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## **MEMORANDUM**

**TO:** State Board of Education

**FROM:** Commissioner Manny Diaz

**RE:** Broward County School District Non-Compliance with Florida Law

**DATE:** March 19, 2024

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Based upon the following memorandum, I find there is probable cause to believe the Broward County School District (the district) is not in compliance with Florida law. Specifically, the district has failed to comply with section 1002.33(17), Florida Statutes (2019), regarding revenue it collected from an ad valorem tax it levied under section 1011.71(9), Florida Statutes.

During the August 2018 election, the School Board of Broward County placed a referendum on the ballot asking county voters to approve an ad valorem levy for the operational needs of public schools. The referendum was approved by the voters and provided additional funding for Broward County Public Schools for fiscal years July 1, 2019, through June 30, 2023.

Section 1002.33(17) required that students in public charter schools “be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district.” During the time the district received revenues under the voter approved referendum, nearly 50,000 Broward County public school students, representing just under 20% of the district’s total enrollment, chose to enroll in and attend a public charter school. However, Broward County School District decided to share only a small portion of the revenue generated under this voter approved tax and only shared it with certain public charter schools.

On March 7, 2024, the Florida Department of Education (Department) sent a letter to the district indicating that the Department was made aware that Broward County School District is not complying with Florida laws which require the district to share revenue collected via a discretionary tax levied under section 1011.71(9) with its public charter schools.

In that letter, the Department reminded the district that two Florida appellate courts, including the Fourth District Court of Appeal, have already ruled that revenue generated under this discretionary tax must be shared with public charter schools. Broward County School District resides in the jurisdiction of the Fourth District Court of Appeal and is therefore bound by its

decisions. *Acad. For Positive Learning, Inc. v. Sch. Bd. of Palm Beach Cnty. (Academy II)*, 359 So. 3d 767, 771 (Fla. 4th DCA 2023); *Acad. For Positive Learning, Inc. v. Sch. Bd. of Palm Beach Cnty. (Academy I)*, 315 So. 3d 675, 678, 684 (Fla. 4th DCA 2021) (en banc); *see also Archimedean Acad. Inc. v. Sch. Bd. of Miami-Dade Cnty.*, 338 So. 3d 1032, 1035–26 (Fla. 3rd DCA 2022).

To date, the district has knowingly and willfully refused to comply with the law. The State Board’s enforcement authority is found in section 1008.32. The statute provides that “[t]he State Board of Education shall oversee the performance of . . . district school boards . . . in enforcement of all laws and rules.” § 1008.32, Fla. Stat. In enforcing laws and state board rule, section 1008.32(2)(a) first requires that I report my determination of probable cause to the State Board. The State Board must then require the district to document compliance with law or state board rule. *See* § 1008.32(2)(a), Fla. Stat. If the district fails to satisfactorily document compliance, the State Board may order compliance within a specified timeframe. *See* § 1008.32(3), Fla. Stat. The State Board may then impose sanctions if it determines that the district is unwilling or unable to comply with state board rule within the specified timeframe. *See* § 1008.32(4), Fla. Stat.

Considering the above, I recommend that the State Board consider my finding of probable cause and order the district to document compliance with Florida law by submitting proof of full and complete payment to all eligible charter schools<sup>1</sup> in the district. Alternatively, the district may document compliance with a School Board approved payment plan beginning no later than the commencement of the 2024-2025 school year which will result in full and complete payment to all eligible charter schools no later than December 31, 2024, or a later date mutually agreed upon by the district and the charter schools.

If the district fails to document compliance by the date set by the State Board, I recommend that the State Board consider this failure at the April 17, 2024 meeting. *See* § 1008.32(3). If the district fails to come into compliance by the April 17 meeting, I request that the State Board find that the district is “unwilling or unable to comply with law or state board rule within the specified time” and consider imposing one or more of the sanctions available under section 1008.32(4), including withholding the transfer of state funds, discretionary grant funds, discretionary lottery funds or any other funds specified as eligible and declaring that the district is ineligible for competitive grants until such time as the district complies with Florida law.

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<sup>1</sup> Operational charter schools which were in operation and serving students during any of the fiscal years July 1, 2019, through June 30, 2023.