


MEMORANDUM

January 23, 2007
AMV 2006-2007/M084
AMV 305-995-1436

TO: Audit Committee Members
Dr. Rudolph F. Crew, Superintendent of Schools

FROM: Allen M. Vann, Chief Auditor
Office of Management and Compliance Audits

BY: Trevor L. Williams, District Audit Director
Office of Management and Compliance Audits



**SUBJECT: AUDIT COMMITTEE FOLLOW-UP ON MANAGEMENT'S RESPONSE
TO THE AUDIT OF ACHIEVE THROUGH EDUCATION, INC.**

The subject audit was presented to you at the December 5, 2006 meeting, at which time, the Audit Committee ask to table the report to allow staff the opportunity to provide more complete responses to Achieve Through Education, Inc., response to the \$260,428 overpayment in FTE. You may recall that you also asked staff to provide an action plan for recovering the overpayment. Pursuant to your request, we are providing a response to the following matters:

Overpayment per Contract Terms:

1. Achieve Through Education, Inc., stated that while they received 12 payments during contract year 2005-2006, for contract years 2003-2004 and 2004-2005 they received only 11 payments rather than 12 payments as stated in the related contracts. And as such, there is a combined payment shortage of \$436,408 from M-DCPS.
 - A review of the history of payments M-DCPS made to Achieve Through Education, Inc., shows that in each of the three contract years in question, M-DCPS made 11 payments to Achieve Through Education, Inc. The payments corresponded to the period (i.e., the school year including summer sessions) during which M-DCPS students were in attendance and serviced at Achieve Through Education, Inc., campuses. The accompanying payment timeline adequately documents this. Further, we believe that while the contracts do state that 12 monthly payments will be made, the agency's interpretation of this contract provision is erroneous, as it assumes that an arbitrary 12th payment, for which services were not rendered, should be made. The School Board Attorney has reviewed the matter and has issued opinion that concurs with that of the auditors. As stated in the attached memorandum from the attorneys, they are not

aware of any information to conclude that Achieve Through Education, Inc. was shortchanged.

2. Achieve Through Education, Inc., stated that the contracts did not indicate that funding will be calculated on homeroom attendance and that students may not have been marked present during homeroom. They also stated that discrepancies between enrollment and attendance could be resolved by comparing certain other documents, including student entry/withdrawal form, grade book, etc.
 - Student attendance for the purpose of determining the overpayment was determined based on the guidelines established by the Florida Department of Education, which are followed by M-DCPS and were mutually agreed to under each of the contracts in question. Additionally, wherever discrepancies between enrollment and attendance were noted, other documents, including those mentioned herein were reviewed. Homeroom attendance remains the required official attendance.
3. Achieve Through Education, Inc., stated that the contract indicates that funding will follow Florida Statute 1011.62 and as a result they are entitled to additional funding because of the schools' declining enrollment as allowed in this statute.
 - First, the contract terms the Achieve Through Education, Inc., cited are from the current contract, which is a revision of the contracts under which the overpayments occurred. Second, the Board Attorney has concluded that Achieve Through Education, Inc., has erroneously applied the above statute to itself. The statute was intended to be applied to school districts. Please refer to the accompanying memorandum from the School Board Attorney.

Overpayment per Contract Terms – Recovery Plan:

The administration has established the framework to develop recovery plans for each case of overpayment of FTE revenues to all community base organizations that provided educational services to the District during the period in question. School Operations will take the lead in this effort, which will include other departments. Please refer to the accompanying memorandum from School Operations for further details.

Other Subject Matter:

You will also find included in the accompanying memorandum from the School Board Attorney their response to our question relative to whether the charter schools were properly applying Florida Statute 196.1983 regarding property tax exemption pass-

Audit Committee Follow-up on Management's Response to the Audit of Achieve
Through Education, Inc.

January 23, 2007

Page 3 of 3

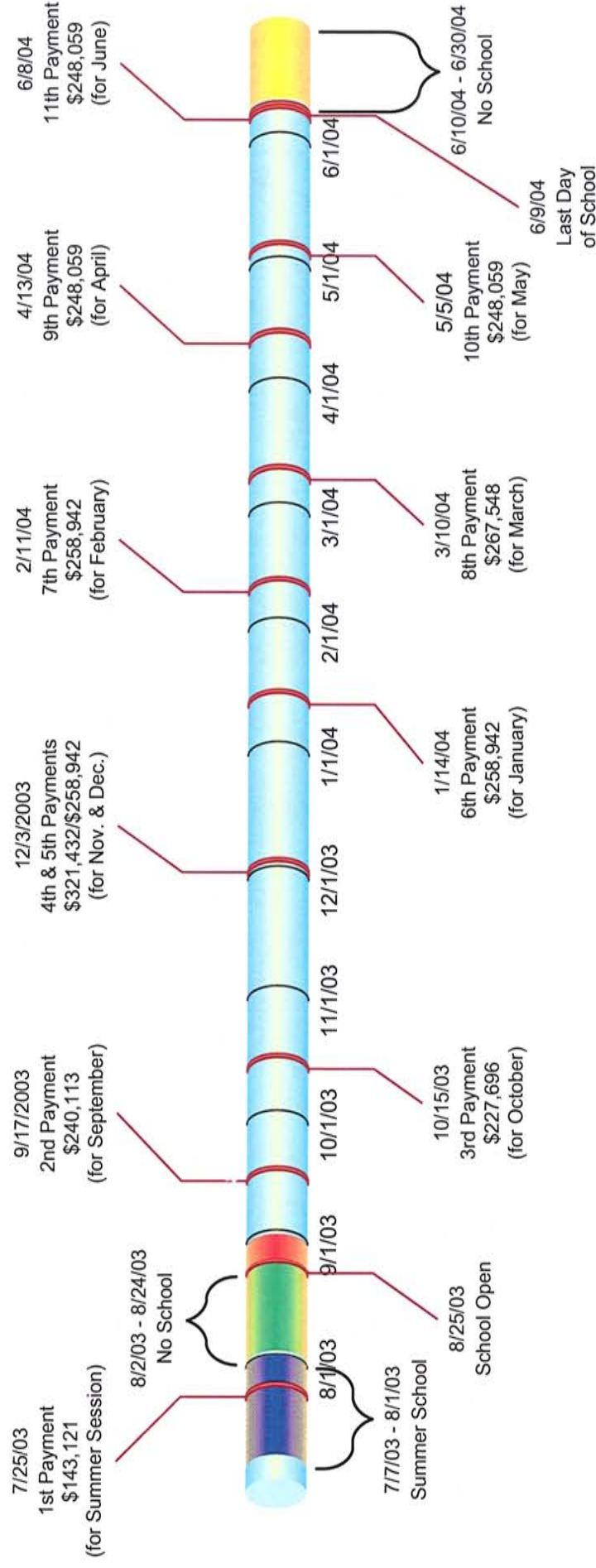
through. As noted in their memorandum, the specific circumstance may determine the appropriateness of the school's application of this statute.

I trust that the submitted information addresses the committee's concerns. If you have any questions about this request, please do not hesitate to contact me at (305) 995-1436 or Mr. Williams at (305) 995-1328.

AMV/TLW

cc: Ms. Carolyn Spaht
Ms. JulieAnn Rico
Mr. Freddie Woodson
Mr. Guillermo Someillan, Achieve Through Education, Inc.

Timeline of M-DCPS Payments to Achieve Through Education, Inc., For Fiscal Year 2003-04

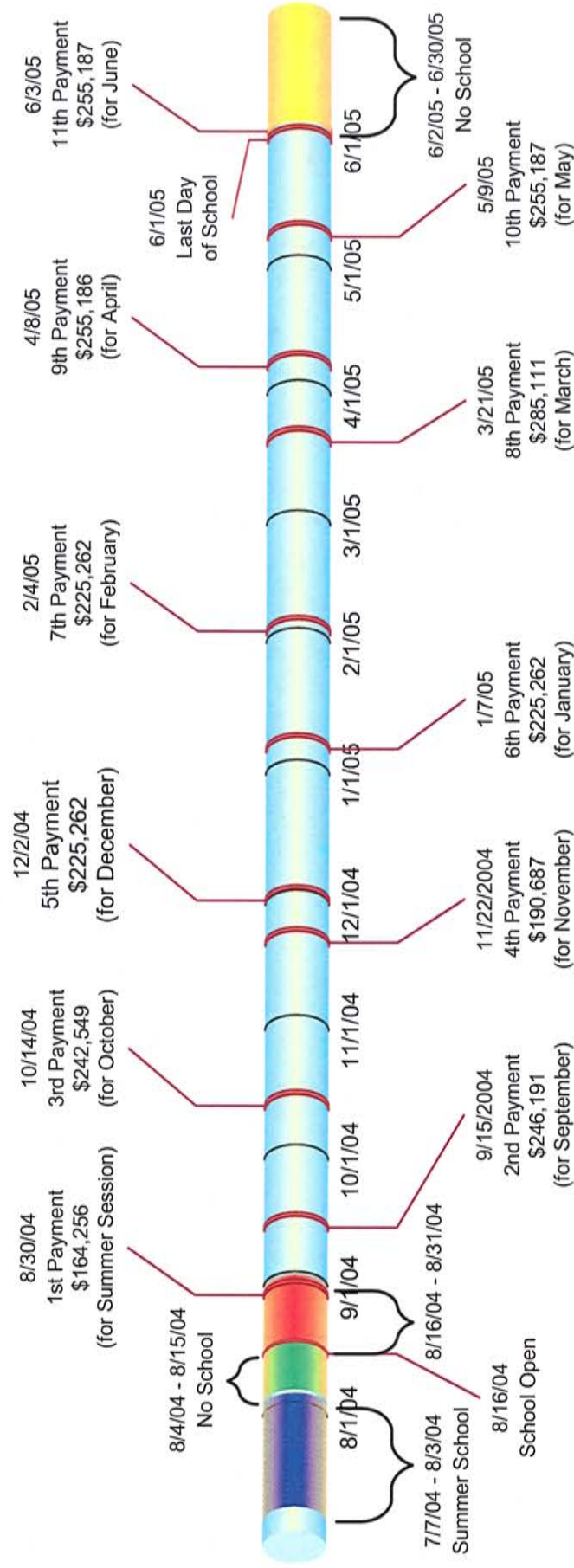


Note:

The red-colored interval above represents seven (7) days that the payments made by M-DCPS did not cover. The yellow-colored interval above represents 21 days beyond the school year for which the agency received payments from M-DCPS. Therefore, within the 11 payments M-DCPS made, the agency was paid a net of 14 days beyond the period for which instructional services were provided.

Sources: Payment data taken from MSAF payment information system. School schedule taken from M-DCPS official school calendar.

Timeline of M-DCPS Payments to Achieve Through Education, Inc., For Fiscal Year 2004-05

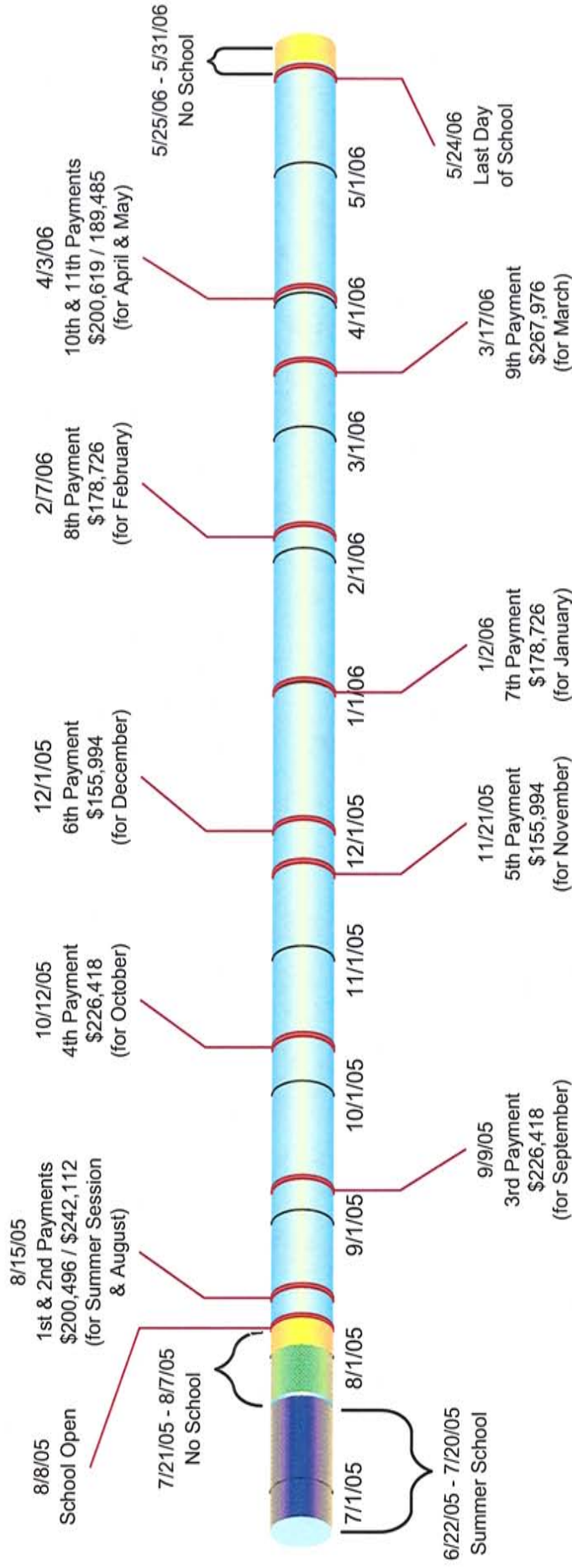


Note:

The red-colored interval above represents sixteen (16) days that the payments made by M-DCPS did not cover. The yellow-colored interval above represents 29 days beyond the school year for which the agency received payments from M-DCPS. Therefore, within the 11 payments M-DCPS made, the agency was paid a net of 13 days beyond the period for which instructional services were provided.

Sources: Payment data taken from MSAF payment information system. School schedule taken from M-DCPS official school calendar.

Timeline of M-DCPS Payments to Achieve Through Education, Inc., For Fiscal Year 2005-06



Note:

The yellow-colored interval above represents 14 days beyond the school year for which the agency received payments from M-DCPS. Therefore, within the 11 payments M-DCPS made, the agency was paid 14 days beyond the period for which instructional services were provided.

Sources: Payment data taken from MSAF payment information system. School schedule taken from M-DCPS official school calendar.

MEMORANDUM

January 19, 2007

TO: Mr. Allen M. Vann, Chief Auditor
Office of Management and Compliance Audits

FROM: Freddie Woodson, Associate Superintendent
School Operations

SUBJECT: **RECOVERY PLAN FOR OVERPAYMENTS MADE TO COMMUNITY BASED ORGANIZATIONS THAT DELIVER SERVICES TO AT-RISK STUDENTS THROUGH EDUCATIONAL**

In order to provide an update to the Audit Committee regarding the Internal Audit of Achieve Through Education, Inc. an overpayment recovery plan has been developed and will be implemented and monitored to ensure the recovery of District funds that have been overpaid without compromising the program for at-risk students. This Overpayment Recovery Plan will not only apply to Achieve Through Education, Inc., but will also apply and be implemented with other community-based organizations that delivered educational services to at-risk students in which there was an overpayment of FTE fees by the District. The elements of the plan are as follows:

- Work with the Office of Management and Compliance Audits to determine the nature and amount of overpayment made to each community-based organization that delivered educational services in which an overpayment was made.
- Meet with each community-based organization in which an overpayment was determined to review the amount of the overpayment and discuss a plan to recover the amount overpaid over time.
- Coordinate a meeting with the Office of Management and Compliance Audits and each community-based organization to determine the amount to be collected at established intervals.
- Request that the Office of Management and Compliance Audits be available to meet and/or clarify with each community-based organization as to how each overpayment amount was determined.
- Work with the Office of Procurement Management Services to review and discuss each overpayment recovery plan and develop an amendment to subsequent contracts relative to overpayment recovery plan compliance.
- Meet with the Office of Management and Compliance Audits, Procurement Services, and Accounts Payable to review plan and implementation timeline for overpayment recovery for each community-based organization.
- Involve the School Board Attorney's Office to ensure that each overpayment recovery plan complies with legal requirements relative to development, implementation, and monitoring.

Each plan will be developed in consultation with the community-based organization to ensure that a significant and negative financial impact is not an unintended consequence of the overpayment recovery effort. If you have any questions and/or would like additional information regarding this matter, please contact me at 305 995-4242 or Dr. Steve Gallon III, Administrative Director at 305 995-1270.

FW/SG:jc
M241

cc: Ms. Carolyn Spaht
Ms. Julie Ann Rico
Mr. Joseph Gomez
Dr. Kathleen Caballero
Dr. Steve Gallon III

Ms. Cynthia Gracia
Mr. Antonio Martinez
Mr. Trevor Williams
Mr. Miguel Torres
Ms. Barbara Jones

 FW



Miami-Dade County Public Schools

giving our students the world

School Board Attorney
JulieAnn Rico, Esq.

Miami-Dade County School Board

Agustín J. Barrera, Chair
Dr. Martin Karp, Vice Chair
Renier Díaz de la Portilla
Evelyn Langlieb Greer
Perla Tabares Hantman
Dr. Robert B. Ingram
Ana Rivas Logan
Dr. Marta Pérez
Dr. Solomon C. Stinson

MEMORANDUM

TO: Mr. Allen M. Vann, Chief Auditor
CC: Ms. Carolyn Spaht, Chief of Staff
Mr. Trevor L. Williams, District Audit Director
FROM: Ms. JulieAnn Rico, School Board Attorney
DATE: January 23, 2007
RE: Audit Committee's Questions on Management Responses from Achieve Through Education, Inc.

Superintendent of Schools
Rudolph F. Crew, Ed.D.

Thank you for your recent memorandum conveying the Audit Committee's request for our opinion about the applicability of FLA. STAT. § 1011.62(8) to the calculation of FTE-based payments to Achieve Through Education, Inc. ("ATEI"), a contracted provider of alternative education services. Our responses to the three questions are set forth below. In sum, we disagree with ATEI's interpretation of the statute; and it appears that ATEI received the appropriate amount of funding under the audited contracts, assuming that the per-student amount was 95% of per-student amount for comparable students in the District's own comparable schools in those years.

1. Do the funding provisions of the final clause of FLA. STAT. § 1011.62(8) apply to community-based organizations under alternative-education contracts with the School Board?

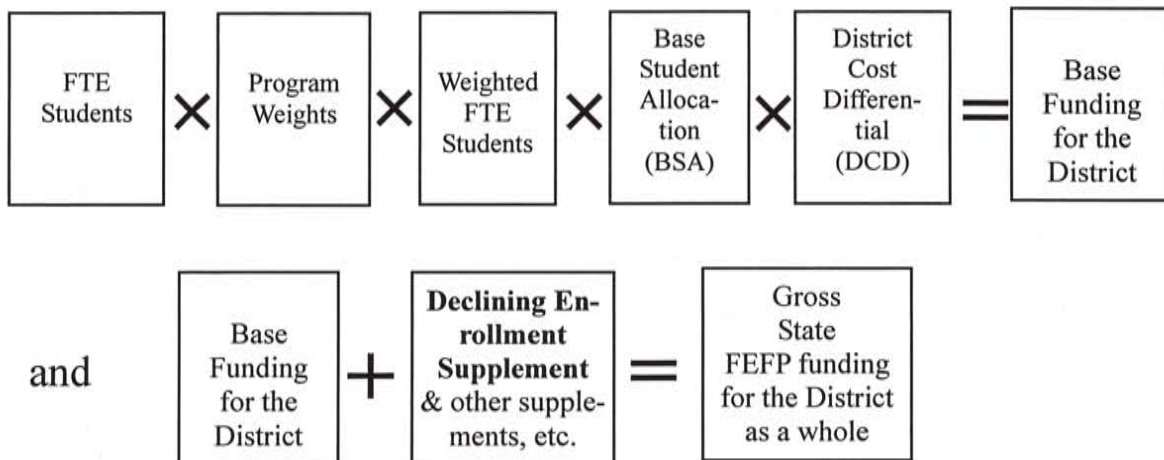
Achieve Through Education is registered as a Florida not-for-profit corporation and apparently is deemed a community-based organization (CBO). Under 20 U.S.C. § 7801(6), the term "community-based organization" means "a public or private nonprofit organization of demonstrated effectiveness that-- (A) is representative of a community or significant segments of a community; and (B) provides educational or related services to individuals in the community."

Regardless of how a contracted alternative-education provider is classified, however, the declining-enrollment supplement of FLA. STAT. § 1011.62(8) was not intended to flow

directly to individual service providers. Rather, the supplement is built in to the overall FTE funding received from the State, and the District passes an appropriate, equitable amount to contracted providers, so that comparable students (in the same grade level and in the same kind of program) are funded similarly to comparable students in other public schools in the District.

Because school districts are large-scale government operations with many fixed costs that may not directly depend on student enrollment, the Legislature intended the declining-enrollment supplement to protect school districts from drastic funding reductions when district-wide enrollments decline from one year to the next. *See* FLA. STAT. § 1011.62(8).

The State adds the declining-enrollment supplement to the District's base allocation in the annual appropriations act, based on the anticipated decline projected by school districts annually pursuant to DOE-approved estimate methods. "The declining enrollment supplement is determined *district-wide* by comparing the unweighted FTE for the current year to the unweighted FTE of the prior year."¹ As shown at p. 7 of DOE TAP 2006-03 (Funding and Financial Management of Florida's Public Charter Schools):



In other words, when the Legislature allocates funding to each district in the spring, it has the actual FTE figures for each district from the October and February surveys, and it has each district's approved estimate of the coming year's FTE (which takes into account the approved estimate of enrollment decline). The State calculates the district-wide declining-enrollment supplement and adds that amount to the overall allocation for the District (and fine-tunes the supplement amount after the October and February FTE surveys). For in-

¹ See www.floridaschoolchoice.org/Information/charter_schools/files/Funding_and_Financial_Management_TAP.pdf (Florida DOE, November 2006), at p. 15.

stance, Miami-Dade's 2006-07 overall allocation from the State FEFP included nearly \$6,000,000 for a declining-enrollment supplement, which was later adjusted to approximately \$16,000,000 in December, based on the October survey.² Thus, the declining enrollment supplement was intended to protect the District's overall funding—not any one particular student or one particular school.

The key requirement in funding contract-school alternative-education students is simply that they receive an equitable per-student amount like comparable students in schools directly operated by the District, which has State supplements (e.g. sparsity and/or declining enrollment) already built in.

The history of the declining-enrollment supplement, discussed next, corroborates that general conclusion. (This discussion treats section 1011.62 as having been applicable during the years of 2003-2005, although technically it probably did not apply.³) The de-

² See www.floridaschoolchoice.org/Information/charter_schools/files/Funding_and_Financial_Management_TAP.pdf (Florida DOE, November 2006), at p. 20, explaining that the FEFP is calculated five times throughout the year to arrive at each year's final appropriation:

(1) First Calculation – This calculation is completed immediately after the annual legislative session. District allocations for July 10 are based on this calculation.

(2) Second Calculation – This calculation is made upon receipt of the certified tax roll from the Department of Revenue as provided for in Section 1011.62(4), F.S. Districts' allocations for July 26 through December 10 are based on this calculation.

(3) Third Calculation – This calculation is made upon receipt of districts' October survey FTE reported in November. District allocations for December 26 through April 10 are based on this calculation. (Districts' current year July and October and prior year June FTE amounts are summed and a February estimate is made based on the previous year's trend of February and October surveys.)

(4) Fourth Calculation – This calculation is made upon receipt of districts' February survey FTE and estimated June FTE surveys reported in March. District allocations for April 26 through June 26 are based on this calculation.

(5) Final Calculation – This calculation is made upon receipt of districts' June survey FTE reported in July. Prior year adjustments in the following fiscal year are made, based on a comparison of this Final Calculation, to the Fourth Calculation.

³ Normally the Legislature makes the allocation through an appropriations act, alternating each year between the House and the Senate. Technically, FLA. STAT. § 1011.62(8) probably would not have been applicable during those years, because—in the strictest sense—it applies only in the very rare years when “the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act.” *Id.* § 1011.62, introductory paragraph. Although § 1011.62(8) therefore apparently was *not technically applicable* in 2003-04, 2004-05, or 2005-06, the appropriations act itself often cites § 1011.62, and the statute seems to set the framework for the appropriations act. Thus, for practical purposes, our discussion will treat § 1011.62(8) as if it were, in effect, applicable during those years.

cluding-enrollment supplement has been on the books, in one form or another, for at least 19 years. In 1987, FLA. STAT. § 236.081(7) provided:

Decline in full-time equivalent students.--The full-time equivalent student membership in each program multiplied by the cost factor for each program, adjusted for the maximum, shall be compared to this calculation for the prior year. In those districts where there is a decline in weighted full-time equivalent students, the decline is to be multiplied by the base student allocation and then multiplied by a factor of 0.5.⁴

In 1989, the formula in subsection (7) was amended and added a provision regarding decline due to transfer of programs to other institutions:

Decline in full-time equivalent students.--In those districts where there is a decline between prior year and current year unweighted FTE students, 50 percent of the decline in the unweighted FTE students shall be multiplied by the prior year calculated FEFP per unweighted FTE student and shall be added to the allocation for that district. For this purpose, the calculated FEFP shall be computed by multiplying the weighted FTE students by the base student allocation and then by the district cost differential. If a district transfers a program to another institution not under the authority of the district's school board, the decline [in the district's FTE] is to be multiplied by a factor of 0.15.

FLA. STAT. § 236.081(7) (1989). We believe the obvious intent of the amendment was to partially safeguard funding for districts that lost substantial numbers of students by wholesale transfer of programs to other state institutions (such as, for example, transferring the District's adult education program or technical-career program to a community college—a separate government entity not under the authority of the School Board).

The provision remained substantially the same through 1997, but the phrase “including a charter technical career center” was added in 1998 by HB 4135 and Chapter No. 98-302, which also authorized creation of such technical career centers.⁵ Notably, 1998 HB 4135 “appropriated from the General Revenue Fund the sum of \$3 million, for FY 1998-99, as a grant and aid to Daytona Beach Community College for planning and design costs for a

⁴ In practical effect, the supplement concept could be understood as in this simplified example: if there are 100,000 students this year, but the estimate for next year is only 50,000, the Legislature would provide overall funding for the District as if there will be 75,000 students next year.

⁵ The bill text is available at <http://www.flsenate.gov/cgi-bin/view_page.pl?Tab=session&Submenu=1&FT=D&File=hb4135er.html&Directory=session/1998/House/bills/billtext/html/>.

charter technical career center which will serve Volusia and Flagler County students in grades eleven through fourteen on a model basis." Thus, the school boards of Volusia and Flagler counties were transferring their technical-career students to the Daytona Beach Community College, which is a separate government agency with its own separate funding, and not under the control of the school boards.

In 2002 the statute was transferred to Chapter 1011, but subsection (7) retained substantially the same language, obviously referring to a one-time decline in school district FTE (from one year to the next) due to the transfer of a program to an independent institution such as the example shown above, where two school boards had transferred their technical-career program to a community college, or where school boards would transfer such programs to a charter technical career center sponsored by a community college under FLA. STAT. § 1002.34. *See* FLA. STAT. § 1011.62(7) (2002).

Subsection (7) was renumbered as "(8)" in 2006:

(8) DECLINE IN FULL-TIME EQUIVALENT STUDENTS.--In those districts *where there is a decline between prior year and current year unweighted FTE students*, 50 percent of the decline in the unweighted FTE students shall be multiplied by the prior year calculated FEFP per unweighted FTE student and shall be added to the allocation for that district. For this purpose, the calculated FEFP shall be computed by multiplying the weighted FTE students by the base student allocation and then by the district cost differential. If a district *transfers a program* to another institution *not under the authority of the district's school board*, including a charter technical career center, the decline is to be multiplied by a factor of 0.15.

Although the School Board may have a longstanding practice of contracting with outside alternative-education providers, subsection (8) should not apply in those situations because the Board apparently has not completely transferred the District's alternative education program to outside providers that are not under the authority of the Board. Moreover, the students in those programs are still the District's students; they are not funded by another state institution such as a community college.

In spite of assigning students to a contracted provider, the School Board still retains ownership of the overall program and has some control over the provider by contract. This situation is different from the one contemplated in FLA. STAT. § 1011.62(8), where a one-time transfer of a District program is made to an independent government agency or charter corporation sponsored by a community college board of trustees or a consortium under FLA. STAT. § 1002.34(3)(a), where the School Board would not have a contractual

sponsorship-relationship with the School Board).

Thus, the intent of the statute was to guide the State in calculating the difference in the District's own FTE enrollment from one year to the next, in order to determine the District's overall funding for the coming year. The statute expressly provides that the supplement "shall be added to the *allocation for that district*."

We also believe ATEI's method of calculating its alleged shortfall (*see* ATEI's Addendum 1, at p. 32 of the draft audit report) is incorrect. Section § 1011.62(8) refers only to a one-time decline for the District as a whole, from one year to the next. There is no legal basis for calculating an individual school's decline. And there certainly is no basis for the month-by-month comparison where ATEI has tried to show a decline from certain individual months in 2004 to certain individual months in 2005, to calculate an alleged entitlement to a special, separate declining-enrollment supplement. It appears that the basis of ATEI's calculations is fundamentally inaccurate.

Our understanding of the District's responsibility for funding ATEI under the 2003-04 to 2005-06 contracts was to allocate funding taking into consideration the fact that the District received a declining-enrollment supplement (if any) in those years, and simply pass on an amount equivalent to what comparable students in the District were allocated in each of those years. For a simplistic hypothetical example, if the District's FEFP allocation for an alternative-education student in a District high school was \$5,000 (including any declining-enrollment supplement) in 2005-06, then ATEI would have received 95% of that amount, minus teacher cost, etc. (per the contract terms⁶) per comparable student. Assuming that general formula was applied in those years, we would conclude that ATEI received an appropriate total allocation.

2. If ATEI agreed to a funding formula different from FLA. Stat. § 1011.62(8) in its prior contracts, can ATEI now claim entitlement to additional FTE revenues by applying the statutory formula instead of the contracts' formula?

We conclude that the contract terms should prevail, although we do not see a conflict between the formula specified in former contracts and the formula stated in Section §

⁶ The funding formula for FY 2004, 2005, and 2006 is quoted at page 8 of the audit report: "funding will be calculated based upon actual peak attendance as determined in July [date omitted], November [date omitted] and March [date omitted]. The payments will be approximately the total calculated funding based on 95% of basic FTE for either the summer session or the regular school year, minus deduction for teacher cost. . . ."

1011.62. It appears that the FEFP funding for ATEI was obviously based on the allocation received by the District under that statute (assuming the statute applied if cited by the appropriations act) because the prior contracts mentioned that "funding [was] based on 95% of basic FTE." Although the current contract takes the further step of actually citing the statute that describes how the State calculates FTE funding for school districts, it appears that the overall funding provisions have remained the substantially the same in ATEI contracts, both prior and current, if FLA. STAT. § 1011.62(8) is understood as explained under Question 1, above.

However, even if, *arguendo*, applying § 1011.62 to the prior contracts somehow would have resulted in greater funding for ATEI, it is important to note that ATEI was presumed to know whether FLA. STAT. § 1011.62 was applicable. "A person who contracts with the government is presumed to know the law" *Harris v. School Bd. of Duval County*, 921 So.2d 725, 735 (Fla. 1st DCA 2006). And if, *arguendo*, something in the statute could have resulted in more funding than contemplated in the prior contracts, we believe ATEI voluntarily waived any such alleged benefit by entering a contract that specified a distinct formula: "funding will be calculated based upon actual peak attendance as determined in July . . . , November . . . and March The payments will be approximately the total calculated funding based on 95% of basic FTE for either the summer session or the regular school year, minus deduction for teacher cost. . . ." Even if there was a statutory right at stake, parties may generally agree to waive statutory rights. *See* 17A Am. Jur. 2d Contracts § 236.

"The law has long recognized an individual's right to waive statutory protections as well as constitutional or contractual rights. *See, e.g., Gilman v. Butzloff*, 155 Fla. 888, 22 So.2d 263 (1945)." *S.J. Business Enterprises, Inc. v. Colorall Technologies, Inc.*, 755 So.2d 769, 771 (Fla. 4th DCA 2000). *See also Hartwell v. Blasingame*, 564 So.2d 543, 545 (Fla. 2d DCA 1990). Accordingly, we are of the opinion that ATEI was bound by the funding terms to which it agreed in the contracts, regardless of whether the funding could have been different under ATEI's interpretation of FLA. Stat. § 1011.62. Yet, as stated before, ATEI's interpretation is not accurate; the funding under prior contracts was apparently based on the State allocation under that statute or the applicable appropriations act, regardless of whether a particular statute was cited.

In conclusion, the provisions of FLA. STAT. § 1011.62 do not dictate how the District must allocate funds to a given contracted provider of education services. The statute simply describes the State's method of determining the overall FEFP allocation for the District as a whole. The Board and ATEI had the discretion to enter a contract where the parties agreed to an equitable specific allocation for the contractor's provision of services.

3. If the contract specified 12 monthly payments to ATEI, was the District required to make 12 monthly payments even though ATEI serviced M-DCPS students only 11 months during the annual contract period?

Annual education funding is normally provided for 180 days. If ATEI also provided summer classes, it would appear that 11 months of funding was the appropriate amount. The 12-payment provision probably was originally intended to function similar to personnel employment contracts, which may spread an annual salary into twelve payments, even though the employee actually works 10 or 11 months. These arrangements facilitate the employee's reception of a predicable amount every month.

However, probably the only way to have spread the ATEI payments out over 12 months would have been to estimate the total annual amount, then divide that estimated amount into twelve portions, and then take a correction after each payment if better attendance data was available (similar to the way the State apportions school districts' FEFP payments into 24 instalments, with corrections based on FTE surveys). We do not interpret the contract as requiring a superfluous 12th payment, above the amount of invoices fairly submitted for serving students in attendance.

In practical effect, it seems that the overall annual payments to ATEI would have been the same, regardless of whether they were made pursuant to 11 invoices, or made in 12 instalments based on estimates and corrections. At the end of the day, it appears that ATEI would have received the same amount in one year; but the 12-payment plan would have involved more accounting intricacies, while the 11-payment method seems more direct.

Although the contract specified a 12-payment plan, we believe ATEI waived literal compliance with the 12-payment provision in prior contracts by failing to raise the issue at that time. (ATEI acknowledges that 12 payments were received under the 2005-2006 contract. *See* the audit report at p. 10.) We are not currently aware of any information that would lead us to conclude that ATEI was shortchanged by one month's payment amount in each of those years.

4. Applicability and Operation of § 196.1983 to Charter School Lease Agreements

In your memorandum regarding the applicability of FLA. STAT. § 1011.62 to Community Based Organizations, you also inquired as to whether FLA. STAT. § 196.1983 (2006) has been properly applied by lessors or property owners leasing property to local charter schools.

Section 196.1983, entitled "Charter school exemption from ad valorem taxes," provides that:

Any facility, or portion thereof, used to house a charter school whose charter has been approved by the sponsor and the governing board pursuant to s. 1002.33(7) shall be exempt from ad valorem taxes. *For leasehold properties, the landlord must certify by affidavit to the charter school that the lease payments shall be reduced to the extent of the exemption received.* The owner of the property shall disclose to a charter school the full amount of the benefit derived from the exemption and the method for ensuring that the charter school receives such benefit. *The charter school shall receive the full benefit derived from the exemption through either an annual or monthly credit to the charter school's lease payments.* [Emphasis added.]

Section 196.1983 places two (2) essential pre-conditions on landowners seeking to obtain the tax exemption permitted under the statute: 1) the landlord must submit an affidavit certifying that the lease payments made by the charter school have been reduced in an amount commensurate with the tax exemption received by the landlord; and 2) the landlord must also ensure that the lessee charter school receive "the full benefit derived from the exemption through either an annual or monthly credit to the charter school's lease payments." Pursuant to § 196.1983, the landlord/lessor, in order to receive the benefit of the exemption, must be able to show that it is giving the lessee charter school either a monthly or annual credit in an amount tantamount to the tax exemption annually claimed by the landlord.

Consequently, if the pertinent lease requires that the lessee pay for any applicable property taxes and the landlord provides a credit (either monthly or annually) against the lease payments in an amount equal to the property taxes, it would seem that the landlord would have complied with the provisions of § 196.1983. However, it would appear that, a landlord who merely asserts that it has not charged the lessee for any applicable property taxes—but has not indicated that either a monthly or annual credit in the amount equal to the property taxes has been charged against the lease payments—is not in compliance with the requirements of § 196.1983.⁷

⁷ Section 196.1983 became law on July 1, 2000, after the passage of House Bill 2087 by the Florida legislature. The Final Bill Analysis for HB 2087, explained that: "The property owner must disclose to the charter school the full amount of the benefits, and, as a result, the full benefit from the exemption must go to the charter school through a credit against the lease payment." See HB 2087, House of Representatives, as Revised by the Committee on Education Innovation, Final Analysis, June 15, 2000, p.11.

Memo to Allen M. Vann, Chief Auditor

RE: Audit Committee's Questions About Management Responses from Achieve Through Education, Inc.

Date: January 23, 2007

Page 10

Nonetheless, if the charter school and the landlord mutually agree that the landlord's failure to charge the annual property tax on the leasehold property constitutes a "credit" against the lease payments, for purposes of § 196.1983, and memorializes said arrangement, or at a minimum provides an affidavit to that effect, then the landlord could successfully assert that it has met the requirement of § 196.1983, in order to properly take the tax exemption. For the latter assertion to be persuasive, the landlord would have to have indicated in writing (presumably prior to the commencement of the lease) that the lessee was required to pay for the property taxes as part of the lease agreement. It would seem inapposite that a landlord could legally claim that it has met the requirements of § 196.1983, if no such agreement was reached, or an indication thereof made prior to the inception of the lease agreement.

Another matter to be considered in this analysis, is the District's established practice with respect to the applicability of § 196.1983. If the District has not—since the passage of this statute in 2000—objected to the practice of landlords simply claiming the exemption on behalf of the charter school (i.e., if the District has required proof that the landlord has credited the benefit of the exemption against the lease payments submitted by the charter school), it may be difficult to attempt to retroactively enforce the provisions of the statute. This analysis is not intended to condone any noncompliance by landlords; it merely recognizes the possible difficulty of retroactive enforcement. Strict statutory compliance in future leases should, of course, be diligently required.

Should you have any questions concerning this information, please do not hesitate to contact me.