Pinellas County School District's Proposal for Alternative Solutions to Litigation over HB 7069

At least eleven school boards have voted to join a lawsuit challenging HB 7069 because aspects of the law usurp the constitutional authority of the elected school board members to operate, supervise and control the public schools within their district. The purpose of this document is to initiate a dialogue to consider alternative solutions to protracted litigation over the constitutional defects to sections of HB 7069. Litigation is, and should be a last resort. It is time consuming, expensive and a distraction from the mutual objective of increasing student performance at all levels. Directing our resources toward curing the deficiencies in HB 7069 is more productive than challenging its constitutionality but to date, our efforts to persuade elected officials that HB 7069 must be reconsidered have been unsuccessful. Our goal is to renew our efforts. To that end, this memorandum identifies the primary deficiencies in HB 7069 and suggests solutions to cure the deficiencies. We look forward to working with our legislators in doing so.

Constitutional Defects in HB 7069

Schools of Hope

HB 7069's establishment of Schools of Hope is designed to serve students from one or more persistently low-performing schools. A persistently low performing school is defined as a school that has earned three consecutive grades lower than a "C" under Florida's accountability system. As one of several large urban school districts in Florida, Pinellas County is successfully addressing the needs of our struggling schools. For example, six of the seven schools with a grade of "F" in 2015 have improved and three of the schools have earned a grade of "C" or better. As a state, 70% of Florida's "D" and "F" schools have improved their grade and overall, there has been a 46% reduction in "D" and "F" grades in the past year. Clearly this improvement should not be ignored but rather supported. To the extent that HB 7069's Schools of Hope is intended to contribute to the sustained improvement experienced by Pinellas County and other school districts, we applaud the legislature's efforts. However, we should recognize that the creation of a new type of charter school---a School of Hope—is likely unnecessary because Florida already has many choice options in place from McKay and Opportunity Scholarships to many magnet programs. In Pinellas County, we are very proud that the Brookings Institute named our district as one of the top ten school districts in the nation for providing parental choice.

If we are to add Schools of Hope to the existing choice options already available, we should recognize that the statutory framework of HB 7069, as currently written, is not viable. The reason is that the overall concept is virtually identical to a law enacted in 2006

and struck down by the court as unconstitutional. Specifically, in 2008 twelve school boards filed a lawsuit challenging Section 1002.335, F.S., which established the "Florida Schools of Excellence Commission" as an independent, state-level entity with the power to authorize charter schools throughout the State of Florida. Prior to the enactment of this law, only district school boards could authorize charter schools. Section 1002.335 F.S. stated that the district school boards could exercise that exclusive authority only if the State Board of Education granted them the power within their district. The school boards filed the suit as a "facial challenge" to this statute. Finding that "no set of circumstances exists under which the statute would be valid" the Court held that the statute was unconstitutional and stated:

> *Section 1002.335* provides for the creation of charter schools throughout Florida. This statute permits and encourages the creation of a parallel system of free public education escaping the operation and control of local elected school boards. It vests in an "Excellence Commission" of seven people appointed by the State Board of Education from recommendations of the Governor, President of the Senate and Speaker of the House of Representatives, all the powers of operation, control and supervision of free public education specifically reserved in *article IX, section 4(b) of the Florida Constitution*, to locally elected school boards, with regard to charter schools sponsored by the Commission.

Duval County School Board v. State Board of Education, 998 So. 2d 641, 643 (1st DCA 2008).

For the same reasons that the Schools of Excellence Commission failed, the Schools of Hope concept will also fail because it "permits and encourages the creation of a parallel system of free public education escaping the operation and control of local elected school boards." The law would allow a Hope Operator to open a charter school by simply submitting a "notice of intent". There is no requirement that the School Board approve an application. There is no ability for the School Board to deny a Hope Operator the right to open a school. The School Board is required to enter into a "Performance Based Agreement" with the Hope Operator and the contents of the agreement are completely prescribed by statute. There is no negotiation. Basically, the elected School Board has no role in the process whatsoever. This scheme contradicts Article IX Section 4 of the Florida Constitution which requires that the elected members of the School Board "operate, control and supervise all free public schools within the school district". Additionally, teachers at Schools of Hope are not required to be certified. The Florida Supreme Court has already stated that the concept of allowing uncertified teachers to teach in public schools violates the Article IX, Section 1 (a) of the Florida Constitution requiring a "uniform" and "high quality" education. *See*, Bush v. Holmes, 919 So. 2d 392 (Fla. 2006).

We believe that charter schools focused on persistently low performing schools can play a meaningful role and we would welcome Schools of Hope Operators if they can offer options for students and families in our communities that don't already exist. However, the State Board of Education and School of Hope Operators cannot displace the role of the elected school board members. Rather than continuing with litigation to address issues that have already been addressed by Florida courts, our suggestion is that nonprofit

organizations with experience in managing low performing schools submit their application to the local school board under the existing charter school laws. Existing laws already provide charter schools with greater flexibility than traditional public schools and they should be encouraged to use that flexibility to create innovative programs to improve struggling schools. Circumventing the role of the elected school board members and creating a separate, parallel system of public education with no accountability is not the way to do it.

Additionally, while the proposed funding for the Schools of Hope Program recognizes the need for investing in professional development, compensation for teachers and school leaders, community engagement and wrap around services, it does not go far enough. HB 7069 authorizes up to $2,000 per full time equivalent student at traditional public schools but it is limited to only 25 schools in the entire state. A better approach for improving the education of students in persistently low performing schools would be to extend the additional funding to each and every school in the state which has earned three consecutive grades lower than a “C”.

We believe that these proposals would correct the constitutional problems with the Schools of Hope provisions of HB 7069 yet preserve the legislative intent of increased school choice.

Capital Outlay

HB 7069’s requirement that school districts share their capital outlay revenue suffers from the same constitutional issues as described above because again, it usurps the constitutional authority granted to elected school board members. Article VII Section 9 of Florida’s Constitution authorizes school boards to levy ad valorem taxes. A private, not-for-profit corporation such as a charter school has no authority to levy taxes. The requirement that school boards share the revenue generated from levying taxes is an indirect levy by charter schools when there is no authority to do so.

In addition to the constitutional issues, there are grave inequities created by HB 7069’s formula for sharing locally levied millage funds with charter schools. The School Board of Pinellas County sent a letter dated July 19, 2017 to the members of the Pinellas County legislative delegation noting these inequities. Specifically, the formula for sharing funds reduces the district millage revenue by the annual debt service outstanding as of March 2017 which effectively penalizes school districts that have little or no debt. As mentioned in that letter, Pinellas County may have to delay or cancel several projects in its five year capital outlay plan due to an estimated loss of 25 million dollars resulting from HB 7069’s capital outlay sharing formula. HB 7069’s formula is also inequitable for charter schools operating in districts with high debt service because they would be ineligible for capital outlay funds.

The purpose of capital outlay funds is to invest in necessary capital projects for a public purpose. Charter schools serve a public purpose and like traditional public schools, have the need to build, lease and repair their facilities. Any formula should therefore relate to the capital needs of the charter school. Yet, HB 7069’s current formula does not. For

example, the current formula does not address projected student enrollment, inventory of existing facilities within the county, age and condition of the facilities or any of the other criteria which must be included in a School Board's tentative educational facilities plan required for capital outlay under s. 1013.35, F.S. A proposed formula which considers such factors and therefore actually aligns with the purpose of capital outlay funding, would require that the charter school demonstrate its capital needs on the same basis required of district school boards. The charter school's plan would be incorporated in the district's five year capital outlay plan and district facilities work program. Under this approach, the amount of funds to be allocated for use by charter schools should not be greater than the percentage of facilities owned or leased by charter schools in the district as compared to all facilities in the district including those owned or leased by traditional public schools and charter schools combined. To illustrate, the estimated square footage of facilities owned or leased by charter schools in Pinellas County total approximately 446,745 square feet as compared to the total of all space available for students in Pinellas public schools (traditional public schools, and charter schools combined) equal to 19,107,757. Based on this ratio, charter schools would be allocated 2.27% of total millage equal to $107,668,400 and after deducting PECO funds, there would be $2.84 per sq. ft. to be allocated for charter school facilities or $1,268,756.

This proposed formula is consistent with the purpose of capital outlay funds and would not penalize school boards that have resisted borrowing. However, it would likely require an amendment to s. 1011.71 (2) F.S. to authorize a local option for heavily indebted school boards to levy amounts in excess of 1.5 mills in order to raise the funds necessary for the capital needs of both traditional schools and charter schools.

Summary

Our objective is to work with the legislature to find a solution which avoids protracted litigation. We have proposed solutions intended to initiate a productive dialogue and ultimately build upon the successes already made.