assigned safe-school officers at their campuses and (ii) a form that solicits information from charter schools concerning their compliance with section 1006.12, as Respondent interprets that statute. Separately, pursuant to section 1002.33(7)(b), Petitioner has brought to DOAH a dispute stemming from Respondent's denial of Petitioner's request that Respondent perform its duty under the plain language of section 1006.12 to assign safe-school officers to Petitioner's charter school facilities. Respondent filed a comprehensive Answer to these charges on January 7, 2019.

The final hearing took place on January 8, 2019. The parties stipulated to all the relevant facts, and, without objection, the following exhibits were received in evidence: Petitioner's Exhibits 1 though 5, 8, 10, 20 through 23, and 25; and Respondent's Exhibits 1 through 3, 6, and 8 through 17. No witnesses were called.

The final hearing transcript was filed on January 14, 2019. Both parties timely submitted proposed final orders, which were due on February 4, 2019, and these were considered in preparing this Final Order.

Unless otherwise indicated, citations to the official statute law of the State of Florida refer to Florida Statutes 2018.

FINDINGS OF FACT

1. Petitioner Renaissance Charter School, Inc. ("RCS"), is a nonprofit Florida corporation that operates six charter schools located within the Palm Beach County School District (the "District"). The District is a constitutionally created political subdivision of the state whose geographic jurisdiction ("district region") is Palm Beach County.[1/] As used herein, the term "district administration" will refer generally and collectively to the district school officers, officials, and employees through whom the District acts.

2. Respondent The School Board of Palm Beach County, Florida (the "Board"), is the collegial body established under the Florida Constitution to operate, control, and supervise all free public schools within the District.[2/] Its members are elected to office by the voters of the District.

3. The Board is the "sponsor" of RCS's charter schools. As a sponsor, the Board is empowered to exercise a form of regulatory jurisdiction over all charter schools within the District. The Board's sponsorship authority includes the power to deny the renewal of, or terminate, a charter agreement.[3/]

4. Although owned and operated by private interests, charter schools are public schools. As such, charter schools receive a portion of the public funds appropriated to educational purposes. These funds follow students, so that a

particular charter school's share of available funds is based upon its student enrollment. Funding sources include, among other things, "categorical program funds" appropriated by the Florida Legislature to specific purposes, of which charter schools are entitled to a proportionate share. Financial resources flow to charter schools through their sponsors, which are required to make timely payments to the charter schools within their respective district regions.

5. In an immediate response to the infamous mass shooting that took place at a high school in Parkland, Florida, on February 14, 2018, the Florida Legislature enacted the Marjory Stoneman Douglas Public Safety Act (the "Safety Act"), which was signed into law and took effect less than one month after the outrage, on March 9, 2018. Among other features, the Safety Act imposes new obligations regarding the stationing of "safe-school officers" ("SSOs") at all public school facilities. SSOs must be certified law enforcement officers except that, in circumstances not shown to exist in this case, regular employees who qualify for appointment as "school guardians" may also serve as SSOs.

6. There is no dispute in this case that, under the Safety Act, one or more SSOs must be assigned to each charter school facility in the District, including RCS's six schools. The question is, whose duty is it to assign SSOs to charter schools?

The Board's answer, clearly expressed in word and deed, is this: It's not our job; rather, the obligation falls to each charter school to arrange police protection for its own campus, as though each charter school were a school district unto itself. Indeed, failing that, the charter school will be in violation of the Safety Act.

7. Accordingly, the Board has not assigned SSOs to the charter schools in the District.[4/] Nor, apart from paying charter schools their respective proportionate shares of a categorical appropriation for school safety called the Safe Schools Allocation, which preexisted the Safety Act, has the Board provided any funds to cover the cost of police protection.

8. By letter dated March 14, 2018, RCS's security director sent a letter to the District requesting that the Board provide a full-time SSO to each of RCS's charter schools in the district region. The District denied this request via a reply letter dated March 28, 2018, which stated that RCS would need to look to "the governing board of the six Renaissance Charter Schools operating in" Palm Beach County "for assistance [in] implementing the Safety Act or for providing the" SSOs.

9. On April 4, 2018, the Board adopted a resolution declaring its opposition to the deployment of district employees as school guardians, thereby manifesting an intention to rely exclusively on school police or other certified law enforcement

officers for the protection of students and school personnel. By this resolution, the Board exercised its discretion, under the Safety Act, to opt the District out of participation in the Coach Aaron Feis Guardian Program ("Guardian Program").

10. In August 2018, RCS submitted a request for mediation services to the Florida Department of Education ("DOE") pursuant to section 1002.33(7)(b). Specifically, RCS wanted DOE to mediate the ongoing dispute between RCS and the Board over the responsibility for assigning police officers to charter schools in accordance with the Safety Act. The Board refused to mediate. Thus, by letter dated August 27, 2018, the commissioner notified the parties of her decision that the dispute "cannot be settled through mediation" and "may be appealed to an administrative law judge appointed by the Division of Administrative Hearings."

11. Thereafter, RCS sent a letter dated September 12, 2018, to the School District Chief of Police asking to enter into negotiations with the School District Police Department for the provision of police officers to its facilities through a cooperative agreement. As of the final hearing, some four months later, RCS had received no response from the district administration.

12. On or about October 3, 2018, district administrative staff prepared a survey using Google Forms that was sent by

email to each charter school in the District with the subject line, "TIME-SENSITIVE REQUEST Re: Safe-School Officers." The email contained a link to an online form, titled "Charter School Safe-School Officers FY19" (the "Form"). Recipients were instructed to "complete this form by noon on Thursday, October 4, 2018."

13. The survey consisted of six queries. Three were dual choice, yes/no questions that would be answered by selecting the appropriate radio button. Three others required the recipient to type in a short answer. The five questions that "required" an answer were marked with an asterisk.

14. The form solicited the following information:

> Provide your school name.* [Your answer]
>
> Do you have a safe-school officer on your campus?* [Yes/No]
>
> Is the safe-school officer on your campus Monday – Friday during all school hours?* [Yes/No]
>
> If not, please identify the safe-school officer's schedule. [Your answer]
>
> Is the safe-school officer armed?* [Yes/No]
>
> Provide the name of the agency that employs the safe-school officer.* [Your answer]

15. The Board maintains that completion of the survey was "optional" and that no charter school has suffered, or will suffer, any adverse consequences for failing to provide a timely

response. The Board has not adopted the Form as a rule pursuant to the rulemaking procedure prescribed in the Administrative Procedure Act.

16. More broadly, the Board has not adopted any rules implementing the Safety Act, nor has it codified the statement, which it has clearly embraced, that charter schools in the district region are required by law independently to arrange, on their own authority, police protection for their own campuses.

CONCLUSIONS OF LAW

17. DOAH has personal and subject matter jurisdiction in these proceedings pursuant to sections 120.56 and 1002.33(7)(b).

18. As an operator of charter schools in Palm Beach County, RCS is substantially affected by the Board's statement concerning charter schools' obligations under the Safety Act vis-à-vis the assignment of SSOs. RCS was substantially affected, as well, by the Form, which the Board used to solicit information from the charter schools in the District about their SSOs. Thus, RCS has standing under section 120.56 to challenge the alleged unadopted rules at issue.

19. As a separate and independent basis for maintaining this action, RCS has standing under section 1002.33(7)(b) to seek an administrative resolution of its dispute with the Board over who has the duty to arrange for police protection of

charter school facilities in the District, a dispute which relates to RCS's approved charters and involves the equitable treatment of RCS's charter schools as public schools.

20. The statute at the heart of this case is section 1006.12. As amended by the Safety Act, this section provides, in full, as follows:

> Safe-school officers at each public school.—For the protection and safety of school personnel, property, students, and visitors, each district school board and school district superintendent shall partner with law enforcement agencies to establish or assign one or more safe-school officers at each school facility within the district by implementing any combination of the following options which best meets the needs of the school district:
>
> **(1)** Establish **school resource officer** programs, through a cooperative agreement with law enforcement agencies.
>
> (a) School resource officers shall undergo criminal background checks, drug testing, and a psychological evaluation and be certified law enforcement officers, as defined in s. 943.10(1), who are employed by a law enforcement agency as defined in s. 943.10(4). The powers and duties of a law enforcement officer shall continue throughout the employee's tenure as a school resource officer.
>
> (b) School resource officers shall abide by district school board policies and shall consult with and coordinate activities through the school principal, but shall be responsible to the law enforcement agency in all matters relating to employment, subject to agreements between a district school board and a law enforcement agency.

Activities conducted by the school resource officer which are part of the regular instructional program of the school shall be under the direction of the school principal.

(c) Complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in mental health crisis intervention. The training shall improve officers' knowledge and skills as first responders to incidents involving students with emotional disturbance or mental illness, including de-escalation skills to ensure student and officer safety.

(2) Commission one or more **school safety officers** for the protection and safety of school personnel, property, and students within the school district. The district school superintendent may recommend, and the district school board may appoint, one or more school safety officers.

(a) School safety officers shall undergo criminal background checks, drug testing, and a psychological evaluation and be law enforcement officers, as defined in s. 943.10(1), certified under the provisions of chapter 943 and employed by either a law enforcement agency or by the district school board. If the officer is employed by the district school board, the district school board is the employing agency for purposes of chapter 943, and must comply with the provisions of that chapter.

(b) A school safety officer has and shall exercise the power to make arrests for violations of law on district school board property and to arrest persons, whether on or off such property, who violate any law on such property under the same conditions that deputy sheriffs are authorized to make arrests. A school safety officer has the authority to carry weapons when performing his or her official duties.

> (c) A district school board may enter into mutual aid agreements with one or more law enforcement agencies as provided in chapter 23. A school safety officer's salary may be paid jointly by the district school board and the law enforcement agency, as mutually agreed to.
>
> **(3)** At the school district's discretion, participate in the **Coach Aaron Feis Guardian Program** if such program is established pursuant to s. 30.15, to meet the requirement of establishing a safe-school officer.
>
> (4) Any information that would identify whether a particular individual has been appointed as a safe-school officer pursuant to this section held by a law enforcement agency, school district, or charter school is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

(Underlining and boldface added).

21. Section 1006.12 places upon "each district school board and school district superintendent" the obligation to "partner with law enforcement agencies" for the specific purpose of "establish[ing] or assign[ing] one or more safe-school officers at each school facility within the district." The prescribed goal must be met by (i) establishing school resource officer ("SRO") programs; (ii) appointing school safety officers ("SOs"); (iii) participating in the Guardian Program; or

(iv) any combination of these options, whichever solution "best meets the needs of the school district." To be clear, however, this case does not require a determination of what all the term "establish or assign" entails. Specifically, it is not necessary to decide whether (and possibly also to what extent) the duty to "establish or assign" includes the duty to pay for the services of the SSOs so established or assigned. While disputes concerning this financial obligation might someday be ripe for adjudication, the narrower question of law on which every issue in this case turns (except for whether the Form is an unadopted rule) is, simply, *who* must satisfy the duty to "establish or assign" SSOs at charter schools.

22. The plain and obvious answer to this pivotal question is: the district school board and district superintendent. As used in the Florida Education Code, which comprises all of Title XLVIII and includes section 1006.12, the meanings of these terms——"district school board" and "school district superintendent"——are as certain and free from doubt as any statutory language is ever likely to be. A "district school board" is obviously a school board established under the Florida Constitution, which mandates that one such body of elected constitutional officers exist in each school district. Art. IX, § 4, Fla. Const. Likewise, a "school district superintendent" is, clearly, a superintendent of schools, i.e., the

constitutional officer who serves as a school board's chief administrator, the person responsible for overseeing the day-to-day operations of a district school system. Art. IX, § 5, Fla. Const.; see Hollis v. Sch. Bd. of Leon Cnty., 384 So. 2d 661, 664 (Fla. 1st DCA 1980). Plainly, under section 1006.12, the school board and the superintendent share the responsibility of establishing or assigning SSOs to the schools in their district, including charter schools. Just as clearly, it is *not* the responsibility of a charter school operator to take this action.

23. The foregoing conclusions follow logically and directly from the clear and definite meaning of the statute, which, being unambiguous as a matter of law, provides no occasion for resorting to the rules of statutory interpretation. See, e.g., State v. Peraza, 259 So. 3d 728, 2018 Fla. LEXIS 2448, at *5 (Fla. Dec. 13, 2018). Because section 1006.12 plainly and unambiguously answers the "*who* question" that the parties have presented, there should be no reason to explain *why* in greater detail. But, as this is a first-impression question of statewide interest, the undersigned will examine the Board's arguments more closely.

24. The Board insists that a literal reading of section 1006.12 yields a "readily apparent" "statutory mandate," which can be "simpl[y] reiterat[ed]" as a statement that "school districts are not required to establish or assign [SSOs] at

charter schools." Resp.'s PFO at 14. The problem with this position is that such a mandate, if it exists, is certainly not readily apparent from a literal reading of the statute, which, in fact, literally says the opposite. The Board is forced to take this contrarian position to avoid conceding that its interpretation of section 1006.12 is an unadopted rule. The conclusion that the Board has violated section 120.54(1)(a) is inescapable, however, as will be discussed below.

25. Indeed, the Board itself seems unconvinced that section 1006.12 is unambiguous because, while insisting that the statute literally relieves school boards of any responsibility for assigning SSOs to charter schools, the Board simultaneously argues that section 1006.12 must be read in conjunction with other statutes it asserts are "in pari materia"——that is, which address the same subject as section 1006.12.[5/] The Board's reliance on the doctrine of *in pari materia*, which is a rule of statutory interpretation, is inconsistent with the notion that section 1006.12 is clear and unambiguous, as the doctrine of *in pari materia* is used to clarify the uncertain meaning of an ambiguous statute, not to confuse or change the definite meaning of a statute whose language is clear. Consequently, if section 1006.12 clearly stated that each charter school must establish or assign SSOs to its own facility, there would be no

need to mention the *in pari materia* principle, much less to apply it.

26. The best the Board can hope to accomplish with the doctrine of *in pari materia* is to demonstrate that, despite its apparently plain meaning, section 1006.12 suffers from a *latent* ambiguity that can be seen only when it is read in the light of other statutes dealing with the same topic. As the Florida Supreme Court recently observed, resort to the rule of *in pari materia* construction is sometimes necessary "to determine whether [another, purportedly related statute] creates an ambiguity not otherwise apparent on the face of [the statute whose meaning is at issue]." Peraza, 2018 Fla. LEXIS 2448, at *8. Such an ambiguity would arise if the related statutes, applied literally, were to "abrogate" or "negat[e]" each other. Id. at 10.

27. The Board contends that sections 1002.33(17)(b) and 1011.62(15), Florida Statutes, create just such a problem when considered in conjunction with section 1006.12. Section 1002.33(17)(b) deals with charter school funding and provides, as relevant, that "[c]harter schools whose students or programs meet the eligibility criteria in law are entitled to their proportionate share of categorical program funds included in the total funds available in the Florida Education Finance Program by the Legislature." Section 1011.62(15), in turn, codifies the

Safe Schools Allocation, which is a categorical program fund. It was enacted in 2017, one year ahead of the Safety Act. See Ch. 2017-116, § 4, at 26, Laws of Fla. The Safety Act, passed in 2018, amended section 1011.62(15) as follows:

> (15) SAFE SCHOOLS ALLOCATION.—A safe schools allocation is created to provide funding to assist school districts in their compliance with s. 1006.07 ~~ss. 1006.07-1006.148~~, with priority given to implementing the district's ~~establishing a~~ school resource officer program pursuant to s. 1006.12. Each school district shall receive a minimum safe schools allocation in an amount provided in the General Appropriations Act. Of the remaining balance of the safe schools allocation, two-thirds shall be allocated to school districts based on the most recent official Florida Crime Index provided by the Department of Law Enforcement and one-third shall be allocated based on each school district's proportionate share of the state's total unweighted full-time equivalent student enrollment. Any additional funds appropriated to this allocation in the 2018-2019 fiscal year to the school resource officer program established pursuant to s. 1006.12 shall be used exclusively for employing or contracting for school resource officers, which shall be in addition to the number of officers employed or contracted for in the 2017- 2018 fiscal year.

Ch. 2018-3, § 29, at 50, Laws of Fla.

28. The Board argues that because charter schools receive a proportionate share of the Safe Schools Allocation, and because "each charter school must[——but only for one year——]use a portion of its safe schools allocation funds exclusively for

employing or contracting for" SROs, it "follows that the charter school is responsible for employing or contracting for SROs. Otherwise, a charter school would not receive funds exclusively for that purpose." Resp.'s PFO at 17. The Board's conclusion does not logically follow from the stated premises.

29. First, the sentence added to section 1011.62(15) regarding "additional funds" appropriated to the SRO program for fiscal year ("FY") 2018-2019 addresses a *one-time state expenditure*, which was merely *part of* that year's Safe Schools Allocation——a categorical program whose purposes include, *but are not limited to*, providing funds for the establishment of SSOs. It is highly unlikely, inconceivable even, that the legislature meant to negate the plain language of section 1006.12——which might remain in force for years, if not decades——with a budgetary proviso applicable by its terms to a single, restricted-use appropriation.

30. Second, the record does not support the Board's assertion that, if the school district were responsible for assigning SSOs to charter schools, then "charter schools [would be required to] turn around and give a portion of [their FY 2018-2019 Safe Schools Allocation share] right back to the school district," because the district must "pass through any share [of the additional funds appropriated to the SRO program] to charter schools." Resp.'s PFO at 18. None of the statutes

involved appears to prohibit a district from holding back those "additional funds" appropriated exclusively to the SRO program for FY 2018-2019. But even if charter schools *were* required to "give back" to their sponsors a portion of their FY 2018-2019 Safe Schools Allocation so that such funds could be used by the districts to employ SROs, at most these transactions would constitute a *temporary inefficiency*, and a mere inefficiency is a far cry from actual language in a funding statute *abrogating* the plain meaning of section 1006.12.

31. Third, according to the plain language of section 1006.12, SROs (and SOs, too) must be certified law enforcement officers ("LEOs"). This means that SROs and SOs cannot be private "security officers" licensed by the Department of Agriculture and Consumer Services pursuant to chapter 493, Florida Statutes. See § 493.6101(19), Fla. Stat. And, in contrast to private security officers, LEOs must be employed by a law enforcement agency. (A district school board becomes a law enforcement agency when, and to the extent, it employs LEOs.) A law enforcement agency or "employing agency" is:

> [A]ny agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and

> maintenance of a nonjuvenile detention facility.

§ 943.10(4), Fla. Stat.

32. There is no language in section 1011.62(15), or any other statute or constitutional provision, that explicitly gives private charter schools——which, unlike school districts, are not political subdivisions of the state——the authority to employ or appoint full-time, active duty LEOs.[6/] The undersigned rejects as unthinkable the idea that the legislature would confer an essentially governmental authority upon private entities by implication from the language of a budgetary proviso applicable to a one-shot safe-schools appropriation. As a matter of law, charter schools, being private entities, simply cannot employ LEOs, unless and until the legislature clearly grants them the authority to do so. Thus, it does *not* follow from section 1011.62(15), as amended by the Safety Act, that charter schools are responsible for employing LEOs.

33. For similar and additional reasons, the undersigned rejects the argument that section 1011.62(15) implicitly authorizes charter schools to contract for the services of LEOs. It is not entirely clear whether, and seems doubtful that, in the absence of specific statutory authority, private entities may legally enter into private agreements with law enforcement agencies to provide them the exclusive services of on-duty

police officers, whose obligations are supposed to run to the public at large.[7/] But, assuming such agreements are lawful, imagine the burden that would be created if the more than *650* charter schools in Florida[8/] were required to negotiate separate contracts with sheriff's offices and police departments around the state. While, as explained above, it would be a mistake to throw over the plain language of section 1006.12 merely to *avoid* a possible temporary inefficiency arising by operation of the funding statutes, it would be folly to do so and thereby *create* the enormous systemic burden that hundreds of contract negotiations would entail——now, and potentially for years to come.

34. Finally, and most important, nothing in the actual language of sections 1011.62(15) and 1002.33(17)(b) can reasonably be read as negating or abrogating the plain meaning of section 1006.12 and the requirement, so clearly stated therein, that school boards and superintendents establish or assign SSOs at each school facility within their jurisdictions, including charter school facilities. There is simply no ambiguity-creating contradiction between these statutes. All can be implemented as written without "harmonization."

35. The Board argues that section 1002.33(16) is *in pari materia* with section 1006.12 as well. Section 1002.33(16) broadly exempts charter schools from all provisions of the

Florida Education Code and then enumerates specific exceptions to this general exemption, those being the statutes with which charters schools "shall be in compliance." Among the statutes that charter schools must obey are those "pertaining to student health, safety, and welfare." § 1002.33(16)(a)5., Fla. Stat. There is no dispute that section 1006.12 is such a statute. RCS agrees that it must "be in compliance" with section 1006.12.

36. From this undisputed premise, the Board argues that "the way [for charter schools] to be in compliance with the statute is to 'partner with law enforcement agencies to establish or assign one or more [SSOs] at each school facility.'" Resp.'s PFO at 21. This argument begs the question because it assumes, without establishing, that the phrase "each school board and school district superintendent" means and includes "each charter school"——the very point of contention.

37. To comply with a statute, a person need do no more than that which the statute requires of him or her; no one is required to perform a duty that the law imposes upon someone else. Section 1006.12 places the duty to assign SSOs upon "each district school board and school district superintendent," not on charter schools. No language in section 1002.33(16)(a)5. contradicts the plain meaning of section 1006.12. Nor, when the two statutes are read together, does any latent ambiguity emerge.

38. As RCS points out, section 1002.33(16)(c) delivers the coup de grâce to the Board's "compliance" argument, if not the Board's *entire* argument on the responsibility for assigning SSOs. This section provides that "[t]he duties assigned to a district school superintendent apply to charter school administrative personnel" and "[t]he duties assigned to a district school board apply to a charter school governing board" for purposes of the following four statutes:

> [1]. Section 1012.22(1)(c), relating to compensation and salary schedules.
> [2]. Section 1012.33(5), relating to workforce reductions.
> [3]. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011.
> [4]. Section 1012.34, relating to the substantive requirements for performance evaluations for instructional personnel and school administrators.

§ 1002.33(16)(c)1.-2., Fla. Stat. (making reference to § 1002.33(16)(b)4.-7.). Thus, as section 1002.33(16)(c) shows, when (and to the extent) the legislature intends to require charter schools to perform duties assigned to school boards or superintendents, it not only knows how to express this intent clearly, but also has at hand a ready statutory vehicle for just such an expression, a vehicle which predated the Safety Act. That the legislature declined to add section 1006.12 to the list of statutes deemed applicable to charter school managers—— insofar as they assign duties to school boards and

superintendents, anyway——is a persuasive indication that the legislature intended *not* to place these duties upon charter schools.

39. The Board pushes back against the plain import of section 1002.33(16)(c) with a lengthy argument whose gist is that the statutes listed in paragraph (c) are not the *only* ones which (implicitly) obligate charter schools to the same extent that school boards and superintendents are (explicitly) obligated; rather, all the statutes with which charter schools must comply, including section 1006.12, require charter school operators to stand in the shoes of school boards and superintendents, as far as duties assigned to school boards and superintendents are concerned. This argument is not persuasive.

40. For one thing, the legislature singled out the four statutes identified in paragraph (c) for the plainly evident purpose of *enlarging the meaning* of each of those statutes——and only those statutes. If the legislature had meant to extend the reach of *all* the statutes excepted from the general exemption provided in section 1002.33(16), it would not have mentioned only the four, but would have made reference to all.

41. For another, by making charter schools responsible for duties assigned to school boards and superintendents, as it did in section 1002.33(16)(c), the legislature effectively *increased* charter schools' autonomy with regard to the personnel-related

matters addressed in the four statutes identified in paragraph (c). On the flip side, this particular legislative decision necessarily *decreased* the power of the school boards to control and supervise the charter schools in relation to these matters. This realignment of the balance of power is clearly and unambiguously expressed in the statute.

42. It should be remembered, however, that school boards derive their power to control and supervise the public schools in their districts from the state constitution. While a statute which unambiguously assigned to charter schools the independent duty to appoint their own SSOs might well be constitutional,[9/] the fact that school board members and superintendents are constitutional officers affords a good reason for construing an *ambiguous* statute (which section 1002.33(16)(c) is *not*) strictly in favor of conserving the power of school boards and superintendents, not liberally so as to erode such power. Thus, for this additional reason, the Board's liberal interpretation of section 1002.33(16)(c) must be rejected.

43. To wrap up the discussion of the doctrine of *in pari materia*, a brief look at the whole of section 1006.12 is in order, for the sake of completeness. One thing that is impossible to miss is the statute's use of the term "school district." This term is as clear as a bell and obviously means the district region (for most districts, this is a county), the

district administration (i.e., school employees and officials, including the school board and superintendent), the district school system, or some combination of these, depending on the context in which the term appears.

44. Thus, where the first sentence of section 1006.12 directs the school board and superintendent to implement any combination of the options for establishing or assigning SSOs "which best meets the needs of the school district," the clear meaning of the term "school district" is *district school system*. In other words, the statute plainly mandates, not a patchwork of approaches, but the implementation of a coherent, integrated, *districtwide* solution, which places the needs of the whole school system ahead of the needs of, e.g., one school. The Board's argument that "school district," as used here, means "a charter school" in those situations where (as the Board would have it) the charter school operator is obligated to perform the duties of the school board and superintendent is unconvincing.

45. In section 1006.12(3), the decision to participate in the Guardian Program is committed to the "school district's discretion." In this context, the term "school district" unambiguously refers generally to the district administration, and, in particular, to the person or persons who will take the decision on behalf of the school district. Clearly, the statute requires that the entire district school system either

participate, or not participate, in the Guardian Program. Just as clearly, conversely, the statute does not contemplate that individual charter schools, in the exercise of autonomous discretion, might employ armed school guardians in districts where, as in Palm Beach County, the local school board has decided to opt out of participation in the Guardian Program. Had the legislature intended to give charter schools such discretion, it would have said so.

46. Section 1006.12(4) requires "local law enforcement agenc[ies], school district[s], [and] charter school[s]" to treat as exempt from the Public Records Law any information that would identify SSOs. Given the side-by-side placement of these terms, this provision supplies direct proof that the legislature actually did not intend to conflate school districts and charter schools, or use the term "school district" loosely as a synonym for "charter school." Further, because subsection (4) contains the only specific mention of charter schools, to credit the Board's interpretation of section 1006.12, one would have to imagine that the legislature saw no need to use the term "charter school" anywhere in the statute where the critical responsibilities concerning SSOs are set forth, despite intending to place those responsibilities on charter school operators, but then got specific in relation to the secondary

concern (in comparison, that is, to the statute's raison d'être) of public records. This is unlikely.

47. In sum, after a thorough study of the statute's plain language, including a review of related statutes at the Board's request to determine whether some latent ambiguity exists, the undersigned concludes that section 1006.12 clearly and unambiguously requires school boards and superintendents——not charter school operators——to "establish or assign" SSOs, with the assistance of local law enforcement agencies, to every public school within their respective jurisdictions, including charter schools.

48. RCS alleges that the Board's statement that charter schools must establish or appoint their own SSOs is an unadopted rule. The undersigned agrees.

49. The term "rule" is defined in section 120.52(16) to mean "each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule." As the First DCA explained:

> The breadth of the definition in Section 120.52(1[6]) indicates that the legislature intended the term to cover a great variety

> of agency statements regardless of how the agency designates them. Any agency statement is a rule if it "purports in and of itself to create certain rights and adversely affect others," [State, Dep't of Admin. v.] Stevens, 344 So. 2d [290,] 296 [(Fla. 1st DCA 1977)], or serves "by [its] own effect to create rights, or to require compliance, or otherwise to have the direct and consistent effect of law." McDonald v. Dep't of Banking & Fin., 346 So. 2d 569, 581 (Fla. 1st DCA 1977).

State Dep't of Admin. v. Harvey, 356 So. 2d 323, 325 (Fla. 1st DCA 1977); see also Jenkins v. State, 855 So. 2d 1219 (Fla. 1st DCA 2003); Amos v. Dep't of HRS, 444 So. 2d 43, 46 (Fla. 1st DCA 1983). Accordingly, to be a rule:

> [A] statement of general applicability must operate in the manner of a law. Thus, if the statement's effect is to create stability and predictability within its field of operation; if it treats all those with like cases equally; if it requires affected persons to conform their behavior to a common standard; or if it creates or extinguishes rights, privileges, or entitlements, then the statement is a rule.

Fla. Quarter Horse Racing Ass'n, Inc. v. Dep't of Bus. & Prof'l Reg., Case No. 11-5796RU, 2013 Fla. Div. Admin. Hear. LEXIS 558, at *37-38 (Fla. DOAH May 6, 2013), aff'd, Fla. Quarter Horse Track Ass'n v. Dep't of Bus. & Prof'l Reg., 133 So. 3d 1118 (Fla. 1st DCA 2014).

50. Because the definition of the term "rule" expressly includes statements of general applicability that implement or interpret law, an agency's interpretation of a statute that

gives the statute a meaning not readily apparent from its literal reading and purports to create rights, require compliance, or otherwise have the direct and consistent effect of law, is a rule, but one which simply reiterates a statutory mandate is not. Id. at *39-40; see also Grabba-Leaf, LLC v. Dep't of Bus. & Prof'l Reg., Div. of Alcoholic Bevs. & Tobacco, 257 So. 3d 1205, 1208 (Fla. 1st DCA 2018)(simple reiteration of what is "readily apparent" from the text of a law falls within rulemaking exception); State Bd. of Admin. v. Huberty, 46 So. 3d 1144, 1147 (Fla. 1st DCA 2010); Beverly Enters.-Fla., Inc. v. Dep't of HRS, 573 So. 2d 19, 22 (Fla. 1st DCA 1990); St. Francis Hosp., Inc. v. Dep't of HRS, 553 So. 2d 1351, 1354 (Fla. 1st DCA 1989).

51. Agency rulemaking is not discretionary under the Administrative Procedure Act. See § 120.54(1)(a), Fla. Stat.; Dep't of High. Saf. & Motor Veh. v. Schluter, 705 So. 2d 81, 86 (Fla. 1st DCA 1997)(The "legislature's intention [was] to remove from agencies the discretion to decide whether or not to adopt rules."). Each agency statement meeting the definition of a rule under section 120.52(16) must be adopted "as soon as feasible and practicable." § 120.54(1)(a), Fla. Stat.

52. Section 120.56(4) authorizes any substantially affected person to seek an administrative determination that an agency statement which has not been adopted by the rulemaking

procedure is nevertheless a "rule" as defined in section 120.52 and, hence, violates section 120.54(1)(a). The statutory term for such a rule-by-definition is "unadopted rule," which is defined in section 120.52(20).

53. If the petitioner proves at hearing that the agency statement is an unadopted rule, the agency then has the burden of overcoming the presumptions that rulemaking was both feasible and practicable. In this regard, section 120.54(1)(a)1. provides as follows:

> Rulemaking shall be presumed feasible unless the agency proves that:
>
> a. The agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking; or
>
> b. Related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking.

Section 120.54(1)(a)2. provides as follows:

> Rulemaking shall be presumed practicable to the extent necessary to provide fair notice to affected persons of relevant agency procedures and applicable principles, criteria, or standards for agency decisions unless the agency proves that:
>
> a. Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances; or
>
> b. The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical

> outside of an adjudication to determine the substantial interests of a party based on individual circumstances.

54. The Board's interpretation of section 1006.12 gives the statute a meaning that is not readily apparent from a literal reading of its terms; indeed, for the reasons set forth above, it is the undersigned's conclusion that the Board's statement actually contravenes the plain language of the statute. Thus, the Board's interpretive statement, which is generally applicable to all charter schools in the District and does not fall within the "simple reiteration" exception to rulemaking, meets the definition of a rule.

55. The Board has made no attempt to prove (or even to argue) that it would have been infeasible or impracticable to adopt the Board's interpretation of section 1006.12 as a rule. Thus, feasibility and practicability are presumed.

56. Accordingly, the Board's statement concerning the meaning of section 1006.12——namely that, under this statute, it is the duty of a charter school operator to establish or appoint its own SSOs, for neither the school board nor the superintendent has any obligations in this regard——is an unadopted rule.

57. RCS argues that the Form is also an unadopted rule because it solicits information not specifically required by

statute or an existing rule. Once again, the undersigned agrees.

58. As a matter of fact, the Form solicited information from charter schools regarding SSOs. As a matter of law, no statute or rule specifically requires charter schools to provide this particular information to their sponsors. For these reasons, the Form clearly falls within section 120.52(16)'s definition of a rule, as applied according to its literal meaning.

59. The Board contends that the Form is not a rule because the failure to complete and return the "survey" was, and is, not a disciplinable offense. Although section 120.52(16) does not make an exception for forms that can be ignored with impunity, the undersigned can see how a form truly of no consequence might lack the force of law necessary to make a rule out of a statement.

60. Suppose, for example, that a school board were to send a Google Forms survey to charter school operators soliciting their opinions as to whether the school district should opt out of the Guardian Program. Strictly speaking, such a survey would be a "form" of "any" kind that "solicits any information not specifically required by" law. Yet, this hypothetical form does not "feel" like a rule given the nature of the information sought——not, at least, without more, e.g., a simultaneous

directive that the failure to provide a response to the survey would be grounds for sanction.

61. What distinguishes this case, however, is that the information solicited by the Form——i.e., details regarding the charter school's SSO(s)——is *highly* relevant to a determination of the substantial interests of each charter school to whom it was sent, especially when viewed in light of the Board's interpretation of section 1006.12 as imposing upon charter schools the duty to establish or assign their own SSOs. As most recipients of the Form surely must have noticed, the Board was essentially asking if the charter school was *in compliance with* (the Board's understanding of) section 1006.12——a statute that addresses no less than student health, safety, and welfare.

62. This latter point is particularly significant because, as a sponsor, any school board may terminate a charter agreement *immediately*, even before a hearing takes place, if it finds "facts and circumstances indicating that an immediate and serious danger to the health, safety, or welfare of the charter school's students exists." § 1002.33(8)(c), Fla. Stat. It takes no imagination, therefore, to see the threat implied in the Form.

63. There is no evidence in the instant record that the Board has ever expressly threatened to terminate a charter agreement for the operator's failure to establish or assign an

SSO. On the other hand, there is no evidence that the Board has ever expressly assured a charter school operator that such drastic action would not be taken. The bottom line is that the Form is *not* truly without consequence; it seeks information that the Board could rely upon as grounds for terminating a charter agreement, potentially without affording a pre-deprivation hearing. Accordingly, it is concluded that the Form is an unadopted rule.

64. Section 1002.33(7)(b) provides that any dispute relating to a charter agreement then in force "may be appealed to" DOAH if the commissioner of education determines, as here, "that the dispute cannot be settled through mediation." In such proceedings, "[t]he administrative law judge has final order authority to rule on issues of equitable treatment of the charter school as a public school" and "any other matter regarding . . . section [1002.33]" except for the denial, nonrenewal, or termination of a charter agreement. § 1002.33(7)(b), Fla. Stat.

65. RCS has brought to DOAH a hearable issue under section 1002.33(7)(b), namely the dispute arising from the Board's denial of RCS's request that the Board assign SSOs to its school facilities in the District. Because the Board has established or assigned SSOs at the facilities of traditional public schools but not at charter public schools, its refusal to

honor RCS's request raises an issue of equitable treatment of charter schools as public schools. The commissioner has determined that this particular dispute cannot be settled through mediation.

66. The Board argues that RCS has failed to satisfy a "condition precedent" to this administrative proceeding because RCS did not exhaust the alternative dispute resolution ("ADR") process available under the charter agreement. The ADR section of the agreement, however, is by its plain terms "[s]ubject to the applicable provisions of Fla. Stat. § 1002.33." Section 1002.33(7)(b) does not require that contractual ADR remedies be fully exhausted before seeking DOE mediation or "appealing" to DOAH when and if mediation results in an impasse. Further, the charter agreement's ADR process is voluntary; contractual disputes "may be resolved" thereby "unless otherwise directed or provided for in" section 1002.33(7)(b). Finally, the ADR process at issue is applicable to *contractual* disputes, whereas the matter at hand arises from a dispute over a *statutory* mandate. In short, RCS's avoidance of the ADR process does not bar it from proceeding under section 1002.33(7)(b).

67. On the merits, RCS has proved its case. As discussed at length above, section 1006.12 clearly and unambiguously imposes upon the Board and the superintendent, not upon RCS and other charter school operators, the duty to establish or assign

SSOs at charter school facilities. The Board's refusal to assign SSOs to RCS's charter school facilities per RCS's request, as the Board has done for traditional public schools, is a violation of section 1006.12 and constitutes inequitable treatment of the charter schools as public schools.

68. Having determined that the Board's interpretation of section 1006.12 and its Form are unadopted rules that violate section 120.54(1)(a), an order must be entered against the Board, pursuant to section 120.595(4), for reasonable costs and reasonable attorney's fees, "unless the agency demonstrates that the statement[s are] required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds." No such demonstration was made.

69. Section 1002.33(7)(b) provides that the "administrative law judge shall award the prevailing party reasonable attorney fees and costs incurred during the mediation process, administrative proceeding, and any appeals, to be paid by the party whom the administrative law judge rules against." As the prevailing party, RCS is entitled to such an award.

ORDER

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

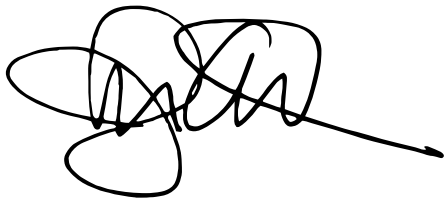
1. The Board's statement concerning the meaning of section 1006.12——namely that, under this statute, it is the duty of a charter school operator to establish or appoint its own SSOs, because neither the school board nor the superintendent has any obligations in this regard——is an unadopted rule in violation of section 120.54(1)(a).

2. The Board's Form titled "Charter School Safe-School Officers FY19" is an unadopted rule in violation of section 120.54(1)(a).

3. The Board's refusal to assign SSOs to RCS's charter school facilities per RCS's request, as the Board has done for traditional public schools, is a violation of section 1006.12 and constitutes inequitable treatment of the charter schools as public schools.

4. RCS shall have 30 days from the date of this Final Order within which to file a motion for attorney's fees and costs, to which motion (if filed) RCS shall attach appropriate affidavits (attesting, e.g., to the reasonableness of the fees and costs) and the essential documentation supporting the claim, such as time sheets, bills, and receipts.

DONE AND ORDERED this 12th day of March, 2019, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 12th day of March, 2019.

ENDNOTES

[1/] Art. IX, § 4, Fla. Const.; § 1.01(8), Fla. Stat.; C.L. v. State, 693 So. 2d 713, 715 (Fla. 4th DCA 1997).

[2/] Art. IX, § 4(b), Fla. Const.

[3/] For purposes of the Administrative Procedure Act, the charter contract is a "license," a term defined in chapter 120 as "a franchise, permit, certification, registration, charter, or similar form of authorization required by law." § 120.52(10), Fla. Stat. (emphasis added). That said, a charter contract under section 1002.33 undeniably resembles a consensual agreement, in form at least; therefore, it is possible that a charter contract constitutes a hybrid instrument under which the parties perform in dual capacities, as regulator (or agency) and licensee, and also as offeror and offeree. The undersigned need not (and does not) exclude the possibility that a cause of action for damages or equitable relief might accrue in favor of a sponsor or a charter school for breach of the charter contract. What is certain, and relevant, is that under

section 1002.33(8), school districts, as charter school sponsors, are delegated the power to regulate.

[4/] To be precise, the statement above is true for all charter schools except "conversion" charter schools, which are charter schools that started out as traditional public schools and later converted. The Board *has* posted SSOs at conversion charter schools. None of RCS's schools is a conversion charter school, however, and, to avoid the need to return to this distinction, the term "charter school," as used in this Final Order, is intended to refer only to "non-conversion" charter schools.

[5/] As the Florida Supreme Court has explained:

> [It is a] well-settled rule that, where two statutes operate on the same subject without positive inconsistency or repugnancy, courts must construe them so as to preserve the force of both without destroying their evident intent, if possible. It is an accepted maxim of statutory construction that a law should be construed together with and in harmony with any other statute relating to the same subject matter or having the same purpose, even though the statutes were not enacted at the same time.

Mann v. Goodyear Tire & Rubber Co., 300 So. 2d 666, 668 (Fla. 1974)(footnotes omitted); see also, e.g., Mehl v. State, 632 So. 2d 593, 595 (Fla. 1993)(separate statutory provisions that are in pari materia should be construed to express a unified legislative purpose); Lincoln v. Fla. Parole Comm'n, 643 So. 2d 668, 671 (Fla. 1st DCA 1994)(statutes on same subject and having same general purpose should be construed in pari materia).

[6/] This is not a situation where, with the agreement of an employing agency, a private entity might hire an off-duty police officer to provide security services "on the side."

[7/] Relatedly, section 1006.12(2)(c) states that "[a] district school board may enter into mutual aid agreements with one or more law enforcement agencies as provided in chapter 23." Such agreements, it will be noted, must be made "between two or more law enforcement agencies." § 23.1225(1)(a), Fla. Stat. As used in section 23.1225, Florida Statutes, "the term 'law enforcement agency' means any agency or unit of government that has

authority to employ or appoint law enforcement officers, as defined in s. 943.10(1)." § 23.1225(1)(d), Fla. Stat. Charter schools are not law enforcement agencies and, therefore, cannot enter into mutual aid agreements.

[8/] The undersigned takes official recognition of the public record of DOE titled Charter Schools, which is available online at http://www.fldoe.org/schools/school-choice/charter-schools (last visited March 10, 2019). This record states that "the number of charter schools in Florida has grown to over 655 in 2017-18."

[9/] The undersigned expresses no opinion either way on this point.

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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 the original notice of appeal with the Clerk of the Division of Administrative Hearings and a 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 appeal must be filed within 30 days of rendition of the order to be reviewed.