

ORANGE COUNTY
BOARD OF EDUCATION

AGENDA ITEM ABSTRACT

Meeting Date: May 29, 2012

AGENDA ITEM No. 12-05-(2)-15

ACTION ITEM: (Y/N) Y

SUBJECT: North Carolina Virtual Academy Resolution

INFO. CONTACT: Donna Coffey / G. Patrick Rhodes PHONE: 919-732-8126

ATTACHMENTS: 1. Resolution To Seek Intervention As A Party In The Pending Litigation North Carolina Learns, Inc. v. State Board of Education.

PURPOSE: The purpose of this agenda item is to provide a draft Resolution for board consideration regarding the North Carolina Virtual Academy.

BACKGROUND: The North Carolina School Boards Association has asked our board to consider intervening, at no additional cost to the board, in a lawsuit to contest the default granting of a charter to a for profit virtual charter school by an administrative law judge. Allison Schafer, Chief Counsel for NCSBA, has provided the background below:

Administrative Law Judge Beecher Gray recently ruled that the North Carolina Virtual Academy (NCVA) must be granted a charter to begin operating in August 2012. The ruling came after North Carolina Learns, Inc., the nonprofit organization that filed NCVA's charter application, filed legal action against the State Board of Education (SBE), alleging that the SBE acted arbitrarily and capriciously when it did not vote on NCVA's charter application before a statutory March 15, 2012, deadline.

On May 18, 2012, the Board of Directors of the NCSBA voted to file a petition for the Association to intervene in the litigation and to seek other interveners among its members. Intervention would allow legal counsel representing the association and its members to participate fully in the litigation, in the same manner that local boards participated in the lawsuit regarding mandatory eye exams for all students in 2006. There will be no cost to the board for intervening in the litigation; the Association's Legal Assistance Fund will bear the litigation costs.

In the charter application, NCVA estimates that it will enroll 2,750 students in grades K-10 in its initial year of operation. Because NCVA will be a virtual charter school, with no fixed location, it projects that those 2,750 students will come from all over the state of North Carolina. NCVA conservatively estimates that its revenues in its first year will include almost \$13.5 million in state revenue and \$5.1 million in local funds. **Although NCVA will not have buildings to maintain, transportation, or child nutrition costs, it will be entitled to the same state and local per-pupil funding as any brick-and-mortar school.**

Although N.C. Learns filed the charter application and the petition, the organization will be contracting with K12, a private, for-profit corporation, to manage the school operations. K12 runs virtual charter schools in a number of other states. There have been numerous parental and employee complaints

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about virtual charter schools operated by K12, and the company has been required to return funds in at least one state, which discovered that K12 was funded for students who never attended school.

Pursuant to a rarely used provision of state law, N.C. Learns sought preliminary approval for a charter from a local board of education (in this case, Cabarrus County). The Cabarrus County Board of Education granted preliminary approval in late January 2012, and N.C. Learns filed its application for final approval with the SBE on February 14. State law requires the SBE to vote by March 15 on charter school applications that it receives prior to February 15.

However, at the October 6, 2011, SBE meeting, Chair Bill Harrison had announced that the SBE would not be considering any virtual charter school applications for August 2012 openings, because the SBE was waiting for the state's e-Learning Commission to consider the issues surrounding such schools. Therefore, when N.C. Learns submitted its application to the Board for final approval, the Board did not add the application to its agenda.

N.C. Learns persuaded Judge Gray that the SBE's failure to vote on the application by March 15, 2012, was arbitrary and capricious and that the remedy for that failure was the granting of the charter.

If your board is interested in intervening in the litigation as a party, please let our office know as soon as possible, as we expect that the state's appeal will be filed within the next week or so.

Note: Orange County Schools is not against or opposed to on-line or virtual learning programs. Orange County Schools' students participate in N.C. Virtual Public Schools and several of our teachers are instructors for N.C. Virtual Public Schools.

FINANCIAL IMPACT: All costs associated with this action will be borne by the North Carolina School Boards Association.

RECOMMENDATION: The Superintendent recommends the Board of Education intervene as a party in the pending litigation captioned North Carolina Learns, Inc. vs. State Board of Education, and approve the attached resolution.

RESOLUTION

**To Seek Intervention As A Party In The Pending Litigation
*North Carolina Learns, Inc. v. State Board of Education***

**Orange County
Board of
Education**

Board Members:

Donna Coffey
Chair
Stephen H. Halkiotis
Vice Chair

Eddie M. Eubanks
Tony M. McKnight
Anne Medenblik
Deborah A. Piscitelli
Brenda Stephens

G. Patrick Rhodes
Superintendent

200 East King Street
Hillsborough, NC 27278
Telephone: 919-732-8126
FAX: 919-732-8120



WHEREAS, the Cabarrus County Board of Education granted preliminary approval to an application filed by North Carolina Learns, Inc. (hereafter "N.C. Learns") to establish a virtual charter school; and

WHEREAS, according to the application, N.C. Learns projects that its virtual charter school will serve 2,750 students from across North Carolina beginning in August 2012 and will double its initial enrollment within seven years; and

WHEREAS, prior to the submission of N.C. Learns' charter application to the Cabarrus County Board of Education, the State Board of Education asked the E-Learning Commission to study virtual charter schools and develop standards and recommendations for the State Board to apply in evaluating charter school applications; and

WHEREAS, in March 2012 the E-Learning Commission had not completed its study of the issues surrounding virtual charter schools, including funding, oversight, and academic achievement; and

WHEREAS, in light of the E-Learning Commission's continued study of the impact of virtual charter schools, the State Board of Education took no action on N.C. Learns' charter application in March 2012;

WHEREAS, on May 18, 2012, an Administrative Law Judge ruled that because the State Board failed to take action, N.C. Learns' charter application is granted and its virtual charter school will begin operating in August 2012; and

WHEREAS, although a virtual charter school has lower operating costs than a traditional charter school, the statutory funding formula requires N.C. Learns' virtual school to be funded under the same per-pupil formula as brick and mortar charter schools; and

WHEREAS, the Orange County Board of Education will be obligated to transfer a per-pupil share of local funds for each Orange County student who enrolls in the virtual charter school, including students who previously have been home schooled and who therefore are not provided for in state and local budget appropriations; and

WHEREAS, the Orange County Board of Education submitted a proposed budget to the Board of County Commissioners by May 15, as required by state law; and

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WHEREAS, in developing the proposed budget, the Board of Education considered and planned for a certain percentage of its local funds being allocated to charter schools attended by students domiciled in Orange County; and

WHEREAS, the Board of Education did not have the opportunity to consider and plan for local students enrolled in a virtual charter school; and

WHEREAS, local education budgets are already under significant strain due to cutbacks in state and local funding during the previous four years and the elimination of significant federal funding in the upcoming fiscal year; and

WHEREAS, early data on student achievement at virtual charter schools in other states reflects significantly low student performance and graduation rates; and

WHEREAS, as a result of the Administrative Law Judge's ruling, the virtual charter school could begin operating within three months with no review by the State Board of Education, the body charged in the state constitution with oversight of the public school system, of the virtual charter school's operating costs, the quality of the education it will provide, and its impact on school districts across the state; and

WHEREAS, the Board of Education does not believe that a single local board of education, accountable only to the people of Cabarrus County, should be in a position to make a decision that impacts students and school districts across the state; and

NOW, THEREFORE, BE IT RESOLVED, the Orange County Board of Education hereby agrees to seek intervention as a party in the pending litigation captioned *North Carolina Learns, Inc. v. State Board of Education* and authorizes Tharrington Smith, LLP, to represent the Board of Education in the litigation, with the litigation costs to be borne by the N.C. School Boards Association Legal Assistance Fund.

Adopted this ____ day of _____, 2012.

Chairperson

Superintendent