

STATE OF FLORIDA
STATE BOARD OF EDUCATION

Florida Charter Educational Foundation, Inc.,
and Polk Charter Academy,

Applicant/Appellant,

v.

School Board Of Polk County

School Board/Appellee.

RECOMMENDATION OF THE COMMISSIONER OF EDUCATION

This is an appeal regarding the denial of an Application purportedly submitted by a high-performing charter school to establish and operate a new charter school that will substantially replicate its educational program. For such appeals, section 1002.33(6)(c)1, Fla. Stat., requires the Commissioner of Education to “review the appeal and make a recommendation to the state board.” After review of the Application, the appeal brief filed by the Applicant, the response brief filed by the School Board, and the other documents submitted by the parties, the Commissioner of Education makes the following recommendation regarding this appeal of the School Board’s denial of the application. The Commissioner reserves the right to modify this written recommendation based upon the oral arguments of the parties at the State Board meeting.

Jurisdiction

The School Board’s response brief requests that the State Board reject this appeal, or refer the appeal to the Charter School Appeal Commission, because the Applicant does not presently operate a high-performing charter school. (School Board brief, p. 1 & 4) The School Board alleges that the Applicant (FCEF) has no legal authority to submit an application to replicate the Winthrop Charter School (Winthrop), because Winthrop is governed by Bay Area Charter Foundation, LLC (BACF).

The membership of FCEF and BACF are identical, and the charter contract for Winthrop (Applicant exhibit 4) names both FCEF and BACF. Section 1002.33(6)(b)3.b., Fla. Stat., provides an “applicant is considered to be replicating a high-performing charter school if the proposed school is substantially similar to at least one of the applicant’s high-performing charter schools and the organization or individuals involved in the establishment and operation of the proposed school are significantly involved in the operation of replicated schools.” (Emphasis added)

The Commissioner recommends that the State Board find that FCEF is replicating a high-performing charter school and thus the State Board has jurisdiction to hear the appeal. The Commissioner recommends that the State Board deny the School Board's request to refer this appeal to the Charter School Appeal Commission.

Review of the Draft Application and the Final Application

Section 1002.33(6)(b), Fla. Stat., provides that upon timely submission of a draft charter school application the School Board "shall review and provide feedback as to material deficiencies." The Applicant timely submitted a draft charter school Application. The School Board reviewed the draft Application and identified material deficiencies in only two of 22 sections. With regard to the 20 sections with no identified deficiencies, the final Application does not materially differ from the draft Application. With regard to the two sections of the draft application with identified deficiencies (student performance and ESE), the final Application was modified to address the deficiencies.

The School Board responded to the final Application by raising many new alleged deficiencies that were not raised when the draft Application was submitted. The purpose of the School Board review of a draft charter school application is "to facilitate greater collaboration in the application process," and to require the School Board to "review and provide feedback as to material deficiencies." Section 1002.33(6)(b), Fla. Stat. The School Board review of the submitted Application should be limited to material deficiencies identified during the draft Application review, unless the Applicant makes changes which raise additional material deficiencies. Even so, for purposes of this appeal, all of the alleged deficiencies, both those raised in response to the draft and final Applications, have been considered.

Standard of Review

Section 1002.33(6)(b)3.b., Fla. Stat., provides that an application submitted by a high-performing charter school may be denied by the sponsor (School Board) only if the sponsor demonstrates by clear and convincing evidence that:

- (I) The application does not materially comply with the requirements in paragraph (a);*
- (II) The charter school proposed in the application does not materially comply with the requirements in paragraphs (9)(a)-(f);*
- (III) The proposed charter school's educational program does not substantially replicate that of the applicant or one of the applicant's high-performing charter schools;*
- (IV) The applicant has made a material misrepresentation or false statement or concealed an essential or material fact during the application process; or*

(V) The proposed charter school's educational program and financial management practices do not materially comply with the requirements of this section.

The School Board denied the Application to replicate a high-performing charter school. The School Board identified, in its written notice to the Applicant, three primary reasons for its denial of the application. Each of the reasons identified by the School Board are discussed below.

Issue One: Budget and Financial Plan

The School Board indicates that the applicant failed “to adequately include an expense projection that includes a full accounting of the costs of operation to ensure fiscal responsibility” and “failed to provide an adequate financial plan for each year requested by the charter for operation of the school for up to five year” (Applicant Exhibit 1). The School Board supports this position by arguing that the applicant overstated projected transportation revenue by \$8,580 and mistakenly included charter school capital outlay revenue of \$91,379 (School Board brief, p. 16; Applicant exhibit 9, p. 33). These alleged deficiencies were not identified by the School Board during the draft Application review.

The School Board did not identify this issue as a material deficiency during the review of the draft Application. However, the School Board’s response brief stated that deficiencies in the school’s business plan were “the most significant and arguably the most important basis for denial” (School Board brief, p. 16), and therefore will be addressed in this Recommendation.

The Applicant has a reasonable expectation that the replicated school will be eligible for charter school capital outlay in the school’s first year of operation, just as the Applicant’s other schools have been eligible during their first year due to the accreditation status of the proposed Education Service Provider. Further, the Application reveals that each of the five charter schools currently operated by the Applicant are financially stable with positive fund balances reported for each of the previous five years. The high-performing school that is being replicated (Winthrop Charter) reported a \$2.75 million unassigned fund balance for fiscal year 2015, which represented 29% of its total revenue. The School Board is required to consider the academic and financial history of an applicant’s existing charter schools in determining whether to approve or deny the application. (Sec. 1002.33(6)(a)6, Fla. Stat.)

The Commissioner recommends that the State Board find that the School Board has not demonstrated by clear and convincing evidence that the Applicant failed to adequately include an expense projection that includes a full accounting of the costs of operation to ensure fiscal responsibility.

Issue Two: Authority to Replicate

The School Board argued that the Applicant made a material misrepresentation or false statement during the application process. The School Board alleges that the Applicant (FCEF) has no legal

authority to submit an application to replicate the Winthrop Charter School (Winthrop) because Winthrop is governed by Bay Area Charter Foundation, LLC (BACF).

This issue is a restatement of the grounds for the School Board's request to reject the appeal, or to refer this appeal to the Charter School Appeal Commission. For the reasons stated above in the recommendation to deny the request, the Commissioner recommends that the State Board find that the School Board has not demonstrated by clear and convincing evidence that the applicant made a material misrepresentation or false statement during the application process.

Issue Three: Evaluation Instrument Standards for Approval

The School Board asserts that the Application did not meet the standards for approval in eight areas: Target population and student body; exceptional students; school culture and discipline; governance; management; student recruitment and enrollment; parent and community involvement; and transportation. Of these eight areas, the School Board identified only one (exceptional students) as a material deficiency during the draft Application review.

Exceptional Student Education (ESE) was identified as a material deficiency during the review of the draft Application. The School Board's letter of denial states that the "applicant fails to ensure that the School will enroll 12% ESE (exceptional student education) students based on the proposed model." (Applicant Exhibit 1) The School Board further argues that while the Applicant did in fact allocate resources to serve up to 80 ESE students (12% of total enrollment) in its first year, the School Board was "unable to ascertain how many ESE students the Appellant projects to enroll in subsequent years because the application does not included projected revenue sheets for years two through five." (School Board brief, p. 18)

There is no legal requirement for a charter school to "ensure" that it enrolls a specific population of students, because charter schools are schools of choice. The Application projects ESE enrollment of 12% for each year of operation, as provided for in the Students by Grade Budgeted enrollment and Special Needs revenue projections in the five-year consolidated budget projections. (Appellant Exhibit 2, Attachment X of the Application)

The School Board found that the Applicant "fails to outline a reasonable transportation plan that serves all eligible students" (Appellant exhibit 1). However, the Application specifically budgets for a bus to provide transportation if necessary, even though the charter school statute does not require charter schools to provide routine busing.

The remaining issues raised in the School Board's rejection letter were not identified during the draft Application review. For the reasons stated in the Applicant's appeal brief, these issues are without merit.

The Commissioner recommends that the State Board find that the School Board has not demonstrated by clear and convincing evidence that the Applicant failed to meet the standards for approval for a high-performing charter school replication application.

Overall Recommendation

The Commissioner recommends that the State Board determine that the State Board has jurisdiction to hear this appeal. The Commissioner further recommends that the State Board find that the School Board failed to demonstrate by clear and convincing evidence that:

- (I) The application does not materially comply with the requirements in section 1002.33(6)(a), Fla. Stat.;
- (II) The charter school proposed in the application does not materially comply with the requirements in sections 1002.33(9)(a)-(f), Fla. Stat.;
- (III) The proposed charter school's educational program does not substantially replicate that of the applicant or one of the applicant's high-performing charter schools;
- (IV) The applicant has made a material misrepresentation or false statement or concealed an essential or material fact during the application process; or
- (V) The proposed charter school's educational program and financial management practices do not materially comply with the requirements of this section.

Based upon the foregoing, the Commissioner of Education recommends that the State Board issue a final order overturning the School Board's denial of the Application.

January 11, 2017

Pam Stewart
Commissioner of Education