

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

PARRISH CHARTER ACADEMY, INC,

Applicant/Appellant,

Case No.: 2017-3470

vs.

SCHOOL BOARD OF MANATEE COUNTY,
FLORIDA,

School Board/Appellee.

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THE APPELLEE SCHOOL BOARD OF MANATEE COUNTY, FLORIDA
PROPOSED EXCEPTIONS TO THE RECOMMENDED ORDER

The Appellee, the School Board of Manatee County, Florida, pursuant to Rule 28-106.217, Florida Administrative Code, submits its exceptions to the Charter School Appeal Commission's Recommended Order to the State Board of Education dated September 28, 2017, and says:

EXCEPTIONS

1. The Appellee, the School Board of Manatee County, Florida, excepts to the entire Proposed Order from the Charter School Appeal Commission to the State Board of Education.
2. The Charter School Appeal Commission on August 25, 2017, over objection by counsel for the School Board of Manatee County, admitted new evidence that was not part of the Appellate Record and created prejudice to Appellee, the School Board of Manatee County, Florida, and committed reversible error.

3. The Appellee, the School Board of Manatee County, Florida, produced competent and substantial evidence and showed good cause for the denial of the application from Parrish Charter Academy, Inc.

4. The allowing of the introduction of new evidence by Parrish Charter Academy, Inc., to the Charter School Appeal Commission, formed the basis of the recommendation by the commission for the reversal of the denial of the application of Parrish Charter Academy, Inc. by the School Board of Manatee County.

5. The decision reached by the commission was contrary to Florida Statute Section 1002.33, the guidelines set forth by the Department of Education in their Evaluation Instrument and violated rules of evidence for the consideration of matters on an Appeal.

PRELIMINARY STATEMENT

On August 25, 2017, a hearing was held before the Charter School Appeal Commission. The Appeal before the Charter School Appeal Commission was to be based solely upon evidence in the Appellate Record and should not have been based upon new evidence.

Reversible error was committed by the Charter Appeal Commission on August 25, 2017. Over objection by counsel for the School Board of Manatee County, the Charter Appeal Commission admitted new evidence that was not in the Appellate Record and created prejudice to Appellee School Board of Manatee County, Florida. These actions constitute reversible error based upon the Appellate Record:

EXCERPTS FROM THE SCHOOL BOARD OF MANATEE COUNTY, FLORIDA'S APPELLATE BRIEF

(SCHOOL BOARD'S BRIEF AT PAGE 2)

The District utilizes the State Model Application and the Florida Charter School Evaluation Instrument as the rubric to identify components required by the State of Florida Department of Education for charter school applications submitted under Fla. Stat. § 1002.33. [Exh. 3:1-36.] It is

the responsibility of the Applicant to develop a thorough and comprehensive charter application. See: Sch. Bd. of Seminole County v. Renaissance Charter Sch., Inc., 113 So. 3d 72, (Fla. 5th DCA. 2013).

(SCHOOL BOARD'S BRIEF AT PAGE 5)

The School District of Manatee County reviewed Parrish Charter Academy's application in accordance with its policies utilizing the Florida Charter School Application Evaluation Instrument developed by the Florida Department of Education (FDOE) as required by Florida Statute. [Exh. 3:1-36.]

The Application and supporting documents submitted by Parrish Charter Academy failed to comply with the directives of the Florida Department of Education to provide academic excellence and the focus on reading and is otherwise deficient warranting denial of the application for "good cause"

(SCHOOL BOARD'S BRIEF AT PAGE 7-8)

Parrish Charter Academy's curriculum is incomplete and there is no methodology as to how it will be completed. The curriculum of Parrish Charter Academy for grades kindergarten through 2nd grade, was not part of the Application. [Exh. 2:029, Exh. 3:10] According to

Applicant, the curriculum was not developed because "EL Education is in the process of developing an ELA curriculum for Grades K-2 which will be available by the spring of 2017. . ." [Exh. 2:029]. The lack of a curriculum in kindergarten through second grade has been a repeated issue in the prior applications submitted by Parrish Charter Academy. [Exh. 5:16.]

In addition, Parrish Charter Academy did not provide a clear and coherent framework for Reading and ELA instruction in Tier 2 for K-2 for students reading below grade level. [Exh. 2:157, 3:008].

(SCHOOL BOARD'S BRIEF AT PAGES 8-10)

Experiential Learning is the model chosen by the Applicant and it is not aligned to the Florida Standards. In order to align the applicant's chosen curriculum to Florida Standards, the application references "Scope and Sequence of FS aligned to Materials" as part of professional development. [Exh. 2:013.] However, the Applicant's plan is insufficient: 1) Teaching staff will not be provided with adequate time to learn the course materials and to develop them in a scope and sequence format, especially when there is little time before the start of school for the task. [Exh. 2:015, Exh. 4:43-53]. 2) The application [Exh.2:020] reveals that the "framework will be developed during the before school training, and specificity added throughout the school year [...]".

This is problematic because there is no assurance that student learning of Florida Standards will occur. 3) The development of curriculum is inconsistent in that one part of the application states that FORZA will provide the curriculum development and support, [Exh. 2:080, 2:088], and

another part of the application states that teachers will be responsible to align the curriculum. [Exh. 2:014-015, 2:019.] 4) In addition, the application is inconsistent and states, “The curriculum is well aligned with the LAFS [Language Arts Florida Standards] and the core program Experiential Learning.” [Exh. 2:028.] However, the application also states, “The PLC curriculum teams identified by the principal will create a scope and sequence of community-based topics and activities and identify resources for each course described above.” [Exh. 2:047.]

The above statements are contradictory: It is undetermined who is responsible for aligning the Curriculum to the Florida Standards. It is undetermined who is responsible for aligning the Curriculum to the Florida Standards. There is no clear or consistent indication of who is responsible for curriculum development, and who aligns the curriculum to Florida Standards. Additionally, the following statements represent an unrealistic goal and a lack of adequate planning to align the chosen curriculum to Florida Standards: The application states:

1) “The teams will use the planning weeks before the school opens to create curriculum maps with a scope and sequence for each core subject that is aligned with the FS, Experiential Learning, and the curricular choices described below. The team will also meet during the first weeks of school to complete and revise the maps.” [Exh. 2:014.]

2) “Grade level PLCs, made up of teachers from different disciplines that teach the same grade level, will meet before school begins in August and either daily, weekly or bimonthly, depending on need, to collaborate in preparing units and daily lessons.” [Exh. 2:015]. This arrangement raises concern that teachers will not have time to do other necessary things related to teaching (i.e. prepare materials, meet with parents, make phone calls, etc.).

3) “Similar to Manatee’s MTSS team approach, the schools PLC collaborative problem solving teams will meet to monitor, intervene and support struggling students in need of remediation.” [Exh. 2:019.]

4) “Finally, a variety of assessments will be developed for the lesson and units.” [Exh.2:015.] [There is no evidence of training for teachers in developing assessments.]

5) “As students work to solve the question or problem, they assess themselves and their peers based on a rubric established by the teacher that outlines the expectations and criteria for the final product.” [Exh. 2:016.] [Nowhere in the application is Professional Development for teachers to be trained and students to be trained to assess themselves. There is no indication when teachers will be trained to develop self-assessment rubrics.]

6) “Students at PCA will be a participant in Experiential Learning across all content areas, thus making learning an experience based on interdisciplinary units aligned to the Florida Standards (FS) and the Next Generation Sunshine State Standards (NGSSS).” [Exh. 2:020.] [Participation in Experiential Learning across content areas does not necessarily equate to a learning experience aligned to Florida Standards.]

(SCHOOL BOARD'S BRIEF AT PAGE 11)

During the Capacity Interview, Parrish Charter Academy was questioned about their plan for the use of the Florida Interim Assessment Item Bank and implementation, because the Applicant planned to use the Florida Interim Assessment Item Bank (IBTP) for their benchmark assessments. [Exh. 2:053; Exh: 4:25-26.] However, the IBTP will no longer be available as of June 2017. Therefore, Parrish Charter Academy does not have a viable benchmark assessment plan that is sufficient to determine whether students are making adequate progress. The Memo dated January 25, 2017 from FLDOE Chief, Bureau of K-12 Student Assessment Victoria Ash states and confirms that, "The Department will start the decommissioning process on June 12, 2017 and IBTP will no longer be accessible by districts, or by FDOE."

(SCHOOL BOARD'S BRIEF AT PAGE 10)

During the Capacity Interview, Applicant's response did not show academic capacity to demonstrate mastery of the Florida Standards. [Exh. 4:11-13.] Charter Applicants are required to provide a detailed curriculum plan that illustrates how students will be provided services to "attain the Sunshine State Standards." Applicants must provide goals and objectives for student learning; specifically, improving student learning and measuring that improvement. These goals must indicate how much improvement and how it will be measured.

The application must describe the reading curriculum and differentiated strategies used for students reading at or above grade level, but also a *separate* curriculum for students who are reading below grade level. Parrish Charter Academy has failed to meet these requirements as set forth in Fla. Stat. §1002.33(6)(a)(2), Fla. Stat. §1002.33(6)(a)(3) and Fla. Stat. §1002.33(6)(a)(4).

(SCHOOL BOARD'S BRIEF AT PAGE 18-19)

The School Board of Manatee County has provided competent substantial evidence and "good cause" to justify the denial of Parrish Charter Academy. It is the responsibility of the charter applicant to demonstrate the capacity to open and operate a quality charter school focused on the requirements as set forth in Florida Statute and the Model Application.

Parrish Charter Academy does not reflect that it has a thorough understanding of the key issues; nor the capacity to open and operate a charter school focused on improved student achievement. The Application and Capacity Interview lacked specific and accurate information to demonstrate a thorough preparation of a clear, realistic picture of how the school expects to operate.

The Parrish Charter Academy Application does not meet the criteria for approval based on failure to meet Section 3: Educational Program Design and Section 4: Curriculum and Instructional Design of the FLDOE Model Application as evidenced by:

- 1) Lack of a clear and coherent educational program and curriculum plan aligned with the Florida Standards.

2) Lack of a comprehensive reading plan aligned with Florida Standards and designed to meet the needs of students reading at, above and below grade level.

3) Lack of assessment plan, including progress monitoring, to inform instruction and ensure students attain the Florida Standards.

4) Lack of meaningful, manageable, measureable priorities focused on student learning.

5) Lack of specificity concerning the target population.

6) Reliance on outdated testing programs that are not aligned with student expectations for academic achievement.

7) Lack of instructional support and accommodations for English Language Learners.

8) Lack of sound approach to classroom management.

9) Student discipline.

Furthermore, the partially met requirements reveal cumulative weaknesses to what should be a fundamentally sound educational program.

The School Board of Manatee County has provided competent substantial evidence and “good cause” to justify the denial of Parrish Charter Academy. The application does not meet the requirements in Florida Statute and the Florida Department of Education Evaluation Criteria for the reasons set forth above and supported by the record.

REVERSIBLE ERROR BY THE CHARTER SCHOOL APPEALS COMMISSION

The Charter School Appeal Commission on August 25, 2017, over objection by counsel for the School Board of Manatee County [Page 31 in the Transcript, Lines 4-17], admitted new evidence by Parrish Charter Academy, Inc. that was not part of the Appellate Record. This created prejudice to Appellee, the School Board of Manatee County, Florida, and constitutes reversible error. This new evidence included:

That the curriculum in grades kindergarten through grades 2 is now complete. [Transcript at Page 75, Lines 18-25, Page 76, Lines 1-3.]

That the curriculum that was supposed to be developed by teachers, FORZA, Principal or PLC teams, would now be developed by Dr. Sarria. [Transcript Page 36, Lines 24-25, Page 37, Lines 1-9.]

That the curriculum would be aligned to the Florida Standards by a Dr. Sarria or the Principal - Dr. Sarria has no experience in alignment of K-2 ELA curriculum. [Page 38, Lines 22-25, Page 39, Lines 1-4.] “So to answer your question, I don’t have any experience implementing EL curriculum in the ELA.” [Transcript at Page 40, Line 15-18.]

That the school now has a plan to replace the item bank that is no longer in existence. [Transcript at Page 58, Lines 18-25, Page 59, Lines 1-7.]

The above was not part of the Appellate Record and directly impacted the issue in controversy. The area where the Charter Appeal Commission allowed new evidence, formed the basis of the denial by the School Board of Manatee County. [Transcript at Page 75, Lines 14-25, Page 76, Lines 1-3.]

As per the Appellate Record, the School Board of Manatee County, Florida, had set forth the proper grounds for the denial. There was a proper denial for insufficient curriculum and curriculum that was not aligned to the Florida Standards as required by statute. Florida Statute §1002.33(6)(a), as well as a lack of testing. The improperly admitted testimony by Dr. Sarria had a direct bearing on the decision by the commission and a decision to the contrary in favor of the School Board of Manatee County would have been rendered otherwise.

In addition to evidentiary issues, the decision reached by the commission was contrary to Florida Statute Section 1002.33 and the guidelines set forth by the Department of Education in their Evaluation Instrument. As set forth in the Hearing Transcript, the movant admitted non-compliance with statute:

Page 75, Line 14 and continuing on Page 76, Line 1:

MS. HODGENS: Well, then I would say that -- and I'm going to try to couch it appropriately, and then, again, we can talk through it if we need to.

I move that the Commission find that the School Board did not have competent substantial evidence to support its denial of the application based on the applicant's failure to meet the standards for the education plan because the educational design is innovative, the curriculum plan is mostly developed and has some development left to do and it has been -- what's the word -- it's there now, the K2 plan is there, the part that needs to be addressed and needs to be aligned. [Emphasis added].

From the words of the Commissioner Hodgens, it is clear that she considered new evidence in rendering her decision that was adopted by the Charter Appeal Commission. **More specifically, that the curriculum in kindergarten through grade 2 was now complete and further admits that the curriculum was not developed, nor aligned to the Florida Standards as required by statute 1002.33(6)(a).**

MEMORANDUM IN SUPPORT

A. The Charter School Appeals Commission Created Reversible Error by Allowing the Introduction of Evidence that was Not Part of the Appellate Record

Parties are forbidden from presenting to the appellate court any matters outside the record of the lower tribunal: “That an appellate court may not consider matters outside the record is so elemental that there is no excuse for any attorney to attempt to bring such matters before the court.” *Altchiler v. Dept. of Prof. Reg.*, 442 S.2d 349, 350 (Fla. 1st DCA 1983).

Asserting facts for the first time, may not be considered on appeal. *Holmberg v. Baxter Healthcare Corp.*, 901 F.2d 1387, 1392 (7th Cir. 1990); *Groner v. Golden Gate Gardens Apartments*, 250 F.3d 1039, 1047 (6th Cir. 2001); *Riley v. City of Montgomery*, 104 F.3d 1247, 1251 (11th Cir. 1997).

Both Federal and State appellate rules specifically require references to the record. Fed. R. App. P. 28(a)(7) (2002).

Parties may not rely on information that is technically in the record, but still not properly before the appellate court on review. *Sabina v. Dahlia Corp.*, 650 S.2d 96, 99 (Fla. 2nd DCA 1995); *Blimpie Capital Venture, Inc. v. Palm Plaza Partners, Ltd.*, 636 S.2d 838, 840 (Fla. 2nd DCA 1994).

In addition, materials that were not before the trial court for consideration at the time of rendition of the order on review, may not be considered on appeal. Groner v. Golden Gate Gardens Apartments, 250 F.3d 1039, 1047 (6th Cir. 2001).

Florida Statute s. 59.041 explains the harmless error standard:

No judgment shall be set aside or reversed, or new trial granted by any court of the state in any cause, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence or for error as to any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire case it shall appear that the error complained of has resulted in a miscarriage of justice. This section shall be liberally construed.

A miscarriage of justice occurred by the standards set forth in the Florida Supreme Court case Special v. West Boca Medical Center, 2014 WL 5856384 (Fla. 2014). That case requires that the party that seeks relief [School Board of Manatee County] must identify the error and raise the issue before the Appellate Court [State Board of Education].

Additionally, this test properly places the burden of proving harmless error on the beneficiary of the error [Parrish Charter Academy]. This requires the beneficiary of the error to demonstrate that there is no reasonable possibility that the error contributed to the verdict discourages efforts to introduce error into the proceedings. Based upon the facts enumerated above, the error committed by the Charter Appeal Commission was anything but “harmless”.

CONCLUSION

Accordingly, the Appellee, the School Board of Manatee County, Florida, excepts to the entire Proposed Order from the Charter School Appeal Commission. The Charter School Appeal Commission on August 25, 2017, over objection by counsel for the School Board of Manatee County, admitted new evidence that was not part of the Appellate Record and created prejudice to

Appellee and reversible error. The Appellee, the School Board of Manatee County, Florida, produced competent and substantial evidence and showed good cause for the denial of the application from Parrish Charter Academy, Inc.

Respectfully submitted this 3rd day of October, 2017.

s/ Mitchell Teitelbaum, Esq.
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CERTIFICATE OF SERVICE

I certify that the original and a copy of this document has been electronically served upon the Florida Department of Education and by Certified Mail, and electronically and regular mail served upon Melissa Gross Arnold, located at 6279 Dupont Station Ct., Jacksonville, FL 32217, email: melissa@arnoldlawfirmllc.com on date listed above.

s/ Mitchell Teitelbaum, Esq.
Attorney