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*Legal
update
PM
Session*

M E M O R A N D U M

TO: Caroline Zucker, Chair
Carol Todd, Vice-Chair
Shirley Brown,
Jane Goodwin
Frank Kovach
Lori White, Superintendent

FROM: Art Hardy

RE: Adequacy Lawsuit update

DATE: January 3, 2012

Introduction

The purposes of this memorandum are to give the Board on update on an ongoing "adequacy" lawsuit - Haridopolos v. Citizens for Strong Schools, Inc. - which is currently pending in the Circuit Court in Leon County, and to seek the Board's authorization for joining the Sarasota Classified/Teachers Association and possibly others in filing an amicus brief in a related proceeding.

These issues will be further discussed at the Board's January 17th workshop.

History of Adequacy Litigation in Florida

In 1994 this School Board and then-Board member Janice Mee joined a coalition of plaintiffs including 44 other school boards and 22 other school board members in filing an action against the Governor, the Speaker of the Florida House, the President of the Florida Senate, the Commissioner of Education, and the State Board of Education alleging that the State had failed to provide its students their fundamental right to an adequate education by failing to allocate adequate resources to the educational system.

In 1996, the Florida Supreme Court, by a 4 to 3 vote, affirmed an order of the trial court dismissing the plaintiffs' claim concluding that because there was not an appropriate standard for determining whether the constitutional requirement of "adequacy" had been met, the case would present "a substantial risk of judicial intrusion into the powers and responsibilities assigned to the legislature ..." Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 680 So. 2d 400, 408 (Fla. 1996). At least a majority of 4 justices did, however, recognize that the courts can be involved in the enforcement of the adequacy provision in an appropriate case. Id. at 408-09 (Overton, J., concurring) ("to say otherwise would have the effect of eliminating the education provision from our constitution").

In response to the Supreme Court's decision, in 1998 the voters of Florida amended the Constitution's education provision to describe education as a "fundamental value" and a "paramount duty of the state," and to require that "adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education..." Article IX, Section 1, Florida Constitution.

The Current Adequacy Suit

In Citizens for Strong Schools, Inc., two not-for-profit corporations, two Duval County public school students, and four parents/guardians of students attending public schools in Duval or Pasco Counties have brought suit against the Speaker of the Florida House, the President of the Florida Senate, the Commissioner of Education, and the State Board of Education alleging the State has failed to meet its Constitutional mandate by, among other things, providing insufficient funding for public education and shifting responsibility for educational funding to local governments. The defendants sought to have the trial court dismiss the case on the grounds that it raised a political question over which the court does not have jurisdiction based upon Coalition for Adequacy and Fairness in School Funding, Inc. The trial court denied defendants' motion. The State then filed a petition for a writ of prohibition in the First District Court of Appeal asking the appellate court to prohibit the trial court from moving forward with the case.

The First District decided that the entire Court would review the case rather than the typical three judge panel. In an 8 to 7 decision, the First District ruled that the trial court did have jurisdiction to hear the case and, therefore, denied the writ. Haridopolos v. Citizens for Strong Schools, Inc., 36 Fla. L. Weekly D2560 (Fla. 1st DCA Nov. 23, 2011). The majority based its ruling in part upon the fact that a majority of justices in Coalition for Adequacy and Fairness in School Funding, Inc. found that a court could decide claims of constitutional inadequacy at least under certain circumstances, and that the Florida Supreme Court in Bush v. Holmes, 919 So. 2d 392 (Fla. 2006) interpreted the 1998 amendments to Article IX, Section 1 as intending to provide the constitutional standards lacking in Coalition for Adequacy and Fairness in School Funding, Inc.. The majority then certified the following question to the Florida Supreme Court:

DOES ARTICLE IX, SECTION 1(A), FLORIDA CONSTITUTION, SET FORTH JUDICIALLY ASCERTAINABLE STANDARDS THAT CAN BE USED TO DETERMINE THE ADEQUACY, EFFICIENCY, SAFETY, SECURITY, AND HIGH QUALITY OF PUBLIC EDUCATION ON A STATEWIDE BASIS, SO AS TO PERMIT A COURT TO DECIDE CLAIMS FOR DECLARATORY JUDGMENT (AND SUPPLEMENTAL RELIEF) ALLEGING NONCOMPLIANCE WITH ARTICLE IX, SECTION 1(A) OF THE FLORIDA CONSTITUTION?

The State has filed a motion for rehearing with the First District and the case remains pending there.

Reasons for Filing an Amicus Brief

We believe it is important for the Florida Supreme Court to hear from numerous stakeholders in the education system on this important issue. Therefore, assuming the Supreme Court accepts jurisdiction of the case, we recommend that the School Board join with the Sarasota Classified/Teachers Association and statewide education organizations to file an amicus brief supporting the right of the courts to determine whether the requirements of Article IX, Section 1 can be judicially enforced. At this stage of the litigation, the merits of the underlying adequacy are not at issue and we would not be taking a position on them. Instead, the issue is the much broader question of whether any plaintiff can ever bring a legal claim asserting that the State has not complied with the constitutional mandate found in Article IX, Section 1. If the State successfully

convinces the Florida Supreme Court to reverse the decision of the First District, any future claim alleging the State is inadequately funding education would be foreclosed regardless of its merits. This is the basis for our recommendation that the School Board join in the effort to insure this does not occur by participating in the filing of an amicus brief to the Florida Supreme Court should that Court accept jurisdiction of the case.

Finally, should the School Board join the effort to file an amicus brief, it would do so at no cost. The SC/TA has indicated that it will pay the costs associated with the School Board joining it and others in this effort.

As stated above, this issue is on the Board's workshop agenda on January 17th and a motion authorizing the School Board's participation in an amicus brief will be placed on the Board's regular meeting agenda for later that same day (pending the Board's workshop discussion). I will be available to discuss this at the workshop with the Board. If any individual Board member has any questions or would like further information in advance of the workshop, please contact me directly.