FLORIDA ASSOCIATION OF INDEPENDENT
CHARTER SCHOOLS and ASPIRA RAUL ARNALDO
MARTINEZ CHARTER SCHOOL and MIAMI
COMMUNITY CHARTER MIDDLE SCHOOL

Petitioner,

v.

FLORIDA DEPARTMENT OF EDUCATION and
STATE of FLORIDA BOARD OF EDUCATION

Respondents,

PETITION FOR ADMINISTRATIVE DETERMINATION
OF INVALIDITY OF PROPOSED RULE REVISION

Petitioners, Florida Association of Independent Charter Schools (“Florida Association of Independent Public Schools - “FAIPS”) and Aspira Raul Arnaldo Martinez Charter School and Miami Community Charter Middle School, pursuant to Sections 120.52 (8), 120. 56 (1) and (2), Florida Statutes (“Fla. Stat”), and Rule 28.106.21, Florida Administrative Code ('F.A.C”), file this Petition for Administrative Determination of Invalidity of Proposed Rule Revisions. This petition is a challenge to specific portions of newly proposed amendments to Rule 6A-2.0020, F.A.C., as published by Florida Department of Education, on Eligibility for Charter School Capital Outlay. This constitutes an invalid exercise of delegated legislative authority and in support state as follows:

The Parties

1. The affected agency is the Florida Department of Education (“FLDOE”), whose address is 325 West Gaines Street, Tallahassee, Florida 32399.

2. The names and address of the petitioners are Florida Association for Independent Public Schools, 2103 Coral Way, 2nd Floor, Miami Florida, 33145. Aspira Raul Arnaldo Martinez Charter School, 13300 Memorial Highway, North Miami, Florida 3316100. Miami Community Charter Middle
School, 101 SW Redland Rd. Florida City, Florida. For the purposes of this petition, the petitioners' contact information shall be of the undersigned qualified representative (contact info below).

**Substantial Interests**

3. Florida Association of Independent Public Schools, is a Florida non-profit corporation, dedicated to providing leadership, advocacy and support for independently operated charter schools. Florida is home to over 650 Charter schools, the overwhelming majority of which are freestanding charter schools that are independently operated. These schools are managed, operated and governed by small non-profits. One of the purposes of FAIPS is to act on behalf of independently operated charter schools and its members by representing their common interests before various government entities of the State of Florida, including DOAH. Their interests are substantially affected by this Proposed Rule.

4. Aspira Raul Arnaldo Martinez Charter School, is a charter school in Miami Dade County and is currently serving 573 students. It is a Title I school serving 99% Free and Reduced Lunch. It's school grade over the past two consecutive years is: 2014-2015 - “D” and in 2015 – 2016 - “D”. It received Charter School Capital Outlay in 2015-2016, its 2016-2017 Capital Outlay Appropriation has been withheld by the State in anticipation of this Proposed Rule, therefore it is substantially affected by this Proposed Rule.

5. Miami Community Charter Middle School is a charter middle school in Miami Dade County currently serving 283 students. It is a Title I school serving 99% Free and Reduced Lunch. It's school grade over the past two consecutive years is: 2014-2015 - “D” and in 2015 – 2016 - “D”. It received Charter School Capital Outlay in 2015-2016, its 2016-2017 Capital Outlay Appropriation has been withheld by the State in anticipation of this Proposed Rule, therefore is substantially affected by this Proposed Rule.

**Notice of Proposed Rule**

6. The subject of this Petition is changes to the Charter School Capital Outlay eligibility proposed Rule in Rule 6A-2.0020, F.A.C.. On September 23rd, 2016, the Florida Board of Education
approved the proposed rule in a final public hearing. This Petition is filed within 10 days of the date of that final public hearing, per the requirements in Section 120.56(2), Fla. Stat., and is therefore timely. A copy of Proposed Rule Rule 6A-2.0020, F.A.C., as published on July 15, 2016, and approved by the FLDOE on September 23, 2016, is attached as Exhibit A.

**Background**

7. The Charter School Capital Outlay Law, Florida Statutes 1013.62, provides that Charter Schools receive dollars “in each year in which funds are appropriated for charter school capital outlay”.

8. Florida Statutes 1010.62 also outlines eligibility qualifications for charter schools to receive charter school capital outlay funding.

9. In the 2016 legislative session, the Florida Legislature amended section 1013.62, F.S., to change the eligibility criteria for charter school capital outlay from three years of school operation to two. The revised law also provides weighted capital funding for charter schools that serve student populations that are seventy-five percent or greater free or reduced price lunch eligible or twenty-five percent or greater students with disabilities.

10. The proposed rule, as published, determines what constitutes failure to meet satisfactory student achievement for purposes of receiving capital outlay and proposes that a school with two (2) consecutive “D” school grades is ineligible for funding.

**Proposed Rule is an Invalid Exercise of Delegated Legislative Authority**

11. “Satisfactory Student Achievement” is already defined in F.S. 1008.34 “Definitions” section (1)(a) as follows: “Achievement level,” “student achievement,” or “achievement” describes the level of content mastery a student has acquired in a particular subject as measured by a statewide, standardized assessment administered pursuant to s. 1008.22(3)(a) and (b). There are five achievement levels. Level 1 is the lowest achievement level, level 5 is the highest achievement level, and level 3 indicates satisfactory performance.

12. Without any change in the underlying statute FLDOE proposes to define Satisfactory for
Student Performance and adopt new rules in 6A-2.0020:

“(4) Satisfactory student achievement under Section 1013.62(1)(a)3., F.S., shall be determined by the school’s most recent grade designation or school improvement rating from the state accountability system as defined in Sections 1008.34 and 1008.341, F.S.

Satisfactory student achievement for a school that does not receive a school grade or a school improvement rating, including a school that has not been in operation for at least one school year, shall be based on the student performance metrics in the charter school’s charter agreement. Allocations shall not be distributed until such time as school grade designations are known.

(a) A charter school that receives a grade designation of “F” or two (2) consecutive grades of “D” shall not be eligible for capital outlay funding.

(b) A charter school that receives a school improvement rating of “Unsatisfactory” shall not be eligible for capital outlay funding.”

Ultimate Facts Alleged

13. The Proposed Rules represents an invalid exercise of the Division’s legislative authority because they impose qualifications that do not exist in the statute and unlawfully narrow the scope of eligibility within F.S. 1013.62. As discussed herein, the Division’s Proposed Rules are invalid because:

• The Proposed Rules exceed the grant of rulemaking authority given by the Legislature to the agency;

• The Proposed Rules modify or contravene the statutes they purportedly implement;

Statement of Disputed Issues of Fact and Law

14. The following potentially disputed issues of material fact and law exist:

a) Whether the proposed rule's language denying charter school outlay dollars for schools that have “two (2) consecutive grades of D”, penalizes charter school grades
for the 2014-2015 school year, counter to F.S. 1008.34 (7) which mandates 2014-2015 school grades as an “informational baseline year”.

b) Whether the proposed rule defines “Satisfactory Student Achievement” in conflict with Florida Statute 1008.34 (1)(a).

**Relief Requested**

15. For the reasons expressed, Petitioners' requests that an Administrative Law Judge be assigned to conduct an administrative hearing pursuant to Sections 120.56(1) and (2), Florida Statutes, and that following the hearing, a Final Order be entered determining that Proposed Rules Revision of 6A-2.0020 constitutes an invalid exercise of delegated legislative authority, and modifies or contravenes the statutes they purportedly implement. Petitioners also requests an order for reasonable costs pursuant to Section 120.595(2), Florida Statute.

/s/

Christopher Norwood, J.D.
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14844 Breckness Place, Suite 100
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Qualified Representative for Petitioners

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5th day of September, 2016, I electronically filed the foregoing with the Clerk of the Division of Administrative Hearings by using the DOAH eALJ system, which will send a notice of electronic filing to: Florida Department of Education, Florida Board of Education and the Florida Department of State.

/s/

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DEPARTMENT OF EDUCATION
State Board of Education


PURPOSE AND EFFECT: To revise eligibility requirements for charter school capital outlay to conform to statutory revisions and clarify additional eligibility requirements provided for in law.

SUMMARY: In the 2016 legislative session, section 1013.62, F.S., the charter school capital outlay law, was amended to change the eligibility criteria for capital outlay from three years of school operation to two. Additionally, legislators clarified that evidence of a financial emergency condition would render an applicant ineligible. In addition to the changes above, the proposed rule also: Specifies thresholds for feeder patterns; Establishes deadlines for providing evidence of SACS accreditation; Determines what constitutes failure to meet satisfactory student achievement for purposes of receiving capital outlay; Specifies that eligibility for the additional school weights for free or reduced price meals for schools that serve students under the Community Eligibility Provision of the Healthy, Hunger-Free Kids Act of 2010 shall be determined by applying the multiplier authorized in Section 11(a)(1)(F)(vii) of the Richard B. Russell National School Lunch Act. The proposed rule also incorporates by reference Form IEPC-CO1, the official application necessary to request capital outlay.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency. The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The proposed rule establishes the process for charter schools to apply for state capital outlay funds and interprets the statutory eligibility criteria. The rule does not impose or cause any regulatory costs and will not require legislative ratification. Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 1001.02, 1013.62, FS.

LAW IMPLEMENTED: 1013.62, FS.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:
DATE AND TIME: September 23, 2016, 9:00 a.m.
PLACE: Tampa Airport Marriott, 4200 George J. Bean Parkway, Duval Room, Tampa, Florida 33607

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Adam Miller, Director of Charter Schools, Office of Independent Education and Parental Choice, 325 West Gaines Street, Suite 522, Tallahassee, Florida 32399-0400

THE FULL TEXT OF THE PROPOSED RULE IS:

6A-2.0020 Eligibility for Charter School Capital Outlay.
The following provisions are established for the determination of eligibility of charter schools pursuant to Section 1013.62, F.S. Except as expressly provided herein, proof of eligibility requirements must be provided to the Department by July 1 of the fiscal year for which the charter school seeks funding. The continuation of funding is dependent upon maintaining eligibility requirements during the fiscal year.

(1) A charter school may be considered a part of an expanded feeder chain under Section 1013.62, F.S., if it either sends or receives at least sixty (60) percent of its students directly to or from a charter school that is currently receiving capital outlay funding in the same fiscal year for which the charter school seeks funding pursuant to Section 1013.62, F.S. A charter school must submit an application by the deadline in subparagraph (7)(a) of this rule. The Department shall determine eligibility by applying the feeder chain criteria in Section 1013.62(1)(a)1.c., F.S., to the fiscal year’s data from the October full-time equivalent (FTE) student enrollment survey conducted pursuant to Section 1011.62(1)(a), F.S., in the same fiscal year for which the charter school seeks funding. The Department shall calculate the funding amount associated with a school for which enrollment projections are estimated to meet the feeder chain eligibility criteria and shall distribute funds generated by the formula in Section 1013.62, F.S., upon proof of an expanded feeder chain from the October FTE student enrollment survey data.

(2) Pursuant to Section 1013.62(1)(a)1.d., F.S., charter schools that have been accredited by the Commission on Schools of the Southern Association of Colleges and Schools may be eligible for charter school capital outlay. The eligibility requirement for satisfactory student achievement under Section 1013.62, F.S., shall be determined in accordance with the language in the charter contract and the charter school’s current school improvement plan if the school has a current school improvement plan. A charter school receiving an “F” grade designation through the state accountability system, as defined in Section 1008.34, F.S., shall not be eligible for capital outlay funding for the school year immediately following the designation. Proof of accreditation by the Southern Association of Colleges and Schools Commission on Schools must be delivered to the Department by the deadline established in subparagraph (7)(a) for the fiscal year for which the charter school seeks funding to meet the eligibility requirement in Section 1013.62(1)(a)1.d., F.S. The continuation of funding is dependent upon maintaining accreditation during the current fiscal year. A charter school that expects to be accredited during a fiscal year shall include documentation of application for accreditation. The Department shall estimate the funding amount associated with a charter school anticipating accreditation during the fiscal year and distribute funds generated by the formula in Section 1013.62, F.S., upon proof of final accreditation, if proof of accreditation for the school year is received by the Department prior to April 1 of the fiscal year for which the charter school seeks funding. If the Department does not receive proof of a charter school’s official accreditation by April 1, the charter school shall be determined ineligible for that fiscal year.

(3) A charter school must have been in operation for two (2) or more full school years by July 1 of the fiscal year for which the charter school seeks funding to meet the eligibility requirement in Section 1013.62(1)(a)1.a., F.S.

(4) Satisfactory student achievement under Section 1013.62(1)(a)3., F.S., shall be determined by the school’s most recent grade designation or school improvement rating from the state accountability system as defined in Sections 1008.34 and 1008.341, F.S. Satisfactory student achievement for a school that does not receive a school grade or a school improvement rating, including a school that has not been in operation for at least one school year, shall be based on the student performance metrics in the charter school’s charter agreement. Allocations shall not be distributed until such time as school grade
designations are known.

(a) A charter school that receives a grade designation of “F” or two (2) consecutive grades of “D” shall not be eligible for capital outlay funding.

(b) A charter school that receives a school improvement rating of “Unsatisfactory” shall not be eligible for capital outlay funding.

(5) Eligibility for the additional school weight for free or reduced price lunch and the additional school weight for students with disabilities under Section 1013.62(1)(c)1., F.S., shall be determined by the student’s status as reported in the fiscal year’s October FTE student enrollment survey for the fiscal year in which funding is sought. The number of students eligible for free or reduced lunch for a school that provides free breakfast and lunch to all students under the Community Eligibility Provision of the Healthy, Hunger-Free Kids Act of 2010 shall be calculated by applying the multiplier authorized in Section 11(a)(1)(F)(vii) of the Richard B. Russell National School Lunch Act to the number of students reported to the Department as eligible for free meals based upon the Direct Certification determination. For schools that do not participate under the Community Eligibility Provision of the Healthy, Hunger-Free Kids Act of 2010, the number of students eligible for free or reduced price lunch shall be the number of students reported to the Department as eligible via the household meal application used by the district.

(6) A charter school whose most recent available audit, pursuant to Section 218.39, F.S., reveals any of the financial emergency conditions provided in Section 218.503(1), F.S., is not eligible to receive charter school capital outlay.

(a) Upon notification pursuant to Section 1002.345, F.S., that a charter school’s audit reveals one or more of the financial emergency conditions in Section 218.503(1), Florida Statutes, the Department shall immediately discontinue distributions of charter school capital outlay funding for the school.

(b) A charter school shall remain ineligible to receive charter school capital outlay until the school produces an annual financial audit conducted pursuant to Section 218.39, F.S., which does not reveal any of the financial emergency conditions in Section 218.503(1), F.S., at which time capital outlay funding shall be calculated in an amount proportionate to the number of months remaining in the fiscal year.

(7) Pursuant to Section 1013.62(5), F.S., the procedures for submitting and approving an application for funding and the procedures for documenting expenditures, are as follows:

(a) Charter schools must submit an application using form IEPC-CO1, Charter School Capital Outlay Application, effective October 2016 (DOS link), which is hereby incorporated by reference in the rule, which may be accessed through https://www.floridaschoolchoice.org/login/login_charter_school.asp. The application may be obtained by contacting the Office of Independent Education and Parental Choice, 325 West Gaines Street, Suite 1044, Tallahassee, Florida 32399-0400. The Department will accept hard copy versions of the application. Hard copies should be sent to 325 West Gaines Street, Suite 1044, Tallahassee, Florida, 32399. Applications are due by July 1 of the fiscal year for which funding is sought. The Department may extend the deadline for all applications by posting the extended deadline on its website. The charter school shall include the purpose for which the funds will be expended. The Department shall review the application, determine eligibility, and direct the allocation and distribution of such funds in accordance with that determination.

(b) The Sponsor shall forward such funding pursuant to the provisions of Section 1002.33(17)(e), F.S., to any charter school that is determined to be eligible by the Department under this rule. The
charter school shall include all disbursements and expenditures pursuant to Section 1013.62, F.S., in its monthly or quarterly financial statements pursuant to Section 1002.33(9)(g), F.S., and shall maintain all documentation of such expenditures and provide such documentation to the Sponsor upon request as necessary to monitor compliance with applicable law governing the proper use of such funds.

(c) If overpayments occur, the Department of Education will take any or all of the following actions: require a charter school to return the overpaid amount; adjust a school’s allocations in future years; or seek to collect the overpayment in any manner authorized by law.

Rulemaking Authority 1001.02, 1013.62 FS. Law Implemented 1013.62 FS. History–New 12-15-09, Amended_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Adam Miller, Executive Director, Office of Independent Education and Parental Choice
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Pam Stewart, Commissioner, Department of Education
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 19, 2016
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: July 15, 2016