

CHALLENGE TO EXCLUSION OF CHARTER SCHOOLS FROM CLASS SIZE COMPLIANCE

Pursuant to Section 1002.33(1), Florida Statutes, "Charter schools shall be part of the state's program of public education." Article IX, Section 1(a) of the Florida Constitution requires a "high quality system of public schools" which includes charter schools authorized by law. In implementing the class size provisions of the Constitution, the Legislature has provided in Section 1003.03(1), Florida Statutes, that public schools, beginning in the 2010-2011 school year, may not exceed the numeric limits established for smaller classes by the Constitution.

However, HB 5101 provides, among other things, that charter schools are not required to comply with the class size requirements of Article IX, Section 1(a) of the Florida Constitution. Thus, HB 5101 provides that a charter school must comply with "Section 1003.03, relating to the maximum class size, except that the calculation for compliance pursuant to s. 1003.03 shall be the average at the school level." (underlining added for emphasis).

Accordingly, while all other public schools are statutorily held to being in compliance with the constitutional class size requirements, the Legislature has attempted to exempt charter schools from being in compliance.

PROPOSED LITIGATION

The lawsuit, to be filed in the Leon County Circuit Court, would contend that the above-quoted section of HB 5101 is facially unconstitutional. That is, there is no construction of the language in the legislation, which permits charter schools to be out of compliance with Article IX, Section 1(a) of the Florida Constitution, which could square with the constitutional requirement. Thus, the lawsuit would seek a declaration that the statute is facially unconstitutional and would request injunctive relief enjoining the Department of Education to require charter schools to comply with the classroom level implementation of the class size goals in the same manner as other public schools are being required to comply.

REQUESTED ACTION

The Board is requested to authorize the initiation of litigation challenging the Legislature's attempt to exclude charter schools from complying with the mandatory requirements of Article IX, Section 1(a) of the Florida Constitution relating to classroom level compliance and seeking an injunction requiring the Department of Education to enforce class size requirements against charter schools.