

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

THE SCHOOL BOARD OF
MIAMI-DADE COUNTY,
FLORIDA,

Appellant,

CASE NO. 1D08-0050

v.

THE STATE BOARD OF
EDUCATION, In the MATTER
OF DISTRICT SCHOOL
BOARD OF MIAMI-DADE
COUNTY'S APPLICATION TO
RETAIN EXCLUSIVE
AUTHORITY,

Appellee.

Opinion filed June 22, 2009.

An appeal from an order of the Department of Education.

Melinda L. McNichols, Office of School Board, Miami, for Appellant.

Deborah K. Kearney, General Counsel, Department of Education, Timothy Osterhaus, Deputy Solicitor General, Office of the Attorney General, and Daniel J. Woodring of Woodring Law Firm, Tallahassee, for Appellee.

PER CURIAM.

The School Board of Miami-Dade County appeals the State Board of Education's denial of the School Board's application for exclusive authority to

sponsor charter schools within Miami-Dade County, pursuant to section 1002.335(5), Florida Statutes (2006). In addition, the School Board challenges the constitutionality of section 1002.335, Florida Statutes (2006).

In Duval County Sch. Bd. v. State Bd. of Educ., 998 So. 2d 641 (Fla. 1st DCA 2008), this court found section 1002.335, Florida Statutes (2006) facially unconstitutional because the statute presented a “total and fatal conflict with article IX, section 4 of the Florida Constitution.” Duval County Sch. Bd. v. State Bd. of Educ., 998 So. 2d at 644. We hold section 1002.335 is facially unconstitutional.

The Final Order of the State Board of Education is hereby set aside.

HAWKES, C.J., ALLEN, and CLARK, JJ., CONCUR.