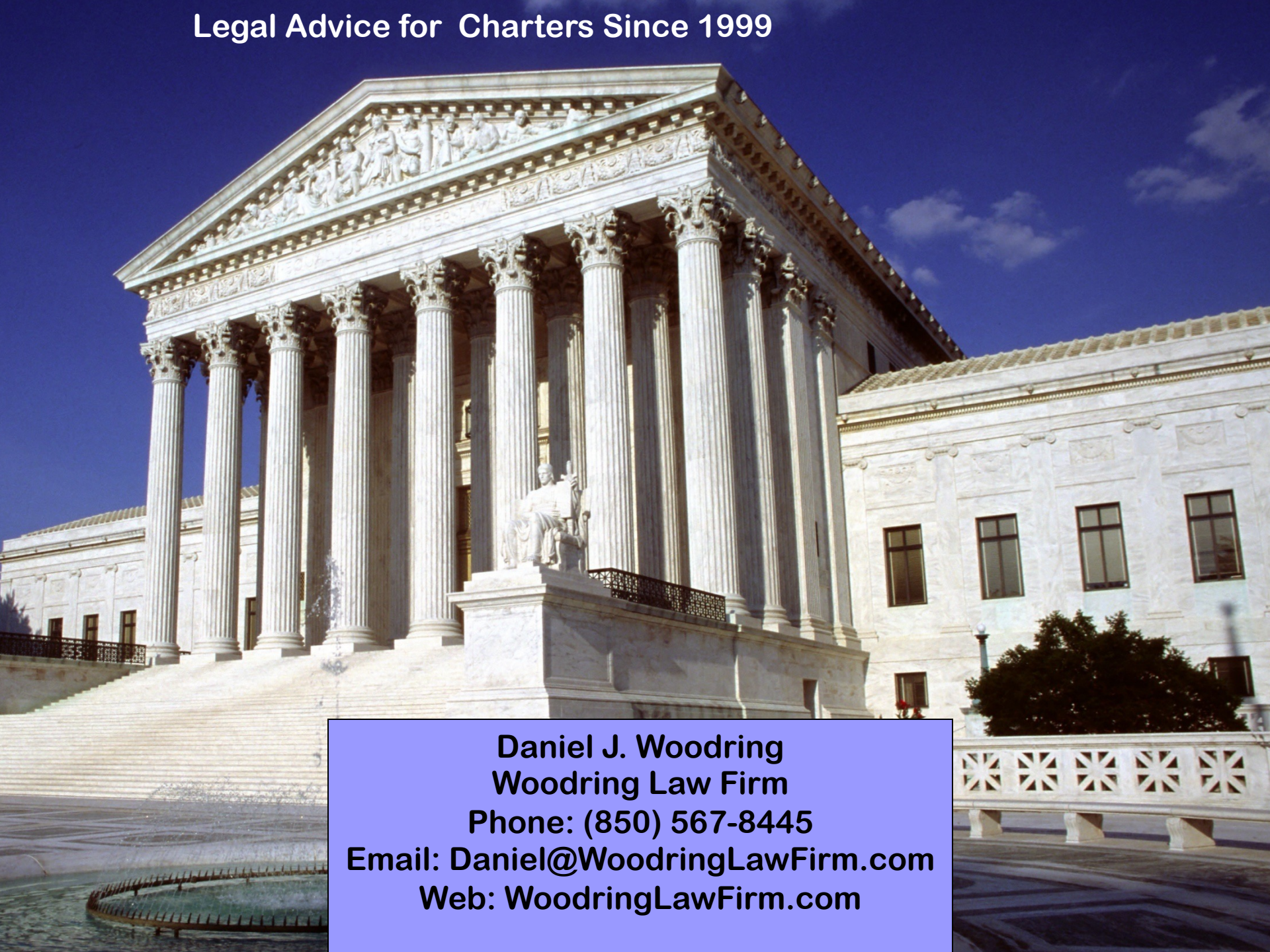
Legal Advice for Charters Since 1999



Daniel J. Woodring
Woodring Law Firm
Phone: (850) 567-8445
Email: Daniel@WoodringLawFirm.com
Web: WoodringLawFirm.com

2021 Charter School Legal Issues

- Pandemic Law
- Florida Case Updates
- Important Statutory Changes
- Contract Law: Employment, Vendors, Charter
- Sunshine Issues
- Facilities
- National Case Updates

Acad. for Positive Learning, Inc., et al v. Sch. Bd. of Palm Beach County

- On November 6, 2018, the voters of Palm Beach County approved an ad valorem millage for school operational purposes pursuant to section 1011.71(9), Florida Statutes:

  *Shall the School Board of Palm Beach County have authority to levy 1.00 mills of ad valorem millage dedicated for operational needs of **non-charter District schools** to fund school safety equipment, hire additional school police and mental health professionals, fund arts, music, physical education, career and choice program teachers, and improve teacher pay beginning July 1, 2019 and automatically ending June 30, 2023, with oversight by the independent committee of citizens and experts?*

- The referendum went into effect on July 1, 2019.

Acad. for Positive Learning, Inc., et al v. Sch. Bd. of Palm Beach County

- On January 10, 2019, two charter schools and two parents of charter school students sued the School Board of Palm Beach County seeking a declaratory judgment and injunctive relief requiring the referendum monies to be shared with charter schools.
- The plaintiffs argued the School Board had illegally excluded public charter schools from the referendum by including the “non-charter” language.
- Primary legal issue: Whether a referendum authorized under section 1011.71(9), Florida Statutes, is part of the School Board’s “current operating discretionary millage levy” that must be shared with charter schools.

Acad. for Positive Learning, Inc., et al v. Sch. Bd. of Palm Beach County

- On August 23, 2019, the trial court entered summary judgment in favor of the School Board.
- The plaintiffs appealed the decision to the Fourth DCA.
- On April 22, 2020, a three-judge panel of the Fourth DCA affirmed the decision of the trial court.
- Upon request of the plaintiffs, the Fourth DCA granted a rehearing *en banc*.
- On February 24, 2021, the Fourth DCA issued an *en banc* opinion in favor of charter schools.
- On September 9, 2021, the Florida Supreme Court declined to review the case.

Acad. for Positive Learning, Inc., et al v. Sch. Bd. of Palm Beach County

- The Fourth DCA held that an ad valorem millage authorized by section 1011.71(9), Florida Statutes, is part of the School Board's "current operating discretionary millage" and struck the "non-charter" language from the referendum.
- The School Board argued it could not be required to retroactively share the funds back to July 1, 2019. The Fourth DCA found this issue was not ripe for review.
- The case was reprimanded to the trial court. On September 1, 2021, the trial court entered an order requiring the School Board to begin sharing the monies with charter schools prospectively. The issue of the retroactive monies is still being litigated.

Acad. for Positive Learning, Inc., et al v. Sch. Bd. of Palm Beach County

- The Fourth DCA's ruling only affects referenda approved prior to July 1, 2019. Referenda approved on or after this date were already expressly required to be shared with charter schools pursuant to HB 7123 (2019).
- However, there are referenda in approximately 15 other counties that are affected by this decision.
- Cases moving up to 3rd DCA in Miami
- Recently filed suit in Pinellas County
- More litigation may follow, counties unlikely to voluntarily write checks

2021 Charter School Legal Issues

- Pandemic Law
  - Preliminary Considerations
    - Masking
    - Vaccines
    - OSHA
    - Federal Funds Issues- EDGAR
    - Liability waiver

2021 Charter School Legal Issues

- Preliminary Considerations

2021 Charter School Legal Issues

- Masking

2021 Charter School Legal Issues

- Vaccines

2021 Charter School Legal Issues

- OSHA
  - Preemption

2021 Charter School Legal Issues

- Federal Funds Issues- EDGAR
  - The Education Department of General Administrative Regulations (EDGAR) are the federal regulations that govern all federal grants awarded by the U.S. Department of Education on or after December 26, 2014 to local districts (LEAs) and charters including State-administered programs. The regulations impact time and effort certifications, indirect cost reimbursement, timely obligation of funds and carryover, financial management rules, program income, record retention, property/ equipment/supplies inventory controls, **procurement,** monitoring, conflicts, travel policies, and allowable costs. All recipients of federal grant dollars must comply with these new rules to avoid audit exposure.
  - https://www.ecfr.gov/current/title-2/part-200#subject-group-ECFR45ddd4419ad436d

2021 Charter School Legal Issues

- Liability 768.38
  - (3) In a civil action based on a COVID-19-related claim:(a) The complaint must be pled with particularity.
  - (b) At the same time the complaint is filed, the plaintiff must submit an affidavit signed by a physician actively licensed in this state which attests to the physician's belief, within a reasonable degree of medical certainty, that the plaintiff's COVID-19-related damages, injury, or death occurred as a result of the defendant's acts or omissions.
  - (c) The court must determine, as a matter of law, whether:1. The plaintiff complied with paragraphs (a) and (b). If the plaintiff did not comply with paragraphs (a) and (b), the court must dismiss the action without prejudice.

2021 Charter School Legal Issues

- 2. The defendant made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance at the time the cause of action accrued.
- a. During this stage of the proceeding, admissible evidence is limited to evidence tending to demonstrate whether the defendant made such a good faith effort.
- b. If the court determines that the defendant made such a good faith effort, the defendant is immune from civil liability. If more than one source or set of standards or guidance was authoritative or controlling at the time the cause of action accrued, the defendant's good faith effort to substantially comply with any one of those sources or sets of standards or guidance confers such immunity from civil liability.
- c. If the court determines that the defendant did not make such a good faith effort, the plaintiff may proceed with the action. However, absent at least gross negligence proven by clear and convincing evidence, the defendant is not liable for any act or omission relating to a COVID-19-related claim.

2021 Charter School Legal Issues

- Contracts: Employment, Vendor and Charter
  - Importance of good employment contracts- leadership
  - Charter Contract issues
  - Standard vendor contracts-transportation an example.

2021 Charter School Legal Issues

- Florida Cases Updates
  - Palm Beach Referendum Case- Shawn
  - Hillsborough Cases, renewal and approval.
  - Championship Academy of Distinction.
  - King Charter School
  - Turner
  - May
  - Oakes
  - Eagle Arts
  - Baird

2021 Charter School Legal Issues

- Hillsborough- Non-renewal and Terminations.
- Rule of Law Issue
- Leon and Palm Beach have done similar things on new applications.

2021 Charter School Legal Issues

- King Charter School PCA
  - “But it is entirely evident that King Charter’s plan to put milk last is simply to discourage students from selecting milk. King Charter has not provided any factual support or argument for why this would be beneficial to students or further the intent of the NSLP, other than that it is in furtherance of its philosophy regarding dairy products. Accordingly, this proposed plan, taken together with King Charter’s expressed intention to discourage children from choosing milk, is violative of the plain language of the federal statute and regulation. Furthermore, the proposed plan is at odds with USDA’s articulated policies and guidance regarding milk being a required meal component in NSLP schools.”

King Charter Sch., Inc. v. Dep't of Agric. & Consumer Services, 1D20-2315, 2021 WL 4465721 (Fla. 1st DCA Sept. 30, 2021)

2021 Charter School Legal Issues

- Championship Academy of Distinction
- “Thus, as of August 16, 2019, the only basis for the School's Board's position that an "immediate and serious danger" existed on Championship's campus was that a contract securing the guaranteed presence of a safe-school officer on Championship's campus had not yet been fully executed. As discussed above, there is no evidence showing that the failure to have a fully-executed contract for safe-school officer services on August 20, 2019, constituted an immediate and serious danger to Championship's students warranting immediate termination of its charter.”
- Attorney Fees

2021 Charter School Legal Issues

- Todd Allen Dupell
  - Even assuming that Plaintiff had succeeded in establishing his *prima facie* case, both the SBBC and the CAD have proffered legitimate, nondiscriminatory reasons for their respective actions. According to the SBBC, the decision to immediately terminate the CAD Charter was based on the fact that the Davie Campus failed to comply with the MSD Act and because the SBBC believed that such a failure constituted an immediate and serious danger to the health, safety or welfare of the Davie Campus students. Furthermore, the SBBC claims that, after assuming operational control of the Davie Campus, the SBBC assigned two assistant principals to manage and operate the Davie Campus because, unlike Plaintiff, the two assistant principals were in fact employed by the SBBC. Pursuant to Florida law, a public-school principal or supervisor must receive a written contract of employment, executed by the school board, after receiving a formal, written recommendation from the applicable superintendent. *See* Fla. Stat. §§ 1001.54, 1012.22(1)(d), 1012.22(1)(b), 1012.33(1)(b); *see also McCalister v. School Board of Bay Cnty.*, 971 So. 2d 1020, 1026-27 (Fla. 1st DCA 2008) ("The relevant statutes expressly authorize only a school board to enter into contracts with principals based on a written recommendation of a superintendent.").

    TODD ALAN DUPELL, Plaintiff, v. THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, et al., Defendants. Additional Party Names: Championship Acad. of Distinction, 20-60116-CIV, 2021 WL 4819418, at *8 (S.D. Fla. Sept. 27, 2021)

2021 Charter School Legal Issues

- Marcus May
  - "May was the CEO of Newpoint Education Partners, a management company that contracted with charter schools. The State alleged that May bought equipment from his friend, Steven Kunkemoeller, then sold the equipment to those schools after a high mark-up, splitting the profits with Kunkemoeller. The State also alleged that May paid for certain products with school funds and directed rebates to himself."
  - "In the end, the jury found May guilty of all charges (one count of fraud and two counts of racketeering) and the trial court sentenced him to **twenty years** on each count to run concurrently."
  - Affirmed

    May v. State, 1D18-5153, 2021 WL 3781242, at *1 (Fla. 1st DCA Aug. 26, 2021)

2021 Charter School Legal Issues

- *Oakes Farms Food & Distribution Services*
- Francis A. “Alfie” Oakes is the owner of Oakes Farms Food & Distribution Services, LLC (“Oakes Farms”). From 2016 to 2020, Oakes Farms supplied the School District of Lee County (“School District”) with fresh produce. Shortly after Oakes Farms's contract with the School District was unanimously renewed for the 2020-21 school year, Mr. Oakes wrote a post on his personal Facebook page discussing the killing of George Floyd, bemoaning the “brainwashing” influence of the media, and characterizing the COVID-19 pandemic as a “hoax.” Three days after Mr. Oakes's post, the School District terminated its contract with Oakes Farms. Plaintiffs believe the termination was **unlawful retaliation for Mr. Oakes exercising his First Amendment rights, a breach of the underlying contract, and a violation of Florida's Sunshine Law**. Accordingly, they now sue: (1) the School District; (2) the members of the Lee County School Board (Mary Fischer, Debbie Jordan, Melissa Giovanelli, Chris N. Patricia, Gwynetta S. Gittens, Betsy Vaughn, and Cathleen O'Daniel Morgan, referred to collectively as the “School Board” or “Board Members”); (3) Gregory Adkins, the School District's Superintendent; and (4) Frederick B. Ross, the School District's Director of Procurement

  Oakes Farms Food & Distribution Services, LLC v. Sch. Dist. of Lee County, Florida, 2:20-CV-488-JLB-MRM, 2021 WL 2186457, at *1 (M.D. Fla. May 28, 2021)

2021 Charter School Legal Issues

- *Turner v. Homestead Police Dep't*, 828 Fed. Appx. 541, 543–44 (11th Cir. 2020)

- Turner's daughter was an elementary student at Keys Gate Charter School in Homestead, Florida. School policy required parents to use a drive-through area when picking up elementary students and prohibited “walk ups.” On September 6, 2016, Turner drove to school to get his daughter. He arrived fifteen minutes after dismissal had started. Turner approached a teacher and asked for his daughter. The teacher said Turner would have to wait fifteen more minutes. Turner instead walked into the school. A vice principal approached Turner, warned him that he was not allowed inside, and called the police. An officer arrived and told Turner to bring the issue to the principal's attention. Turner and his daughter left the school without further incident.

2021 Charter School Legal Issues

- Over the next two weeks, Turner tried unsuccessfully to meet with the principal to discuss what happened on September 6. On September 23, Turner entered the school and requested a meeting with the principal. The school's director of student services brought Turner to a conference room. In the presence of Officer Ducksworth of the Homestead Police Department, the director handed Turner a written trespass notice barring him from the school because of what happened on September 6.
- Turner left the school with Officer Ducksworth. He asked the officer to get his daughter, and Officer Ducksworth told Turner to wait outside. Forty minutes later, Turner reentered the school to find the officer. Seeing Turner inside the building, Officer Ducksworth arrested him. Turner was charged in state court with trespass on school grounds, but the charges were dropped before trial.
- Turner sued Keys Gate, Charter Schools USA, Inc., the City of Homestead, and the Homestead Police Department for defamation, false arrest, false imprisonment, malicious prosecution, false imprisonment of a child, spoliation of evidence, breach of contract, and a civil rights claim under 42 U.S.C. section 1983 for deprivation of his Fourth and Fourteenth Amendment rights.
- The defendants moved for summary judgment, which the district court granted. The district court concluded that: (1) the police department and Charter Schools USA were not proper parties; (2) the city and Keys Gate were entitled to sovereign immunity on Turner's state tort claims because he did not give them pre-suit notice; (3) the city was not liable under section 1983 because Turner admitted that the city did not have a policy or practice *544 that caused his arrest; and (4) there was no dispute of fact that Keys Gate did not materially breach a contract it had with Turner.

2021 Charter School Legal Issues

- *Sch. Bd. of Palm Beach County v. Bakst, Tr. for Eagle Arts Acad., Inc.*, 294 So. 3d 923, 929 (Fla. 4th DCA 2020)

- We also agree with the School Board that treating the commencement of the case as the operative date makes the most sense, as that is the point where both parties can decide whether and how to proceed if potential liability exists for attorney's fees and costs. *Cf. Fla. Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145, 1149 (Fla. 1985) ("The statute [which provided attorney's fees for the prevailing party in medical malpractice cases] may encourage an initiating party to consider carefully the likelihood of success before bringing an action, and similarly encourage a defendant to evaluate the same factor in determining how to proceed once an action is filed."). The sponsoring school board must make the initial choice to notice a charter school for termination, after which the charter school must evaluate the sponsor's reasons for termination and decide whether to contest the termination. § 1002.33(8)(b), Fla. Stat. (2018).

2021 Charter School Legal Issues

Baird v. Mason Classical Acad., Inc., 317 So. 3d 264 (Fla. 2d DCA 2021)

- **Background:** Charter school brought action against parent of former students for tortious interference with the school's contracts with school district and a private college. The Circuit Court, 13th Judicial Circuit, Hillsborough County, Caroline Tesche Arkin, J., denied parent's verified motion for dismissal under the anti-SLAPP statute. Parent filed petition for writ of certiorari.
- **Holdings:** 1 writ of certiorari was the appropriate mechanism for review of order denying parent's motion to dismiss, but
- 2 trial court did not depart from the essential requirements of the law when it concluded that charter school had adequately rebutted parent's claim of protection under anti-SLAPP statute.
-)

2021 Charter School Legal Issues

- Important Statutory Changes
  - Charter Application Deadlines
  - Attorney Fees Changes
  - SOH flex
  - New Charter Sponsors
  - VPK Enrollment Preference

2021 Charter School Legal Issues

- Charter Application deadlines
- Application acted on in 90 days
- Fees awarded if wrongfully denied

2021 Charter School Legal Issues

- Attorney Fees Changes
- Championship
- Rocky Hanna

2021 Charter School Legal Issues

- SOH flex- may come to regular charters
- Fingerprinting
- Direct Reporting
- Teacher Qualifications

2021 Charter School Legal Issues

- New Charter Sponsors
  - State Colleges
  - Universities

2021 Charter School Legal Issues

- VPK enrollment preference
  - 5. Students who have successfully completed, during the previous year, a voluntary prekindergarten education program under ss. 1002.51-1002.79 provided by the charter school, the charter school's governing board, or a voluntary prekindergarten provider that has a written agreement with the governing board.

2021 Charter School Legal Issues

- Sunshine Issues
- Contract approval, Employment decisions
- Executive Session- Shade

2021 Charter School Legal Issues

- Facilities
  - Access to district facilities
  - Barriers for charter schools building facilities
  - A local governing authority must treat charter schools equitably in comparison to similar requirements, restrictions, and site planning processes imposed upon public schools that are not charter schools. The agency having jurisdiction for inspection of a facility and issuance of a certificate of occupancy or use shall be the local municipality or, if in an unincorporated area, the county governing authority. If an official or employee of the local governing authority refuses to comply with this paragraph, the aggrieved school or entity has an immediate right to bring an action in circuit court to enforce its rights by injunction. An aggrieved party that receives injunctive relief may be awarded attorney fees and court costs.

2021 Charter School Legal Issues

- National Case Updates
  - *Peltier v. Charter Day Sch., Inc.*
  - *JT. Vs Deblazio*

2021 Charter School Legal Issues

- *Peltier v. Charter Day Sch., Inc.*, 8 F.4th 251, 257 (4th Cir. 2021)
- After discovery, all parties moved for summary judgment. The district court granted summary judgment to Plaintiffs on the equal protection claim, but to Defendants on the Title IX claim, holding that Title IX did not reach school dress codes. For the reasons set forth below, we conclude that the **charter school here was not a state actor when promulgating the dress code and, thus, is not subject to an equal protection claim.** At the same time, however, we determine that claims of sex discrimination related to a dress code are **not categorically excluded from the scope of Title IX.** Accordingly, we reverse on both claims and remand for further proceedings consistent with this opinion.

  Note Title IX applicable to CMO
  - **Rehearing granted**

2021 Charter School Legal Issues

- J.T. v. de Blasio, 500 F. Supp. 3d 137 (S.D.N.Y. 2020), on appeal

- Background: Parents and guardians of students with educational disabilities filed putative class action alleging that every school district in United States that went from in-person to remote learning during COVID-19 pandemic automatically altered pendency placement of every special education student in United States, District of Columbia, and Puerto Rico and ceased providing those students with free appropriate public education (FAPE), in violation of Due Process Clause, Individuals with Disabilities Education Act (IDEA), Rehabilitation Act, Title II of Americans with Disabilities Act (ADA), Racketeer Influenced and Corrupt Organizations Act (RICO), and state law. Plaintiffs moved for preliminary injunction, and defendants moved to dismiss.
- Holdings: The District Court, Colleen McMahon, Chief Judge, held that:
- 1 Eleventh Amendment barred action against state departments of education;
- 2 defendants located outside of New York were not subject to personal jurisdiction in New York;
- 3 parents lacked standing to bring RICO action against school districts;
- 4 defendants did not constitute association-in-fact RICO enterprise;
- 5 districts' purported predicate acts to defraud federal government were not sufficient to demonstrate closed-ended continuity required to establish RICO claim;
- 6 Southern District of New York was not proper venue for action against out-of-state districts;
- 7 out-of-state school districts were not properly joined;
- 8 severance and dismissal of all claims against all New York State school districts outside of New York City were warranted; and
- **9 school closure orders did not violate IDEA's stay-put provision.**
- Motion for preliminary injunction denied; motions to dismiss granted.
-

Wrap Up

- Questions? Other Topics?
- Can contact me at
  - Daniel@woodringlawfirm.com
  - 850 567 8445