



Miami-Dade Board of County Commissioners  
Office of the Commission Auditor

**CHARTER SCHOOLS:  
ZONING APPROVAL IN THE APPLICATION REVIEW  
PROCESS AND SOCIOECONOMIC IMPACT**

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**Research project produced by the Office of the Commission Auditor.**

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The Office of the Commission Auditor (OCA) was established in September 2002 by Ordinance 03-2 to provide support and professional analysis of the policy, service, budgetary, and operational issues before the Miami-Dade Board of County Commissioners. The Commission Auditor's duties include reporting to the Board of County Commissioners (BCC) on the fiscal operations of County departments, as well as whether or not the fiscal and legislative policy directions of the Commission are being efficiently and effectively implemented.

This report, prepared in collaboration with the Miami Dade County departments as subject matter experts, is substantially less detailed in scope than an audit in accordance with the Generally Accepted Auditing Standards (GAAS). The Office of the Commission Auditor plans and performs the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives; accordingly, OCA does not express an opinion on the data gathered by the subject matter expert.

## Table of Contents

I.	Introduction	
a.	Purpose .....	4
b.	Scope .....	4
c.	Methodology .....	4
II.	Zoning and the Charter School Application Review Process .....	4
III.	Socioeconomic Impact of Charter Schools .....	11
a.	Charter Schools by the Numbers .....	12
b.	State Laws Governing Charter Schools and Legal Challenges .....	14
c.	Impact of Charter Schools on Traditional Public Schools.....	17
d.	Comparison of Charter School and Traditional Public School Student Performance .....	20
e.	Charter School Management and Charter School Closures .....	20
f.	Conclusion.....	22

## **I. Introduction**

### **a. Purpose**

The Office of the Commission Auditor (OCA) prepared this report in response to a request from Commissioner Barbara J. Jordan, representing District 1, and Commissioner Dennis Moss, representing District 9, to conduct research regarding charter schools. Specifically, the request involves a comparative analysis of the zoning protocol followed in the charter school application process in surrounding counties and the socioeconomic impact charter schools have had on their surrounding neighborhoods, including whether their prevalence has led to the closure of public schools.

### **b. Scope**

In examining zoning protocol in the charter school application process, OCA focused on Miami-Dade, Broward, Palm Beach, and Monroe counties. In examining socioeconomic impact, OCA researched the following:

- 1) effect charter schools have had on surrounding neighborhoods, including causing closures of traditional public schools;
- 2) constitutional challenges to charter school development; and
- 3) data on for-profit companies managing charter schools.

### **c. Methodology**

OCA surveyed the School Board of Miami-Dade County, as well as the school boards of Broward, Palm Beach and Monroe counties, in addition to research of school board policies and county policies and procedures memorialized in the various county codes. OCA also conducted a review of academic treatises and journals, as well as governing legislation and case law related to charter school challenges.

## **II. Zoning and the Charter School Application Review Process**

The Florida Department of Education (FLDOE) defines charter schools as “public schools that operate under a performance contract, or a ‘charter’, which frees them from many regulations created for traditional public schools while holding them accountable for academic and financial results.”<sup>1</sup> Generally, in order to create a charter school, an individual, a group of parents or teachers, a business, a municipality or a legal entity must submit an application to the school district and have that application approved by the school board. Upon approval, the charter is formed when the applicants negotiate the contract with the district school board and the parties agree upon its terms, which outline expectations regarding the school's academic and financial performance. The district school board then becomes the sponsor of the charter school.<sup>2</sup>

In examining the application review process in Miami-Dade, Broward, Palm Beach, and Monroe counties, OCA found uniformity, with all counties utilizing the State model application and the current required evaluation instrument developed by FLDOE. All utilize an evaluation team or Application Review Committee (ARC) to identify deficiencies in the written application or areas requiring clarification to fully evaluate the quality of the application or the capacity of the group to properly implement the proposed plan. The ARC ultimately provides recommendations for approval or denial of the application to the superintendent. The school board then approves or denies the application and if approved, the application advances to the contract negotiation process.

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<sup>1</sup> Florida Department of Education, *Charter School Frequently Asked Questions*, <http://www.fl DOE.org/schools/school-choice/charter-schools/charter-school-faqs.shtml> (last visited September 18, 2019).

<sup>2</sup> *Id.*

Given the land use implications, zoning approval is necessary for the establishment of a charter school. However, the manner in which it is included in the charter school application review process varies between jurisdictions. Miami-Dade County is unique across South Florida counties in that its governing body memorializes charter school zoning approval in resolution (No. R-1114-04) and the County Code (§§ 33-152 to Sec. 33-162). In accordance with Section 1013.33, Florida Statutes, Miami-Dade County reviews zoning applications of traditional public schools for consistency with the policies contained within the Comprehensive Development Master Plan (CDMP) and applicable land development regulations. Resolution No. R-1114-04 and Ordinance 04-108 (codified in Sections 33-152 to Sec. 33-162 of the Miami-Dade County Code) ensure that charter schools in unincorporated Miami-Dade County are not exempt from this land use review requirement and that charter school zoning approval goes before the Board of County Commissioners.

Pursuant to Miami-Dade County Resolution No. R-1114-04—the Interlocal Agreement between Miami-Dade County and the School Board of Miami-Dade County (School Board)—zoning review takes place after the charter school application has been approved by the School Board, and the School Board delegates all land use authority to the County to issue final development orders.<sup>3</sup> No charter school shall operate without a final development order from the County. Public hearing is required, as is customary in the County’s land use approval process.

Over the last five years, the following Miami-Dade County charter school zoning applications were denied by the Board of County Commissioners:

- Advanced Learning Charter School, Inc., dba Hive Preparatory School - denied 9/10/15;
- Somerset Academy, Inc. & The University Baptist Church, Inc., - denied 5/18/17;
- JLK Four, LLC. - denied 6/21/18;
- Academir Charter Schools, Inc. - denied 10/25/18; and
- Jack J. Tierney - denied 11/15/18.

In Broward County, there is no formalized zoning process for charter schools. The applying entity provides information on whether the location is available and the desired building is in code compliance to the respective governing body in order to obtain a certificate of occupancy. In Palm Beach County, zoning approval must go before its board of county commissioners (in unincorporated Palm Beach County) or before the governing body of the respective municipality. Zoning approval can take place before or after the charter school application has been approved by the school board. Finally, while Monroe County does not have a standard operating procedure regarding zoning approval, the school board’s bylaws state that the school must have an approved contract and provide evidence of all necessary permits, licensing, zoning, use approval, facility certification and other approvals required for use of the facility by the local government no later than thirty days prior to the initial use of the facility by the school. Failure to meet these requirements results in automatic rescission of the contract, with no further action by the school board.

The below tables summarize the charter school application process and accompanying zoning review process in Miami-Dade, Broward, Palm Beach, and Monroe counties.

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<sup>3</sup> Miami-Dade County Resolution No. R-1114-04 (September 9, 2004) Interlocal Agreement with the School Board of Miami-Dade County, <http://intra/gia/matter.asp?matter=042706&file=false&yearFolder=Y2004>.

**Figure 1**

**Zoning Review in the Charter School Application Process by County<sup>4</sup>**

<b>Miami-Dade</b>	<b>Broward</b>	<b>Palm Beach</b>	<b>Monroe</b>
<ul style="list-style-type: none"><li>•Zoning approval must go before the Board of County Commissioners after the Charter School Application has been approved by the School Board (Resolution No. R-1114-04).</li></ul>	<ul style="list-style-type: none"><li>•No formal zoning process for charter schools.</li><li>•The applying entity provides information on whether the location is available and the desired building is up to code to the respective governing body to obtain a certificate of occupancy.</li></ul>	<ul style="list-style-type: none"><li>•Zoning approval must go before the Board of County Commissioners for locations in unincorporated Palm Beach County, and before the local government of the respective municipality in incorporated Palm Beach County.</li><li>•Zoning approval can take place before or after the charter school application has been approved by the School Board.</li></ul>	<ul style="list-style-type: none"><li>•No formal zoning process for charter schools.</li><li>•No later than thirty (30) days prior to the initial use of the facility by the school, the school shall have an approved contract and provide evidence of all necessary permits, licensing, zoning, use approval, facility certification and other approvals required for use of the facility by the local government. Failure to comply shall result in automatic rescission of the contract, with no further action by the Board.</li></ul>

**Figure 2**

**Charter School Application Process by County**

<b>County/School District</b>	<b>Application Process</b>
<b><u>Miami-Dade County<sup>5</sup></u></b>	<p>Charter schools shall organize or be operated by a non-profit organized pursuant to F.S. Chapter 617, a municipality, or another public entity as provided by law.</p> <p>An applicant may submit a draft charter school application, using the most recent State model application form, on or before May 1st, with an application fee of \$500.00. The District will provide feedback on the application by July 1st but is not responsible for providing feedback on deficiencies resulting from changes in policies or law subsequent to review. The applicant shall submit any final application by the August 1st deadline pursuant to law and the County Code's policy.</p> <p>The District shall review all final applications using the current required evaluation instrument developed by the Florida Department of Education</p>

<sup>4</sup> Communication with school districts.

<sup>5</sup> THE SCHOOL BOARD OF MIAMI-DADE COUNTY, BYLAWS & POLICIES, Policy No. 9800, *available at* <http://www.neola.com/miamidade-fl/>.

County/School District	Application Process
	<p>(FDOE) and may also review additional information required by the School Board (sponsor).</p> <p>The sponsor shall deny any application (a) that does not comply with the statutory requirements and/or sponsor's instructions for charter school applications; or (b) where the applicant has made a material misrepresentation or false statement or concealed an essential or material fact in the application and/or during the application evaluation process.</p> <p>The sponsor shall solicit and consider information to evaluate the applicant's ability to operate a charter school, such as: (1) history and background of individual applicants and/or founding governing boards and its individual members including, but not limited to, a demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform professional services; (2) the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school; (3) desired location and facility information; (4) whether the applicant currently operates charter schools in Florida; and, (5) whether the proposed school will be a replication of an existing school design. A description of internal audit procedures and establishment of controls to ensure that the financial resources are properly managed must be included. This information shall be used to evaluate the applicant's ability to operate a charter school and considered when recommending approval or denial of an application.</p> <p>Technical Review - The technical review may involve initial review of applications that comply with the sponsor's application instructions and recommendations to the Application Review Committee (ARC). If significant deficiencies are found, the application will not be reviewed by ARC but will be forwarded directly to the Superintendent with a recommendation for denial. Applications may also be rejected without review or action by the sponsor if they are in violation of the law.</p> <p>A charter school has no authority to operate until the terms and conditions for operation have been set forth and mutually agreed upon by the sponsor and applicant in a written contract called a charter. The Contract Review Committee (CRC) shall annually review and approve a standard contract that is consistent with this policy and State law which shall be used as the basis for all charters approved under this policy. New contracts and any amendments that materially alter the contract, if approved by the CRC and recommended by the Superintendent, shall be presented to the sponsor.</p> <p>No later than fifteen (15) days prior to the initial use of the facility by the school, the school shall have an approved contract and provide evidence of all necessary permits, licensing, zoning, use approval, facility certification and other approvals required for use of the facility by the local government. Failure to comply shall result in automatic rescission of the contract, with no further action by the sponsor.</p>

County/School District	Application Process
<b><u>Broward County</u></b> <sup>6</sup>	<p>Applications must be in compliance with the Florida Charter Schools Model application format. Charter school applicants must use the model application form prepared by the Florida Department of Education. The application will be reviewed by the District using an evaluation form created by the DOE. Charter school applicants must attend a pre-application training provided by the DOE, prior to submitting an application. Proof of applicant's attendance to the DOE mandated training must be submitted with application. The Superintendent of Schools and appropriate staff will review all applications and, within 60 calendar days, unless the parties mutually agree, in writing, to an additional 60-day extension, submit to the School Board all applications with a recommendation for approval or denial.</p> <p>A committee appointed by the Superintendent of Schools shall review all applications and make recommendations to the Superintendent. After reviewing the application and staff recommendations, the Superintendent shall make a recommendation to the School Board. The School Board must, by a majority vote, approve or deny an application no later than 60 days after the application is received.</p> <p>The School Board shall provide the applicant a proposed charter contract within 60 days of application approval. The School Board and the applicant shall have 75 days to negotiate the charter agreement for final approval by the Board.</p> <p>An approved applicant shall open its charter school at the beginning of the school district's next school year following the approval of the charter school application.</p> <p>It is the responsibility of a charter school applicant to have an appropriate educational facility consistent with all applicable Florida Statutes or to provide evidence that such facility will be available for the beginning of the school year, consistent with the beginning day for public school students, as listed on The Board approved public school calendar. All appropriate inspections and issuance of a certificate of occupancy must be provided to the District no later than 10 days prior to the opening of the school site.</p>
<b><u>Palm Beach County</u></b> <sup>7</sup>	<p>An applicant group seeking approval to establish and operate a charter school shall submit to the sponsor a written application that responds to each request for required information as stated in the Florida Charter School Application. The sponsor shall accept written applications by August 1st of each year as per s.1002.33 (6)(b).</p> <p>Each application will be reviewed by an evaluation team of individual(s) with education, business, non-profit, financial, legal and organizational expertise. The evaluation team will include sponsor staff and/or external experts such as</p>

<sup>6</sup> THE SCHOOL BOARD OF BROWARD COUNTY, FL, POLICIES, Policy No. 1163, *available at* <http://www.broward.k12.fl.us/sbbcpolicies/docs/P1163.000.pdf>.

<sup>7</sup> PALM BEACH COUNTY SCHOOL BOARD, SCHOOL BOARD POLICIES ch. 2.57 (last revised May 27, 2015), *available at* <https://go.boarddocs.com/fl/palmbeach/Board.nsf/Public#>.



County/School District	Application Process
	<p>current and former school administrators and principals; charter school founders; and school, business, non-profit, and public policy leaders.</p> <p>The evaluation team may interview applicants to assess the overall capacity of the applicant to establish and implement the charter school plan; clarify any components of the written application for which reviewers had questions or required additional information to fully evaluate, and corroborate information provided in the written application.</p> <p>The sponsor staff or designee will determine, based on the information gathered throughout the application evaluation process and reviewer recommendations, whether an applicant has met the standard for approval. The sponsor staff or designee will make recommendations to the sponsoring board on whether to grant or deny charter status; and the sponsoring board, in turn, will act on those recommendations.</p> <p>The sponsoring board will only approve applicants for charter approval that demonstrate quality in all components of the application process. An application cannot have significant weaknesses in some components of the application and still be judged to have met the standard for approval. An applicant that is denied charter school status shall have the right to appeal the sponsoring board's decision as stipulated in s. 1002.33(6)(c).</p> <p>All charter schools shall submit to the District certificates of occupancy, inspection reports, insurance premiums and other documentation listed on the Opening of Schools Checklist ("Checklist") PBSB 2414 prior to or at the beginning of each school year of the term of its contract. Pursuant to Fla. Stat. §§ 1002.33 (7) (a) (13), "The sponsor may not require a charter school to have a certificate of occupancy or a temporary certificate of occupancy for such a facility earlier than 15 calendar days before the first day of school." Failure to present certain of these items, such as a certificate of occupancy, will prevent the school from opening.</p>
<b><u>Monroe County</u></b> <sup>8</sup>	<p>F.S. 1002.33 gives the School Board oversight responsibility for all charter schools situated within Monroe County. The Board designates the Superintendent to receive and review all charter applications. The Superintendent shall recommend to the Board the approval or denial of each charter application and contract. The Board shall have final authority, by majority vote, to approve or deny any application and charter contract. Approved charter schools are public schools and shall receive goods and services from the Board as required by law and/or specified through a separate contract with the Board.</p> <p>If approved, the initial charter shall be for a term of four (4) or five (5) years. The Board may renew charters under the conditions and for terms as set forth in State law.</p>

<sup>8</sup> MONROE COUNTY SCHOOL DISTRICT, POLICY MANUAL Policy No. 9800 (last revised May 22, 2012), *available at* <https://go.boarddocs.com/fl/sbmon/Board.nsf/Public?open&id=policies#>.

County/School District	Application Process
	<p>Potential applicants should send letters notifying the Board of their intent to submit an application to sponsor a public charter school not later than July 1st. Such correspondence should be directed to the office of the Superintendent.</p> <p>Failing to send the letter of intent will in no way negatively impact a potential Sponsor's application.</p> <p>Applications for a public charter school will be accepted no later than 4 p.m., on the submission deadline of August 1st, or before.</p> <p>Applicants must submit an application on FLDOE's Model Florida Charter School Application template and forms.</p> <p>The District shall receive and review all applications using an evaluation instrument developed by the Florida Department of Education (FLDOE).</p> <p>The Application Review Committee (ARC) identifies deficiencies in the written application and/or areas that require clarification to fully evaluate the quality of the application or the capacity of the group to properly implement the proposed plan.</p> <p>The ARC shall be comprised of members of the Superintendent's cabinet or their appropriate designees, school principals and other administrators from the following areas of expertise:</p> <ol style="list-style-type: none"> <li>1. District/School Operations (chair);</li> <li>2. Charter School Operations;</li> <li>3. Curriculum and Instruction;</li> <li>4. Education (school principal);</li> <li>5. Facilities;</li> <li>6. Financial Operations;</li> <li>7. Human Resources;</li> <li>8. Management and Compliance Audits (non-voting);</li> <li>9. Special Education;</li> </ol> <p>By majority vote, the ARC shall make a recommendation to the Superintendent to approve or deny each application.</p> <p>All applications will be submitted to the Board by the Superintendent with a recommendation for approval or denial no later than sixty (60) calendar days after the application is received.</p> <p>A standard charter contract shall be consistent with this policy and approved by the Contract Review Committee to be used as the basis for all charters approved under this policy. All contracts and contract amendments, as approved by the CRC, must be presented to the Board for approval. The charter contract must contain all information set forth in the Florida Model Charter Contract Format (Form IEPC-M3) prescribed by the FLDOE.</p>

County/School District	Application Process
	<p>Initial contract shall be for a term of four (4) or five (5) years unless a longer term is specifically required by law.</p> <p>Before a recommendation regarding whether or not the Board should approve an initial contract, evidence of the following shall be provided:</p> <ol style="list-style-type: none"> <li>a. Evidence of a proper legal structure (e.g., articles of incorporation, bylaws, municipal charter). The applicant shall be a not for profit organized pursuant to F.S. Chapter 617.</li> <li>b. Except for virtual charter schools, actual location and evidence that a facility has been secured for the term of the charter, or a deadline for submitting evidence that a facility has been secured for the term of the charter is included in the charter. Evidence should include, but is not limited to: <ol style="list-style-type: none"> <li>1) letter of intent from the landlord or mortgagee indicating property usage and term of occupancy,</li> <li>2) executed lease or certificate of occupancy, and/or</li> <li>3) use or occupational license indicating proper use.</li> </ol> </li> </ol>

### III. Socioeconomic Impact of Charter Schools

Charter schools, operational in Florida since 1996, were established with the intent of improving student learning, increasing learning opportunities with special emphasis on low performing students and reading, and measuring learning outcomes. Designed as a tool for best practices to reform public education, this intended cooperative relationship between charter schools and traditional public schools evolved into a competitive one over time. Now charter schools are seen as instruments of school choice. And as appropriated per-student funding follows students to charter schools, they are also viewed as a cause of reduced funding for the public school that the child would have attended.

Per-student funding, with an allocation of \$7,408 per student for the 2018-2019 school year, has exhibited moderate increases since the 2011-2012 school year.<sup>9</sup> However, these limited dollars appropriated by the State Legislature have failed to keep up with needs and inflation, with current PK-12 funding levels remaining lower than pre-recession levels when inflation is taken into account.<sup>10</sup> The question then becomes, does competition between traditional public schools and charter schools for these limited dollars present fiscal pressures on local school districts?

The concern that charter schools are pulling students and revenues away from traditional public schools lies in how the districts need to respond: by reducing costs. When a public school loses a percentage of its students to charter schools, along with the associated state per-student funding, the school is left with the predicament of not being able to cut fixed costs (e.g., transportation, administration, and facilities). To offset the loss of funding, variable costs, such as spending on teachers, programs, and support services are

<sup>9</sup> Allison Graves, *Rick Scott Says K-12, State University Funding is Highest in Last Six Years*, POLITIFACT FLORIDA (March 23rd, 2018, 11:28 AM)), <https://www.politifact.com/florida/statements/2018/mar/23/rick-scott/rick-scott-says-k-12-state-university-funding-high/>.

<sup>10</sup> *Id.*

often targeted, resulting in larger class sizes and negatively affecting areas such as special education or the arts and the students who once benefitted from these programs and services.<sup>11</sup>

A 2016 report by the Economic Policy Institute found traditional public schools are surviving, but under increased stress.<sup>12</sup> In studying urban districts, the report finds that while resources to traditional public schools have declined, districts have reduced overhead expenditures enough to avoid consuming disproportionate shares of operating spending and increasing pupil/teacher ratios.<sup>13</sup>

#### **a. Charter Schools by the Numbers**

Charter schools now enroll about 10 percent of all of Florida's 2.8 million PK-12 public-school students—amounting to approximately 296,000 students in 648 charter schools. Miami-Dade County has the largest number of charter schools in the state, and its charter school enrollment numbers places it among the top ten nationally of all school systems.<sup>14</sup> Due to the saturation of charter schools in many areas, a moratorium has been placed by some municipalities on the formation of charter schools, as is the case in at least four municipalities in Broward County.<sup>15</sup>

Statewide, the number of charter school approvals substantially decreased from 2011 to 2016 with an uptick in 2017. The 2016 Florida Department of Education Authorizer Report found that districts approved just 31 new charter schools in 2016-17—down from 96 in 2013-14.<sup>16</sup> County-specific data shows the opposite trend, as approvals have substantially increased in Miami-Dade County since 2013, as shown below.

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<sup>11</sup> Alan Stonecipher, Brad Ashwell & Ben Wilcox, *The Hidden Costs of Charter School Choice, Privatizing Public Education in Florida*, INTEGRITY FLORIDA (September 2018), <http://www.integrityflorida.org/wp-content/uploads/2018/09/charter-school-report-final.pdf>; see Helen F. Ladd & John Singleton, *Charter School Growth Puts Fiscal Pressure On Traditional Public Schools*, BROOKINGS (May 1, 2018), <https://www.brookings.edu/blog/brown-center-chalkboard/2018/05/01/charter-school-growth-puts-fiscal-pressure-on-traditional-public-schools/>.

<sup>12</sup> Bruce D. Baker, *Exploring The Consequences Of Charter School Expansion In U.S. Cities*, ECONOMIC POLICY INSTITUTE (November 30, 2016), <https://www.epi.org/files/pdf/109218.pdf>.

<sup>13</sup> *Id.*

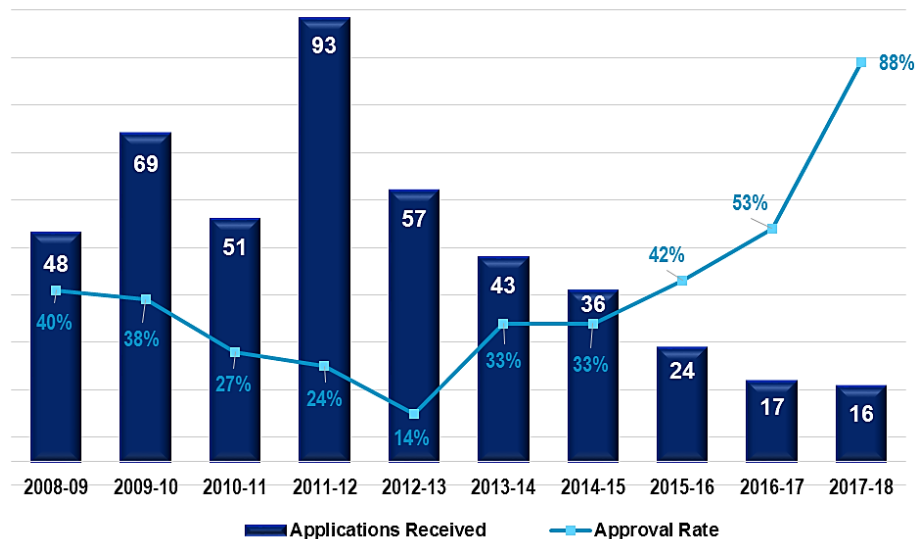
<sup>14</sup> Kevin Hesla, Jamison White & Adam Gerstenfeld, *A Growing Movement: America's Largest Charter Public School Communities*, NATIONAL ALLIANCE FOR PUBLIC CHARTER SCHOOLS (January 2019), [https://www.publiccharters.org/sites/default/files/documents/2019-03/rd1\\_napcs\\_enrollment\\_share\\_report%2003112019.pdf](https://www.publiccharters.org/sites/default/files/documents/2019-03/rd1_napcs_enrollment_share_report%2003112019.pdf).

<sup>15</sup> Communication with Rhonda Stephanik, Coordinator at Broward County Charter Schools Management/Support Department.

<sup>16</sup> Livi Stanford, *Charter School Approvals and Applications are Both Dropping in the State*, REDEFINED (August 29, 2018) <https://www.redefinedonline.org/2018/08/a-deeper-look-at-the-drop-in-florida-charter-school-applications/>.

**Figure 3**

**History of Charter School Application Approval Rate in Miami-Dade County  
2008-2018**

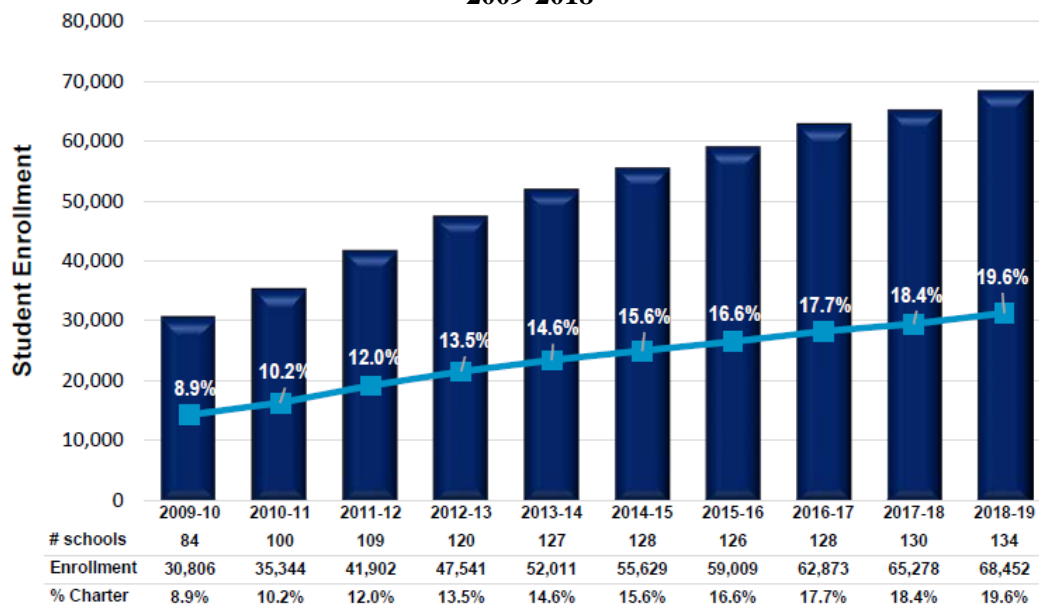


*Source: Miami-Dade County Charter School Compliance and Support*

Despite the high approval rate, the number of charter schools operating within Miami-Dade County has begun to level off in the last four years, after 12 years of increases. Yet charter schools have drawn an increasingly larger share of the district's students. For the 2019-2020 school year, there are 71,108 students enrolled in 140 charter schools in Miami-Dade County, amounting to 20.5% of the County's student population. Illustrated below is the Miami-Dade Charter School Enrollment Trend from 2009-2018.

**Figure 4**

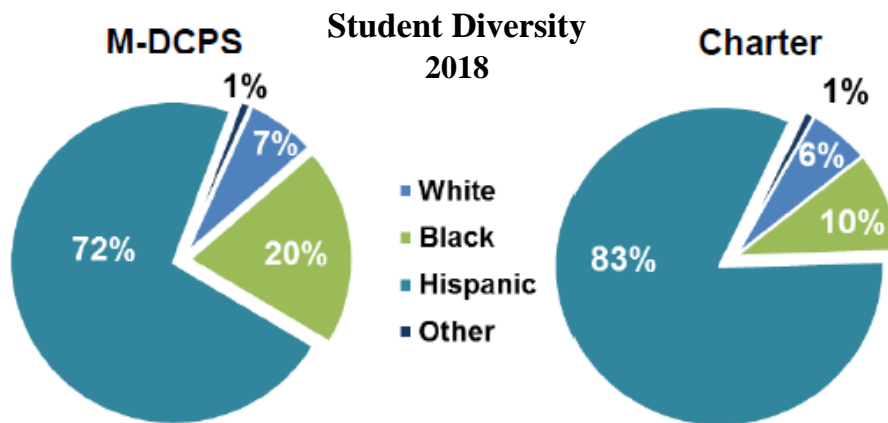
**Charter School Enrollment Trend  
2009-2018**



*Source: Miami-Dade County Charter School Compliance and Support – October 2018 FTE Survey*

Studies examining several states and districts found that the transfer of students to charter schools did not dramatically change the balance of students by race and ethnicity.<sup>17</sup> Depicted below are student demographics for Miami-Dade County Public Schools (M-DCPS) and charter schools in the County.

**Figure 5**



*Source: Miami-Dade County Charter School Compliance and Support*

**Figure 6**

**Membership by Subgroup  
2018**

	M-DCPS	Charter
Free/Reduced Price lunch	69.0%	57.5%
English Language Learners	18.2%	15.4%
Students With Disabilities	10.8%	5.3%
Gifted	11.5%	8.0%

*Source: Miami-Dade County Charter School Compliance and Support*

#### **b. State Laws Governing Charter Schools and Legal Challenges**

The Florida Legislature has loosened restrictions previously placed on the creation of charter schools. Limits on the number of charters in each school district were increased in 2002 and were eliminated in 2003. Charter schools were subsequently made eligible for capital outlay funds appropriated by the State Legislature, surpassing the funds received by traditional public schools in some years.<sup>18</sup> In 2017, the passage of House Bill (HB) 7069 required school districts to share with charter schools capital outlay funds from the discretionary 1.5 millage authorized by law. The bill also established the “Schools of Hope” program, which provides students in areas of persistently low-performing schools with an education option intended to close the opportunity gap and increase student achievement.<sup>19</sup>

<sup>17</sup> Susan Bodilly & Jennifer Li, *The Role of Charter Schools in Improving Education*, RAND EDUCATION (2009), [https://www.rand.org/pubs/research\\_briefs/RB9428/index1.html](https://www.rand.org/pubs/research_briefs/RB9428/index1.html).

<sup>18</sup> Alan Stonecipher, Brad Ashwell & Ben Wilcox, *The Hidden Costs of Charter School Choice, Privatizing Public Education in Florida*, INTEGRITY FLORIDA (September 2018), <http://www.integrityflorida.org/wp-content/uploads/2018/09/charter-school-report-final.pdf>.

<sup>19</sup> “Persistently low-performing school” means a school that has earned three grades lower than a “C,” pursuant to s. 1008.34, in at least 3 of the previous 5 years and has not earned a grade of “B” or higher in the most recent 2 school

“School of Hope” is defined in statutes, after being broadened by the 2019 Florida State Legislature, as “a charter school operated by a Hope Operator which: (1) serves students from one or more persistently low-performing school and students who reside in a Florida Opportunity Zone; (2) is located in a Florida Opportunity Zone or in the attendance zone of a persistently low-performing school or within a 5-mile radius of such school, whichever is greater; (3) and is a Title I eligible school.”<sup>20</sup>

Florida Statutes defines “Hope Operator” as a nonprofit organization that operate three or more charter schools with a record of serving students from low-income families and receives the designation from the State Board of Education. In determining Hope Operator status, the State Board of Education must determine whether the past performance of the operator meets or exceeds the following criteria:

- Student achievement results which must exceed the district and state averages in the state in which the school operates
- College attendance rates at all schools currently operated by the entity which must exceed 80 percent
- The percent of students enrolled at all schools currently operated by the entity eligible for a free or reduced price lunch which must exceed 70 percent
- The operator is in good standing with the authorizer in each state in which it operates
- The audited financial statements of the operator are free of material exceptions and no-going concern issues
- Other outcome measures determined by the SBE

A nonprofit organization may also qualify as a Hope Operator if the organization:

- was awarded a U.S. Department of Education Charter School Program Grant for Replication and Expansion of High-Quality Charter Schools within the past 3 years;
- receives funds through the National Fund of the Charter School Growth Funds; or
- is selected by a district school board.

Once designated as a Hope Operator, and the Hope Operator’s notice of intent to open a School of Hope has been received by a school district, the district has 60 days to enter into a performance-based agreement with the Hope Operator, or be deemed noncompliant.<sup>21</sup>

The penalty for noncompliance is substantial. The offending school districts are precluded from collecting full administrative fees from all of the charter schools they oversee until the Schools of Hope contracts are complete. The administrative fee the school district is able to collect is lessened to one percent (from a maximum of 5 percent) until the performance-based agreement is executed. For Miami-Dade County, the estimated loss would be \$483,000 per month or \$5.8 million annually.<sup>22</sup>

Currently, the four Florida designated Hope Operators are: Democracy Prep Public Schools, Inc., IDEA Public Schools, KIPP New Jersey (KIPP), and Somerset Academy, Inc. KIPP, through KIPP Miami, is

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years, and a school that was closed pursuant to s. 1008.33(4) within 2 years after the submission of a notice of intent; 1002.333, F.S.

<sup>20</sup> Section 1002.333, F.S.

<sup>21</sup> *Id.*

<sup>22</sup> THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, Agenda Item D-65, Request School Board Approval of a School of Hope Performance Based Agreement With KIPP Miami, Inc., *available at* <http://pdfs.dadeschools.net/Bdarch/2019/Bd050819/agenda/d65rev.pdf>.



currently the only Hope Operator operating a School of Hope in Miami-Dade County.<sup>23</sup> These operators receive state funds from the Schools of Hope Program, which has been appropriated \$320,000,000 by the Florida State Legislature to date.

Other financial incentives include access the Schools of Hope Revolving Loan Program, which provides assistance to Hope Operators to meet school building construction needs and pay for expenses related to the startup of a new charter school. Additionally, any facility, or portion thereof, used to house a School of Hope is exempt from ad valorem taxes. Certain institutions, including libraries, churches, colleges and universities, among others, may provide space to schools of hope within their facilities under their preexisting zoning and land use designations without obtaining a special exception, rezoning, or a land use change.<sup>24</sup>

Among the first established Schools of Hope is KIPP Liberty Academy in Miami-Dade County, co-located at Madison Middle School in Commission District 2, represented by Commissioner Jean Monestime, and serving students from the “persistently low-performing school” of Brownsville Middle School, located in Commission District 3, represented by Chairwoman Audrey Edmonson. KIPP Liberty Academy opened for the 2019-20 school year enrolling more than 170 students in 5th and 6th grades, with plans to expand to 8th grade and ultimately educate 400 students annually.<sup>25</sup> Requesting more than \$23 million in Schools of Hope funding over five years, KIPP plans to establish a total of five campuses in the Liberty City and West Little River neighborhoods, eventually enrolling more than 2,800 students in grades K-12.<sup>26</sup>

The constitutionality of public charter schools as well as their primary state funding mechanism have repeatedly been upheld by Florida courts. Most recently, HB 7069 has been challenged by several school boards (Alachua, Bay, Broward, Collier, Hamilton, Lee, Orange, Pinellas, Polk, St. Lucie, and Volusia Counties).

On August 29, 2019, the First District Court of Appeal affirmed a decision by the Leon Circuit County Court, upholding Florida’s Schools of Hope law while rejecting the challenge that the law usurped local authority.<sup>27</sup> Specifically, the complaint alleged that HB 7069 unconstitutionally: (1) mandates that school boards share a portion of their discretionary capital outlay millage revenues with charter schools; (2) allows for the creation of charter schools called “Schools of Hope” that would be allowed to operate outside of any meaningful control or supervision by the school boards and create dual or even multiple systems of public education; (3) allows Schools of Hope and authorized charter school systems to serve as local education agencies; (4) strips the school boards of their ability to supervise and control charter schools by requiring them to enter into a standard charter contract with charter school operators; (5) restricts the authority of the school boards to effectively use federal Title I funds to operate, supervise, and control public schools in their district; and (6) divests the school boards of their authority and responsibility to decide how best to improve a public school that the State has identified as low-performing. The court

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<sup>23</sup> The Florida Department of Education prescribed that the approval of KIPP New Jersey, Inc., as a Hope Operator includes non-profit entities operating in Florida pursuant to a Charter Management Organization (CMO) Management Agreement with KIPP New Jersey, Inc. KIPP New Jersey, Inc., is the CMO for KIPP Miami, Inc., *Id.*

<sup>24</sup> Section 1002.333, F.S.

<sup>25</sup> KIPP MIAMI, <http://www.kippmiami.org/kipp-liberty-academy/> (last visited September 19, 2019).

<sup>26</sup> Jessica Bakeman, *Charter ‘Schools Of Hope’ Get Extra Funding And Special Treatment. They’ll Soon Enroll Thousands*, WLRN (September 6, 2019), <https://www.wlrn.org/post/charter-schools-hope-get-extra-funding-and-special-treatment-they-ll-soon-enroll-thousands>.

<sup>27</sup> *The School Board of Collier County, Florida v. Florida Department of Education*, No. 1D18-2040 (Fla. Dist. Ct. App. Aug. 29, 2019).



ruled that the school boards lacked standing to raise all but their capital millage and federal Title I funding constitutional claims, both of which failed on the merits, citing precedent and that the Florida Constitution “creates a hierarchy under which a school board has local control, but the State Board supervises the system as a whole.”<sup>28</sup> Nine school boards are collectively appealing this decision to the State Supreme Court.

### **c. Impact of Charter Schools on Traditional Public Schools**

Any significant increase in charter school student enrollment directly impacts a school district’s operating budget, as well as staffing levels. For example, as a direct result of KIPP Liberty Academy opening in Miami-Dade County, the School Board approved an as needed reduction-in-force/layoff based on projected loss in per-student funding derived from the charter school’s forecasted enrollment numbers. In its School of Hope Notice of Intent submitted to the Superintendent, KIPP Miami stated that its Liberty Academy will serve, at a minimum, 5th and 6th grades in 2019-20 and, at a maximum, kindergarten through 6th grade, with enrollment ranging between 224 and 784 students. Projecting a loss of per-student funding for potentially 784 students, the School Board of Miami-Dade County approved a human capital loss of up to 62 positions for school year 2019-2020, including 30 core positions (elementary education, language arts/reading, mathematics, science, and social science), 8 non-core positions (electives and all other subject areas and programs), and 24 non-instructional positions.<sup>29</sup> Ultimately, KIPP Liberty Academy opened for the 2019-20 school year enrolling just 170 students in 5th and 6th grades, thus not necessitating the full human capital loss approved by the School Board.

Seventeen (17) public schools in Miami-Dade County have closed since 1996, and two have been reconfigured into K-8 centers, merging elementary and middle schools.<sup>30</sup> However, it is unclear whether these particular closures and changes are the result of the increase in charter schools operating in the County.

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<sup>28</sup> *Id.*

<sup>29</sup> THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, Agenda Item D-65, Request School Board Approval of a School of Hope Performance Based Agreement With KIPP Miami, Inc., *available at* <http://pdfs.dadeschools.net/Bdarch/2019/Bd050819/agenda/d65rev.pdf>.

<sup>30</sup> Miami-Dade County Public School Closures, FLORIDA DEPARTMENT OF EDUCATION, MASTER SCHOOL ID 2019-2020 <http://doeweb-prd.doe.state.fl.us/EDS/MasterSchoolID/Downloads.cfm?CFID=4914164&CFTOKEN=c0c69477c308a471-E9F77A37-5056-AAE8-B021BA6B325E65A9> (select “Download Files”; then select “Download All Schools, All Fields”).

**Figure 7**

**Miami-Dade County Public School Closures  
1996 – Present<sup>31</sup>**

<b>Date Closed</b>	<b>School</b>	<b>Type</b>	<b>Commission District</b>	<b>Address</b>
6/30/2019	Miami Park Elementary School*	Elementary	2	2225 NW 103 <sup>rd</sup> St.
6/30/2015	Primary Learning Center (formerly Miami-Dade Primary Learning Center)	Elementary	3	1500 Biscayne Blvd., Suite 101
7/31/2014	Campbell Drive Middle School	Middle/Jr. High	8	900 NE 23 <sup>rd</sup> Ave.
7/31/2014	Charles R. Drew Middle School	Middle/Jr. High	3	1801 NW 60 <sup>th</sup> St.
7/31/2014	Miami Edison Middle School	Middle/Jr. High	3	6101 NW 2 <sup>nd</sup> Ave.
7/31/2014	Parkway Middle Community School (formerly Parkway Middle School)	Middle/Jr. High	1	2349 NW 175 <sup>th</sup> St.
8/19/2013	Doral Middle School	Middle/Jr. High	12	5005 NW 112 <sup>th</sup> Ave.
8/19/2013	Westview Middle School	Middle/Jr. High	2	1901 NW 127 <sup>th</sup> St.
6/30/2013	Jose Marti Middle School	Middle/Jr. High	12	5701 W 24 <sup>th</sup> Ave.
6/30/2013	Mays Community Middle School (formerly Mays Middle School)	Middle/Jr. High	9	11700 SW 216 <sup>th</sup> St.
6/30/2012	Martin Luther King Elementary School	Elementary	3	7124 NW 12 <sup>th</sup> Ave.
6/30/2011	James W. Johnson Elementary School	Elementary	13	735 W 23 <sup>rd</sup> St.
6/30/2011	Howard A. Doolin Middle School*	Middle/Jr. High	9	6601 SW 152 <sup>nd</sup> Ave.
6/30/2006	Citrus Grove OTC (formerly Citrus Grove Middle)	Senior High	5	357 NW 22 <sup>nd</sup> Ave.
6/30/2003	Floral Heights Elementary School	Elementary	3	5120 NW 24 <sup>th</sup> Ave.
8/30/1999	Catholic Home Elementary School	Elementary	3	1450 NE 2 <sup>nd</sup> Ave.
6/30/1999	Booker T. Washington Middle School (converted to high school)	Middle/Jr. High	3	1200 NW 6 <sup>th</sup> Ave.
6/30/1997	Buena Vista Elementary School	Elementary	3	401 NW 29 <sup>th</sup> Street
6/30/1997	Miramar Elementary School	Elementary	5	1001 NW 7 <sup>th</sup> Street

\*Merged into K-8 Center

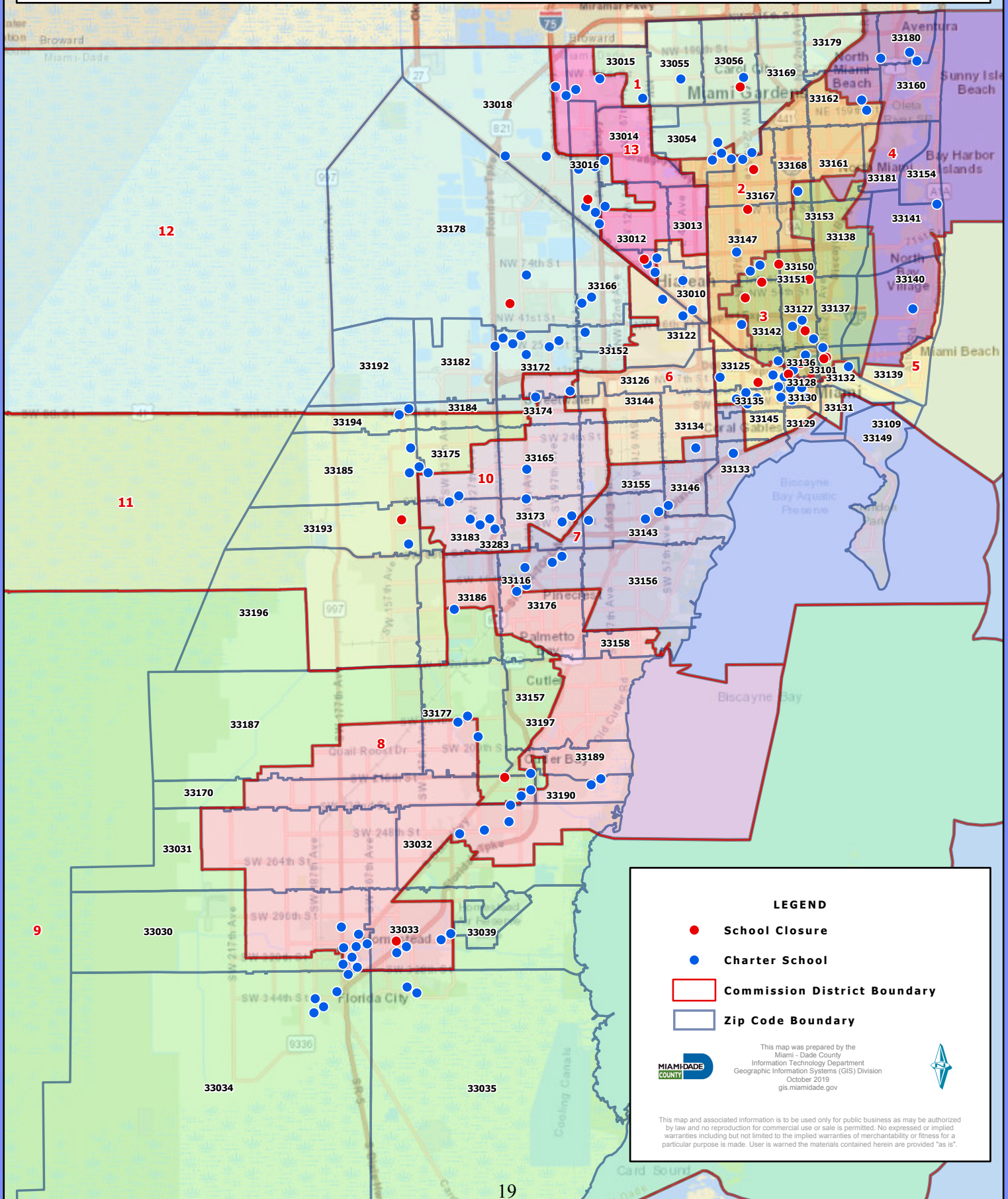
The map below depicts the location of traditional public schools in Miami-Dade County that have closed since 1996, as well as the location of charter schools currently operating in the County.

<sup>31</sup> *Id.*

Figure 8

# Miami-Dade County

## MDCPS School Closures and Charter Schools



#### **d. Comparison of Charter School and Traditional Public School Student Performance**

While FLDOE statewide data suggests that charter school students are outperforming traditional public school students, M-DCPS data specific to Miami-Dade County suggests parallel academic performance among the two groups.

As prescribed in 1002.33 Florida Statutes, charter schools must improve student learning and academic achievement, increase learning opportunities for all students, with special emphasis on low-performing students and reading, encourage the use of innovative learning methods, and require the measurement of learning outcomes. FLDOE's annual charter school performance report states that in 63 of the 77 (82%) comparisons, students enrolled in charter schools demonstrated higher rates of grade level performance than their peers in traditional public schools.<sup>32</sup> In comparisons of achievement and learning gains, FLDOE reported the following findings:

- African-American students in charter schools performed better than African-American students in district-managed schools in 89% of the comparisons.
- Hispanic students in charter schools performed better than Hispanic students in district-managed schools in 93% of the comparisons.
- Students eligible for free/reduced lunch in charter schools performed better than students eligible for free/reduced lunch in district-managed schools in 93% of the comparisons.

In Miami-Dade County, however, county-specific data shows that most charter schools do not produce superior student achievement outcomes when compared to traditional schools. M-DCPS found that almost half of the charter schools in Miami-Dade County performed no differently from the traditional school comparison group in each of the subject areas of Reading/English Language Arts and Mathematics. Where significant differences were found, results in both subject areas favored the traditional school comparison group. The detailed results of the study are as follows:

- In Reading/English Language Arts, 43.7% of the charter schools had results that were not significantly different from the traditional school comparison group, while 31.1% had results that were significantly lower, and 25.2% had results that were significantly higher.
- In Mathematics, 46.2% of the charter schools had results that were not significantly different than the traditional school comparison group, while 34.2% had results that were significantly lower, and 19.7% had results that were significantly higher.<sup>33</sup>

#### **e. Charter School Management and Charter School Closures**

While a charter school must be organized as, or be operated by, a nonprofit organization, it can be managed by for profit companies, raising the question of the extent to which private companies are benefitting from public funding. As of October 2018, Miami-Dade is the district with the most charter schools managed by private companies, with for-profits operating 105 (78%) of the then 134 charters in the district and only 17 charter schools being independent, seven being District managed, and five purchasing services from nonprofit organizations.<sup>34</sup>

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<sup>32</sup> FLORIDA DEPARTMENT OF EDUCATION, *Student Achievement in Florida's Charter Schools: A Comparison of the Performance of Charter School Students with Traditional Public School Students* (March 2019), <http://www.fldoe.org/core/fileparse.php/7778/urlt/SAR1819.pdf>.

<sup>33</sup> Steven M. Urdegar, M.B.A., Ph.D., *Miami-Dade County Public Schools 2017-2018 Review of Charter Schools*, MIAMI-DADE COUNTY PUBLIC SCHOOLS ASSESSMENT, RESEARCH AND DATA ANALYSIS (November 2018), <http://oer.dadeschools.net/Evaluations/M499%20-%20ATTACHMENT%20-%20Charter%20School%20Evaluation%202017-18.pdf>.

<sup>34</sup> MIAMI-DADE COUNTY PUBLIC SCHOOLS CHARTER SCHOOL COMPLIANCE AND SUPPORT, *Miami-Dade County Public Schools Charter School Fact Sheet* (2018), <https://csdade.net/Download/Pdfdocs/factsheet.pdf>.



Through both management fees and leases the schools sign for their facilities, for-profit management companies receive payments coming from per-student funding appropriated by the legislature that is passed on to the charter school. However, in certain instances these for-profit management companies misappropriated or otherwise mismanaged public funds they received. In the most egregious instance, Newpoint Education Partners, which once operated 15 charter schools in six Florida counties and received more than \$57 million in public education funds for charter schools from 2007 through 2016, saw all its schools close (with the exception of one which is still open under new management) when its owner utilized public monies intended for charter schools for personal use and was convicted of racketeering and organized fraud.<sup>35</sup> Other instances include two charter schools in Broward County—Pathway Academy Charter School and Paramount Charter School—closing in 2017 due to financial mismanagement.<sup>36</sup>

Since 1998, at least 373 charter schools have closed in Florida.<sup>37</sup> Charter school closures could be due to financial mismanagement, changing parental preferences, or academic failure. A 2015 state law requires charter schools to close if they fail academically in two consecutive years.<sup>38</sup> Detailed below is the number of charter school closures in Miami-Dade County from 2001 to 2017.

**Figure 9**

**Charter School Closures in Miami-Dade County  
2001 - 2017**

Number of School Closures	2001	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
State Mandated											1				1
District Mandated	1	1	1		2	3	1		2	1					12
Governing Board Voluntary Closure		5	1	2	3	2	3	1			5	3	2	5	32
<b>Total by Year</b>	<b>1</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>5</b>	<b>5</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>6</b>	<b>3</b>	<b>2</b>	<b>5</b>	<b>45</b>

*Source: Miami-Dade County Charter School Compliance and Support*

<sup>35</sup> Alan Stonecipher, Brad Ashwell & Ben Wilcox, *The Hidden Costs of Charter School Choice, Privatizing Public Education in Florida*, INTEGRITY FLORIDA (September 2018), <http://www.integrityflorida.org/wp-content/uploads/2018/09/charter-school-report-final.pdf>

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Section 1002.33, F.S.

**f. Conclusion**

As the Florida State Legislature continues to incentivize the creation of charter schools, Miami-Dade County can expect to continue to see an increase in the number of charter schools operating within the County. While the proliferation of charter schools—and their associated increased student enrollment—creates financial stress on traditional public schools, the extent to which this correlates with decreased student performance and public school closures remains unclear. What is clear is that the unpredictability presented by the opening and closing of charter schools presents challenges for both school districts, and commission districts, in effectively utilizing resources in order to insulate students from fiscal effects. Nonetheless, at the local level, traditional public school students in Miami-Dade County are performing on par with their charter school peers, and by some measures outperforming them.