

MATTHEWS, EASTMOORE, HARDY, CRAUWELS & GARCIA P.A.
1777 MAIN STREET, SUITE 500
SARASOTA, FL 34236
(941) 366-8888
FAX: (941) 954-7777

M E M O R A N D U M

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

FROM: Art Hardy

RE: Imagine-North Port litigation

DATE: March 1, 2013

The purpose of this memorandum is to provide the Board with an update on the litigation involving the Imagine School in North Port and to provide recommendations. I would like to have a discussion on this subject at the Board's March 5th meeting during the Superintendent's Report, and receive instructions from the Board as to how it wishes me to proceed on its behalf in the litigation.

As you are aware, Imagine Schools Non-Profit, Inc., a Virginia nonprofit corporation ("ISNP"), has filed suit against Imagine School at North Port, Inc. ("North Port") and Justin Matthews essentially alleging that North Port and Matthews have taken numerous wrongful acts related to North Port's decision to terminate North Port's affiliation agreement with ISNP. It is ISNP's position that, as the sole member of the North Port corporate entity, it is North Port's parent company and that North Port cannot validly terminate those parties' affiliation agreement. As a result of North Port's actions, ISNP has taken the position that it has the right to remove the members of the North Port governing board and appoint a replacement board.

North Port has denied that it has taken any improper action and argues that it simply seeks to be a good steward

of public funds. Because it states that the school is not receiving sufficient services for the funds it sends to ISNP, North Port's governing board believes it has justification for severing its affiliation agreement with ISNP.

ISNP filed an emergency motion seeking a temporary injunction. Among other things, ISNP sought an order prohibiting Matthews from competing with ISNP and from coming onto the Imagine North Port school campus, and enjoining North Port from violating its Articles of Incorporation and Bylaws. At the conclusion of a lengthy hearing on Tuesday, February 26, the Court denied ISNP's motion.

In its order, the Court also made "additional findings" concerning the School Board. The order states:

"The Sarasota County School Board has yet to intervene in this matter. The Court finds that the Sarasota County School Board is an interested party and has the right to legally intervene in this lawsuit if it so chooses.

The Court encourages the Sarasota County School Board to immediately review this matter and take whatever appropriate action that is necessary, whether legal or administrative, to protect the well being and guarantee the stability of the students at the school at issue."

At the hearing, the Court did not enter any order concerning which individuals comprise the properly constituted governing board of the school. Consequently, after that hearing two "boards," both of which claim to be the legitimate and legal governing board of the school: one which has existed historically and which voted to sever its affiliation agreement with ISNP, and another which was established by ISNP after it claimed to exercise its authority to remove the existing board members and reconstitute a new board.

On February 27th, North Port filed an "Emergency Motion for Injunctive and Declaratory Relief" asking the Court to enjoin ISNP from removing the pre-existing governing board and to declare that the pre-existing board is the "rightful and legitimate" governing board of North Port. A hearing on this motion was held on February 28th at the conclusion

of which the Court entered an order stating: "The Court has an interest in maintaining the status quo during the pendency of this lawsuit. The Court orders that the status quo regarding the school at issue, specifically the composition of the Board and the Administration be restored to the pre-suit composition nunc pro tunc to 2/19/13 and maintained until further Court order. ... This Order shall remain in effect until 5/31/13."

The result of these rulings is that the Court (1) has denied ISNP's request for a temporary injunction to, among other things, remove Matthews as principal of the school and (2) has determined that the original governing board and administration should remain in place at least through the remainder of the school year. The Court has also scheduled a case management conference in the case for March 11, 2013.

During these hearings, a number of individuals from both ISNP and North Port have testified. While I will not attempt to summarize everything from the numerous hours of testimony, I do wish to highlight several items for the Board. Each party accuses the other of acting out of a desire to control both the public funds sent to the charter school and the benefits which will accrue should the school attain the status of a high performing charter as they both expect. (Pursuant to Section 1002.331, Florida Statutes, a high performing charter school receives a number of additional privileges including a modification of its charter to expand the term to 15 years, decreased financial reporting requirements, increased student enrollment, and the ability to "replicate" the school by opening another charter school).

ISNP states that North Port, without any warning or justification, has attempted to sever its affiliation agreement with its parent corporation. ISNP claims that this is a breach of those parties' agreements including that portion of the affiliation agreement which requires North Port to mediate and then arbitrate any concerns it has with ISNP. ISNP also alleges that North Port improperly diverted funds from a school bank account and ISNP, therefore, has taken action to freeze a bank account of the school. ISNP also alleges that Matthews, an ISNP employee, has breached his duties to it.

North Port, on the other hand, claims that ISNP is not providing it with the services for which it is paying and that it does not wish to have funds it pays to ISNP used to assist Imagine schools in other states/districts. (ISNP personnel have testified that the Imagine schools are a "family" and that schools not doing well financially are assisted by their fellow schools.) Additionally, Matthews has testified that he was asked to lie by ISNP during a financial audit.

As a reminder, the School Board's Charter Contract is with North Port. Among other things, the Charter Contract recognizes that "All public funds paid to the charter School will be paid to, and controlled by, the governing board ..." Knowing what individuals comprise North Port's governing board is, therefore, essential for the School Board and for the functioning of the charter school. For the moment at least, this issue has been resolved by the Court's February 28th order. The School Board's Charter Contract does contain several provisions related to the appointment/replacement of members of the governing board. These include:

1. Following composition of the Governing Board, all replacement board members shall be appointed by majority vote of the remaining board members subject to approval of ISNP, which shall not be unreasonably withheld or delayed;
2. A board member may be removed during his/her term only by two-thirds majority vote of the board, subject to approval of ISNP, which shall not be unreasonably withheld or delayed;
3. The Board shall be locally determined and members will reside in Sarasota County or the adjacent counties of Charlotte, Manatee and Desoto.

While ISNP recognizes these provisions in the School Board's Charter agreement, it nevertheless contends that, as the sole member of North Port, it has the statutory right, and the practical need, to establish a new board.

At this point, I request the Board's direction and authorization as to how it wishes me to proceed, if at all, in the litigation. I will make several recommendations for the Board's consideration:

1. That I be given authority to seek the Board's intervention into the ongoing litigation. Given the Court's February 26th order, I am quite confident this will be permitted. Intervention will give me the opportunity to present the Board's position to the Court on any issue that arises in the litigation.
2. That the Board authorize me to file, or join if some other party files, a motion to direct ISNP and North Port to mediation in the hope that those parties will be able to resolve their dispute.
3. That the Board authorize me, in consultation with the Superintendent, to take all other positions in the litigation consistent with protecting the best interests of the District's students at the school and enforcing the Board's rights under the Charter contract.

Separate from the litigation itself, I am aware that the Superintendent and her staff are in close contact with the school and are reviewing the situation there on a regular basis.

Obviously there are some complex issues being litigated and this is simply a brief synopsis of the situation. If the Board desires, we can discuss these issues more fully at the March 5th meeting. In the meantime, if you have any further questions, please do not hesitate to call.