

SCHOOL BOARD OF POLK COUNTY

P.O. BOX 391
BARTOW, FLORIDA 33831

(863) 534-0500

1915 SOUTH FLORAL AVENUE
BARTOW, FLORIDA 33830

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December 18, 2015

Cathy Schroeder, Agency Clerk
Florida State Board of Education
325 West Gaines Street, Suite 1520
Tallahassee, Florida 32299-0400

RE: Appellant/School Board's Answer Brief
Our Children's Prep School, Inc., v. School Board of Polk County, Florida

VIA EXPRESS MAIL

Dear Ms. Schroeder:

Enclosed please find for filing ten copies of the Answer Brief in response to the Notice of Appeal by Our Children's Prep School, Inc. Please be advised that the administrative offices of the School Board of Polk County will close at 3:30 p.m. on December 18, 2015, and reopen on January 4, 2016 at 8:00 a.m.

I wish for you and yours a safe and happy holiday.

Very truly yours,

C. Wesley Bridges II
General Counsel

Attachments

cc: Melissa Gross-Arnold, w/attachment (Via Overnight Delivery)

STATE BOARD OF EDUCATION
FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEAL COMMISSION

OUR CHILDREN'S PREP SCHOOL, INC.

Applicant/Appellant,

v.

CASE NO.: _____

SCHOOL BOARD OF POLK COUNTY, FLORIDA

School Board/Appellee.
_____ /

BRIEF OF APPELLEE, THE SCHOOL BOARD OF POLK COUNTY, FLORIDA, IN
RESPONSE TO OUR CHILDREN'S PREP SCHOOL, INC.'S, NOTICE OF APPEAL
OF DENIAL OF CHARTER SCHOOL APPLICATION

Comes now the Appellee, the SCHOOL BOARD OF POLK COUNTY, FLORIDA (hereinafter "School Board" or "Board"), by and through its undersigned counsel, and files this brief in response to the *Notice of Appeal of Denial of Charter School Application for Our Children's Prep School, Inc.* ("Notice of Appeal") filed by Appellant/Applicant OUR CHILDREN'S PREP SCHOOL, INC., (hereinafter "Our Children's"). Nothing herein should be construed as a waiver of any substantive or procedural right or issue that may be raised pursuant to this appeal by the School Board. Respectfully, the State Board of Education should approve the School Board's decision to deny Our Children's charter school application for the reasons articulated in the School Board's denial letter, each of which constitutes statutory good cause for denial of the application. For purposes of economy and ease of use, this brief will not include exhibits which were included by the Appellant. References to exhibits included by the Appellant

will be referred to as "Appellant Exhibit ____." Additional exhibits attached to this brief will be referred to as "School Board Exhibit ____"

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The School Board of Polk County, Florida, has a long and successful history of sponsoring charter schools, with 25 currently operating and three new charter schools scheduled to open this year. Polk County's charter schools include some of the first in the state, including some of the first conversion charter schools. Approximately 13,000 students, about 14% of our total student population, attend charter schools in Polk County.

The process for submission and evaluation of charter school applications in Polk County is set forth in School Board Policy 9800, a copy of which is attached as School Board Exhibit 1. The application deadline is 1 August of each year, and applications are required to be submitted using the Model Florida Charter School Application. An applicant interview is required. A committee reporting to the Superintendent of Schools reviews the applications; the Superintendent of Schools then prepares a recommendation to the School Board. Copies of the Review Committee's notes regarding each application are provided to the applicants, and there is provision for timely responses to the Review Committee's comments to be provided to School Board members for their consideration. Applications are considered final as of the date of submission, and the School Board does not consider amendments or changes brought after the deadline for submission, other than the correction of technical or nonsubstantial errors such as typographical or grammatical mistakes. School Board Exhibits 1, 6.

On 16 April 2015, the School Board held a new charter applicant orientation at its district offices. In accordance with the opportunity afforded by F.S. 1002.33(6)(b), on 1 May 2015 Our Children's submitted a draft of its application for advance review. The School Board's charter

review committee performed this task and provided a response on 25 June 2015 which identified a number of items deemed insufficient, including Exceptional Student Education, Governance, and Budget. Appellant Exhibit 2. Our Children's submitted its final application on 3 August 2015. Appellant Exhibit 3. At that time, the applicant interview was scheduled, and the charter school applicant timeline was provided to each applicant.

On 11 August, representatives of Our Children's appeared to present their application to the School Board at a work session meeting.

On 9 September 2015, Assistant Superintendent John Small and Director of Charter Schools Melissa Brady conducted the required applicant interview. Appellant Exhibit 7. The purpose of applicant interviews is primarily to allow applicants to clarify any ambiguities and answer questions concerning the content of the submitted application. There is no opportunity to amend an application after the deadline for submission, beyond the mandate of S. 1002.33(7)(b) to correct technical or nonsubstantive errors such as grammatical or typographical mistakes. School Board Exhibit 1.

The Charter Review Committee's comments regarding the Our Children's application were presented to the School Board at it 22 September 2015 work session. Appellant Exhibit 8. On 2 October, the Applicant sent an e-mail to Melissa Brady, in an effort to submit a corrected budget. School Board Exhibit 4. Our Children's application was presented to the School Board for consideration on 6 October 2015, at the regularly scheduled School Board meeting. Based on the Superintendent's recommendation, the School Board voted to deny the application. Appellant Exhibit 9. Pursuant to the provisions of F.S. 1002.33(6)(b)(3), on 16 October 2015, the district provided in writing, by certified mail, the specific reasons, based upon good cause, supporting the denial, with copies to the chair of the founding board and the Department of

Education. Copies of this letter and its attachments are included at Appellant's Exhibit 1. The Applicant took appeal pursuant to F.S. 1002.33(6)(c). The district received notice of the appeal on 19 November 2015.

II. ISSUES PRESENTED ON APPEAL

The School Board's formal letter of denial identified the following reasons for denial, based upon good cause (Appellant Exhibit 1):

1. The application failed to adequately include an expense projection that includes full accounting of the costs of operation to ensure fiscal responsibility.
2. The application failed to provide an adequate financial plan for each year requested by the charter for operation of the school.
3. The application failed to provide a detailed curriculum plan that illustrates how students will be provided services to attain applicable standards, as well as failing to provide measurable goals and objectives for improving student learning and measuring that improvement.
4. The application did not meet statutory standards for approval with respect to its target population and student body (application provided conflicting information regarding the age groups of the students to be served); educational program design (application failed to provide a clear and coherent plan of the proposed education foundation, and failed to provide an educational program for elementary and middle school students other than to provide sample schedules); exceptional students (application failed to provide detailed and comprehensive plan for serving exceptional students, which was deemed a significant deficiency given that the school specifically proposes to serve students with disabilities); student recruitment and enrollment (parent contract provides for dismissal of students for reasons including inappropriate/disruptive

behavior of parents, family members, or students, in violation of F.S. 1000.05(b)); facilities (application failed to provide evidence of ability to lease a facility based upon application narrative and budget); and food service (application failed to provide a definitive explanation of the school's plan to provide food service).

While Appellant does not clearly articulate specific issues raised on appeal, a careful review of its brief suggests that Appellant raises essentially the following issues:

1. Whether the School Board had good cause based upon competent and substantial evidence to deny Our Children's application based on the school's target population (Appellant's Brief, page 10).

2. Whether the School Board had good cause based upon competent and substantial evidence to deny Our Children's application based on deficiencies in the school's educational program design (Appellant's Brief, page 11).

3. Whether the School Board had good cause based upon competent and substantial evidence to deny Our Children's application based on failure to provide a detailed and comprehensive plan for serving exceptional students (Appellant's Brief, pp. 11-12).

4. Whether the School Board had good cause based upon competent and substantial evidence to deny Our Children's application based on the school's organizational plan, which included a parent contract which provides for the dismissal of students without due process (Appellant's Brief, pp. 13-14).

5. Whether the School Board had good cause based upon competent and substantial evidence to deny Our Children's application based on the school's business plan, which includes facilities, food service, and financial planning (Appellant's Brief, pp. 14-19).

An overarching issue hinges on whether the Appellant had a right to change its application after the 3 August deadline for the submission of final applications, and, if so, what comprises “technical or nonsubstantive corrections and clarifications,” as contemplated in S. 1002.33(6)(b) (Fla. Stat. 2014). By extension, this issue asks whether the School Board was required to consider various matters submitted after the application deadline (Appellant’s Brief, page 11).

III. SUMMARY OF ARGUMENT

The School Board properly denied the Our Children’s application for the reasons articulated in its denial letter, utilizing a process that complies with state law and school board policy. The reasons articulated by the School Board comprise good cause and are supported by competent and substantial evidence. Competent and substantial evidence of the absence in a charter application of elements required by law is best established by reviewing the application itself.

State law and School Board policy allow the School Board to consider only those applications submitted by the August 3 deadline, subject to the requirement to allow the school to make technical or nonsubstantive corrections and clarifications such as corrections of grammatical and typographical errors. The School Board is not required to consider amendments or changes submitted after the deadline, beyond technical or nonsubstantive mistakes. Substantive changes to the school’s budget submitted after the application deadline were properly excluded from consideration in evaluating the application.

IV. LEGAL STANDARDS

School Board Policy 9800 sets forth under “Application Evaluation Process”, section B, the following provision:

The Board shall evaluate all timely final applications as submitted. During the evaluation process, 1) applications cannot be amended and 2) missing documentation and unsolicited information will not be accepted or considered. However, as required by law, the Board shall allow the applicant, upon receipt of written notification, seven (7) calendar days to make technical or nonsubstantive corrections and clarifications, including, but not limited to corrections of grammatical, typographical, and like errors or to add missing signatures, if such errors are identified as cause to deny the final application.

Section C mandates that “(T)he Board shall deny any final application that does not comply with the statutory requirements and/or Board’s instructions for charter school applications. School Board Exhibit 1.

Under Florida law, a district school board may deny a charter school application for “good cause.” S. 1002.33(6)(c)3.a., Fla. Stat. (2014) Generally, “a denial based on good cause contemplates a *legally sufficient reason*” for school board action. School Board of Osceola County v. UCP of Central Fla., 905 So. 2d 909, 914 (Fla. 5th DCA 2005).

DOE review of a charter school denial is “*limited to the specific alleged errors of the school board as identified in the (applicant’s) notice of appeal.*” Fla. Admin. Code R. 6A-6.0781(1)(c)(1997)(emphasis added). Typically, for each appellate issue or point raised by a charter school, CSAC and SBE analyze, relative to the statutory and rule-based charter school application requirements:

(a) whether the school board’s factual findings are sound (I.E., based on competent, substantial evidence); and

(b) whether the school board’s factual findings are legally sufficient grounds for denial (I.E., constitute statutory (good cause”). See, e.g., State of Fla., Dep’t of Ed., Charter Sch. Appeal Comm’n Hrgs Transcript, Vol. 2, 169-72 (Feb 7, 2012).

A school board's finding of fact is sound if based on relevant evidence of record that a reasonable mind would accept as adequate to support the conclusion reached. DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957). A school board's finding is a legally sufficient reason for denial if it shows non-compliance with statutory application criteria, material deficiency in an area covered by the DOE's model application, or inability to meet the principles and purposes for charter schools articulated by state law. See Imhotep-Nguzo Saba Charter Sch. V. Department of Ed., 947 So. 2d 1279, 1282-84 (Fla. 4th DCA 2007); School Bd. Of Volusia County v. Academies of Excellence, Inc., 974 So. 2d 1186, 1191 (Fla. 5th DCA 2008); S. 1002.33(2), Fla. Stat. (2014).

V. ARGUMENT

BUDGET AND FINANCIAL PLAN

The School Board will first address deficiencies in the school's business plan, as these are the most significant and arguably the most important bases for denial. Anecdotally, budget-related deficiencies appear to be the most frequently upheld bases for denial of charter applications or termination of charter contracts.

Florida Statute 1002.33(6)(a)5 requires charter applications to include an annual financial plan for each year requested by the charter for operation of the school for up to 5 years, which must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends. Deficiencies of these sorts are statutory and comprise good cause for denial of a charter application.

A sound financial plan is one of the most essential elements of a successful charter application. Regardless of how successful a proposed charter school may be, if the budget

cannot support the innovations proposed in the school's educational program, the school simply is not viable. This charter application included a budget that, based on the errors found in revenue calculations and the submitted expenses in the proposed budget, results in Our Children's Prep School not being able to operate as a financially viable organization. The budget includes projected losses of over \$250,000 for each of the five years submitted, if gifts/grants/bequests funding is not considered. Even giving the school the benefit of the doubt and assuming 100% funding of the budgeted gifts/grants/bequests, the projected losses would be at a minimum of \$140,000 per year and would reach a total negative balance of \$882,450 over the five-year period.

Our Children's application fails to meet the requirements of S. 1002.33(6)(a)(5) in several respects. Specifically:

- Failure to budget costs associated with the school's food service program

- Failure to align the startup narrative with the startup expenditures and revenues with respect to sources of funding and relying upon gifts/grants/bequests and capital outlay funding for which the school would only be eligible, if at all, after year four.

- Failure to address shortage in revenue in each of the five years of the proposed budget.

- Failure to provide evidence of ability to lease an appropriate facility based on the provided narrative and budget.

Our Children's asserts that the School Board somehow "waived" compliance with budgetary requirements and expectations because of its responses to the school's draft charter application in June 2015. Appellant's Brief, page 19. However, the budgeting error in the final charter application submitted in August (including the FEFP Categorical line items of Instructional Materials, Lottery Funds, and Transportation, which were also included in the

FEFP line item), was not calculated incorrectly in the May preliminary budget submitted for advance review by the district. School Board Exhibit 2.

Fiscal Year:	<u>FY16-17</u>	<u>FY17-18</u>	<u>FY18-19</u>	<u>FY19-20</u>	<u>FY20-21</u>
Instructional Materials	12,675	15,000	25,954	27,190	27,190
Lottery	1,290	300	238	286	1,000
Transportation	359,250	370,746	386,370	400,680	400,680
	373,215	386,046	412,562	428,156	428,870

It is both specious and disingenuous to argue that the School Board waived review of inadequacies in the final budget because it performed a preliminary review of a draft budget *which did not contain those inadequacies*. There was absolutely no possibility for school district staff to provide feedback on an error that was submitted in the final budget, but which was not presented in the May draft. Furthermore, the budget changed *substantially* in many other ways from the May draft to the final budget submitted with the application in August. For instance, capital outlay costs *doubled* from the May draft in the August final budget submission. School Board Exhibit 3.

On appeal, Our Children's asserts that it is "permitted by law to correct these mistakes," and that "correction of these errors did not constitute a substantive change to the budget or the program proposed in the Charter Application." Appellant's Brief, pages 18-19. For ease of reference, a copy of the budget submitted with the Charter Application is attached as School Board Exhibit 3, and a copy of the replacement budget submitted after the application deadline is attached as School Board Exhibit 4. Copy of the late and extensively revised replacement budget, highlighted to show the changes between it and the 3 August budget, is also included as School Board Exhibit 5. It is interesting to note that while the revised budget submitted 2 October purported to highlight changes (and did, in fact, highlight 100 different changes which

the Applicant printed in blue), a close review of the revised budget revealed 41 *additional* changes which were *not* highlighted, for a total of 141 changes. The 41 additional changes which were not identified by the Applicant were captured by the School Board, and have been highlighted in yellow in School Board Exhibit 5.

A comparison of the two is illuminating. Laying the budget submitted with the Application on 3 August next to the new, improved and revised budget submitted by Our Children's in October, well after the application deadline, you will note changes to 141 different budget cells resulting in net changes of over \$3.3 million over the five years of the budget. In no universe can it be credibly suggested that 141 changes totaling over \$3.3 million dollars is "technical or nonsubstantial." In no rational plane can it be reasonably argued that such changes equate to grammatical or typographical corrections. It defies credulity to suggest that the School Board should be required to review such changes after the deadline for the submission of charter school applications, never mind accept them. Further, it is remarkable to note that even the fully revised late submission continued to include revenue items that are disallowed, such as meals and special events. Equally notable are items that did *not* change in the late submission, such as the \$7,915,104 that Our Children's Prep School proposes to pay to Our Children's Rehab Center, the private company operated by Ms. Comkowycz, the CEO of Our Children's Prep School, Inc. As a point of interest, the Charter Review Committee raised as a concern the weakness of the internal control plan, how the organization would ensure internal controls over the contracted bookkeeper, and the lack of any description for cash controls, purchasing controls, check stock control, etc. Appellant's Exhibit 6, page 30. The Applicant's response:

We disagree with the staff's conclusions, but agree that further information would be helpful. Understand that the "back office" of the school is not on campus, but rather housed inside the offices of our main therapy contractor, Our Children's Therapy Center, at 150 Avenue B SE, Winter Haven. This is

where the accounting, purchasing, payroll and record keeping for the school would occur.

Appellant's Exhibit 6, page 30.

Further, the Appellant revealed in the October response, after the August deadline, that "the bookkeeper employed by OCRC would be 'shared' by that organization and the school," and that "OCRC would receive reimbursement from the school for a portion of the employee cost, including salary, taxes and benefits." While it is not unusual for a bookkeeper to maintain multiple accounts from various sources, in this case expenditures could often be viewed as competing interests between the school and Our Children's Therapy Center. This does not promote confidence in the fiscal oversight of the school, particularly given that everyone involved in the financial dealings of the school is housed a) outside the school and b) inside Ms. Comkowycz's company.

Two points: First, this "further information" was submitted in October, two months after the deadline for submission of applications and time after which the School Board would not accept or consider any non-technical, substantive changes. Second, and more critically, is that there is a remarkable lack of fiscal oversight and arms-length relationship as between the two organizations, with concomitant danger of commingling of funds between two organizations, one of which is subject to Government in the Sunshine and all applicable public records laws, with the other exempt from any such requirements. Rather than addressing the weaknesses in financial management and oversight, this newly (and late) submitted information raises a host of concerns about potential fiscal and ethical concerns. These concerns could have been addressed as part of the draft review process, or through the applicant interview and charter committee review process, had they been timely disclosed when the application was submitted. Once again,

it cannot be credibly suggested that this information comprises a “technical or nonsubstantial change.”

Our Children’s submitted responses to the Charter Review Committee’s comments vis-à-vis the budget, which are found in Appellant Exhibit 6 at page 27. Notably, the school agreed with the district in connection with a number of deficiencies. The school agreed that it was inappropriate to include capital outlay in revenue assumptions, but argued that it was immaterial. Respectfully, regardless of the amount, including capital outlay that would not be available for three years does not promote confidence in the school’s budget.

Fiscal Year:	<u>FY16-17</u>	<u>FY17-18</u>	<u>FY18-19</u>	<u>FY19-20</u>	<u>FY20-21</u>
Overstated Revenue:	373,215	386,046	412,562	428,156	428,870
Capital Outlay	57,028	62,000	102,943	-	-
Total Overstatement of Original Budget	430,243	448,046	515,505	428,156	428,870
Total Revenue Original Budget	5,919,781	6,133,363	6,484,750	6,858,546	6,884,914
% of original budget overstated	7.27%	7.31%	7.95%	6.24%	6.23%

Due to the overestimation of revenue, the school is not financially viable, as revenues are not sufficient to cover expenses:

Corrected Revenue of Orginal Budget	5,489,538	5,685,317	5,969,245	6,430,390	6,456,044
Total Expenses Original Budget	5,919,781	6,093,636	6,460,750	6,824,914	6,824,914
Ending Balance/(Shortfall)	(430,243)	(408,319)	(491,505)	(394,524)	(368,870)

The School Board identified budgeted items for meals and special events, which are not allowable expenses for public funds. The response from Our Children’s: The dollar amount (\$8,000) is an immaterial amount. Appellant Exhibit 6, page 27. Respectfully, regardless of the amount, including funds for meals and special events, which are unallowable in any amount, does not promote confidence in the school’s budget. Further, even after this deficiency was identified to the school, it continued to appear in the late, revised budget submitted 2 October 2015. School Board Exhibit 4, Account Numbers 71000390 and 73000390.

The School Board identified food services as a category in which budgeted funds were grossly understated, without details as to how the food services budget was calculated. The first year expense totaled \$23,500. At 305 students, this equates to \$0.43 cost per day/per student. The school's response was that the true cost per student is less than \$0.43 per day/per student. Appellant Exhibit 6, pages 27-28. By contrast, the district, which has enormous bulk buying power through economies of scale, bases reimbursement on \$3.15 per student per lunch and \$1.69 per student per breakfast. Respectfully, the suggestion that the student body targeted by Our Children's could be provided appropriate food services for \$0.43 per student/per day does not promote confidence in the school's budget.

The School Board expressed its concern that there is a large startup expense for furniture, fixtures and equipment, which the school planned to fund via a "pledge," with no corroboration. After the deadline for applications had passed, the school asserted that one of its directors would be funding that "pledge." Appellant Exhibit 6, page 28. As this is a significant expense, it certainly should have been included in the original budget document. To the extent it is not "technical or nonsubstantial," it would have to have been included in the original budget document, in order to be considered by the School Board.

The School Board noted the absence of the required balance sheet. The school's response: "It was an oversight on our part to omit the balance sheet." Appellant Exhibit 6, page 28. Respectfully, the omission of such a critical budget document in a final charter school application brings into question the competency and experience of the applicant and does not promote confidence in the school's budget. Further, to the extent that the late submission of this document did not comprise a "technical or nonsubstantial" change, it would have to have been included in the original budget document in order to be considered by the School Board.

Critically, the School Board noted that the Applicant did not provide correct revenue figures in the proposed budgets, with the result that the application failed to demonstrate financial solvency to operate the proposed school. The school's response: "We have indeed made a mistake in the revenue section....Unfortunately, the template I sent to the applicant had the formulas altered for whatever reason... We agree with staff that instructional material, lottery and transportation dollars are already included in total FEFP totals, and this is true for every year presented in." Appellant Exhibit 6, page 29. The school further agreed that the final budget was missing a page presenting the total FEFP calculation, said that the failure had left them "deeply embarrassed," and asked that the School Board "set aside our blunder in revenue." While the Applicant maintains that these errors were "immaterial," by any rational test, both individually and collectively, it is impossible to classify them as anything other than substantive. Under Florida law and School Board policy, the School Board is entitled to evaluate the application as it was submitted, subject to only "technical or nonsubstantive corrections and clarifications, including, but not limited to, corrections of grammatical, typographical, and like errors or missing signatures, if such errors are identified by the sponsor as cause to deny the final application." S. 1002.33(6)(b) (Fla. Stat. 2014); School Board Policy 9800.

To highlight the impact of these discrepancies in the overall budget of the school, a review of each year of the five-year budget reveals shortfalls ranging from \$368,870 to \$491,505—and that is assuming that the line item for Gifts/Grants/Bequests is met at 100%. For the record, even though information about gifts, grants, and bequests is requested, it is not appropriate to use it to determine the financial viability of the school or to include it in the school's revenue projections.

Ending Balance/(Shortfall)	(430,243)	(408,319)	(491,505)	(394,524)	(368,870)
Remove Gifts/Grants/Bequests	75,000	80,000	95,000	110,000	125,000
(New shortfall by not counting gifts, etc)	(505,243)	(488,319)	(586,505)	(504,524)	(493,870)

Because this deficiency is statutory and comprises good cause for denial of a charter application, the Charter School Appeal Commission and the State Board of Education should uphold the School Board's decision and deny this appeal.

TARGET POPULATION

The School Board had good cause based upon competent and substantial evidence to deny Our Children's application based on the school's target population, as reflected in Section 2 of the Application. The application lacks necessary detail for students beginning at twelve months of age and continuing through the traditional pre-K age of five. The application does not differentiate in sufficient detail between the various pre-K age groups of 12 months through two years, eleven months, and three- to five-year-olds. While there is a course code number that serves all of these students, it is necessary to differentiate programming, curriculum, and other services, particularly given the adult-to-student supervision ratios required by law. The best evidence of this lack of specificity and detail is the Application itself, attached as Appellant Exhibit 3.

EDUCATIONAL PLAN DESIGN

The School Board had good cause based upon competent and substantial evidence to deny Our Children's application based on deficiencies in the school's educational plan design. While the Applicant provides examples of a wide variety of supplemental materials, the Application lacks a clear and coherent framework for teaching and learning. While a great deal of information is provided, the lack of an adequate framework does not allow the district to determine how services will be provided to allow students to attain state standards. The volume

of material is perhaps impressive; its cohesiveness and relevance is not. The best evidence of this lack of cohesiveness and structural framework for teaching and learning is the Application itself, attached as Appellant Exhibit 3.

EXCEPTIONAL STUDENTS

The School Board had good cause based upon competent and substantial evidence to deny Our Children's application based on its failure to propose a detailed and comprehensive plan for serving exceptional students.

While the proposed school is designed to serve students with disabilities, the exceptional student education ("ESE") section fails to demonstrate an understanding of the requirements of the school to provide a concrete plan for meeting the broad spectrum of educational needs and providing all students a quality education within this section. The Florida Department of Education Evaluation Template requires a response that meets the standards to present a clear description of the levels of service the school will provide and how the school will ensure that students with disabilities will have an equal opportunity of being selected for enrollment, an understanding and commitment to collaborating with the sponsor to ensure placement decisions will be made based on the student's unique needs, an appropriate plan for evaluating the school's effectiveness, and a realistic enrollment projection and staffing plan. While the Appellant argues that this information is spread throughout the application, the FDOE evaluation rubric requires that it be comprehensively addressed in this section. For instance, a simple "Detail plan in Section 5: School Improvement Plan" (Appellant Exhibit 3, p. 109), does not suffice to allow the district to perform an adequate evaluation.

ORGANIZATIONAL PLAN

The School Board had good cause based upon competent and substantial evidence to deny our Children's application based on the school's organizational plan.

The application provides a Parent Contract, which includes provisions for dismissing a student in violation of S. 1000.05(b), Florida Statutes (2014). The Parent Contract contains the following language:

"If I fail to support the mission, philosophy, and/or policies of the school to the degree that I, family members, or my child's behavior (sic) becomes disruptive, violent, cursing and/or abusive, and no improvement occurs during probationary trials, I agree to withdraw my child, or expect that my child will be involuntarily removed. Removed means your child will no longer be enrolled at OCPS." Appellant Exhibit 3, p. 211.

There is no provision in law or policy that allows for a student to be dismissed or expelled without due process of law. Further, there is no provision in law or policy that allows for a student to be dismissed or expelled on the basis of conduct by other than the student.

The best evidence in support of this reason for denial is the Parent Contract submitted by Our Children's and incorporated in the record as Appellant's Exhibit 3, page 211. While the Appellant argues that the parent contract was merely a "draft," the application was finite as of the time it was submitted, as was clearly communicated to the Appellant by the School Board from the outset. And while both the application and the appeal are replete with references to the competence and experience of Our Children's management team, this is not reflected in a contractual term that provides for the dismissal of students without due process or for the misconduct of persons other than the student.

As a matter of housekeeping, it should be noted that while the Appellant argues that charter schools are exempt from school board policies, such arguments are misplaced in this context. Applicants who wish to open charter schools are *not*, in fact, charter schools, and applications submitted by such applicants are properly reviewed by local district school boards in

accordance with law and duly adopted school board policies. This process is a creature of law and regulation, and it cannot be credibly suggested that local district school boards should not review charter applications in accordance with law and school board policy.

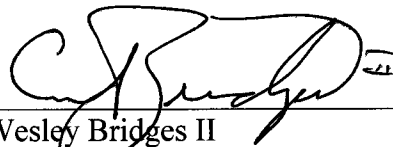
CONCLUSION

The School Board's decision in this matter was based on the professional analysis of its staff, and the School Board's findings show non-compliance with statutory application criteria; the School Board's findings are supported by competent, substantial evidence, and form good cause to deny. See *State of Fla, Dep't of Ed., Charter Sch. Appeal Comm'n Hrgs. Transcript*, Vol. 2, 201-204, 275-78 (Feb. 7, 2012).

Florida law allows and School Board policy mandates that timely charter school applications may not be amended after the deadline for the submission of applications, and that missing documentation and unsolicited information will not be accepted or considered, except for technical or nonsubstantive corrections and clarifications such as grammatical, typographical, and like errors. The errors sought to be corrected by Our Children's in October, two months after the deadline for the submission of applications, are substantive and significant, and in fact reflect fundamental changes in the content and substance of the school's budget.

Any one of the deficiencies discussed herein, each one of which is based on competent, substantial evidence of record, constitutes good cause to support the School Board's decision below to deny Our Children's a charter under S. 1002.33 (Fla. 2014). Accordingly, the School Board's denial should be ***accepted and upheld***, and Our Children's Prep School's appeal should be dismissed.

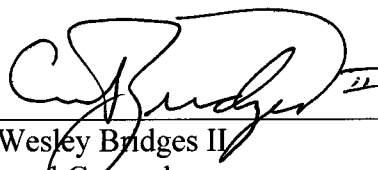
Respectfully submitted this 18th day of December, 2015.



C. Wesley Bridges II
General Counsel
The School Board of Polk County, Florida
Florida Bar Number 0802735
1915 South Floral Avenue
Post Office Box 391
Bartow, Florida 33813
863.534.0773 (office)
863.519.7972 (facsimile)
wes.bridges@polk-fl.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing and all its attachments has been furnished this 18th day of December, 2015, by overnight delivery, to Melissa Gross-Arnold, Esquire, The Arnold Law Firm, 6279 Dupont Station Court, Jacksonville, Florida 32217.



C. Wesley Bridges II
General Counsel
The School Board of Polk County, Florida

**STATE BOARD OF EDUCATION
FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEAL COMMISSION**

OUR CHILDREN'S PREP SCHOOL, INC.

Applicant/Appellant,

v.

CASE NO.: _____

SCHOOL BOARD OF POLK COUNTY,
FLORIDA,

School Board/Appellee.

TABLE OF EXHIBITS

1. School Board Policy 9800
2. Draft budget submitted by Our Children's Prep School, Inc., May 2015, for preliminary review in accordance with F.S. 1002.33(6)(b)
3. Final budget submitted by Our Children's Prep School, Inc., 3 August 2015
4. Revised budget submitted by Our Children's Prep School, Inc., October 2015
5. Highlighted copy of revised budget submitted by Our Children's Prep School, Inc., October 2015, reflecting substantive changes between final budget and revised budget
6. Letter dated 16 April 2015 from Melissa Brady to charter applicants, instructing applicants that the application deadline was 3 August 2015 and that no additional submittals to address deficiencies will be considered as part of the review process

Exhibit 1