

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

-----/
PARRISH CHARTER ACADEMY, INC.,

Applicant/Appellant,

v.

SCHOOL BOARD OF MANATEE COUNTY,
FLORIDA,

School Board/Appellee.

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SCHOOL BOARD OF MANATEE COUNTY,
FLORIDA's RESPONSE TO APPELLANT'S
NOTICE OF APPEAL AND BRIEF

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**SCHOOL BOARD OF MANATEE COUNTY FLORIDA'S RESPONSE TO
APPELLANT'S NOTICE OF APPEAL AND BRIEF**

The School Board of Manatee County, by and through their undersigned General Counsel Mitchell Teitelbaum, pursuant to Florida Statute 1002.33 and 6A-6.0781, respectfully submits and files their response to the Notice of Appeal of Denial of the Charter School Application with incorporated brief filed by Appellant, Parrish Charter Academy, Inc. on April 27, 2017, and received by the District on April 27, 2017.

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Preliminary Statement

The Applicant/Appellant in this appeal is Parrish Charter Academy, Inc. and will be referred to throughout this appeal as "Parrish Charter Academy" or "Applicant". The Appellee in the instant matter is the School Board of Manatee County, Florida and it will be referred to as the "District" or "School Board" throughout this brief. The District incorporates by reference all Exhibits used by the Appellant and attached to the

Appellant's Brief and will refer to the Exhibit by the designation assigned by the Appellant. The page numbering of the charter school application used by the Appellant [Exh. 2:001-639] herein, is not the original page numbering used by the District in the Evaluation Instrument, [Exh. 3:1-36]. The District had referred to the original page numbering used in Parrish Charter Academy's application. [Exh. 2.]

The denial letter of March 27, 2017, [Exh. 1:1-9], properly sets forth the basis and "good cause" for the denial of the Parrish Charter School Application [Exh. 2:001-639]. The District's denial letter, [Exh. 1], referenced the Charter School Application on pages Exh.1:2-3, 1:1:5, 1:7-9; referenced the Capacity Interview on pages Exh. 1:2-3, 1:6, 1:8-9; and referenced the Evaluation Instrument on page Exh. 1:1. In addition, the denial letter of March 27, 2017 also attached the evaluation instrument. [See: Exh.1 and Exh. 3.]

Statement of Facts and Relevant Procedural Background

Manatee County currently has 48 traditional schools and 12 charter schools, which serve approximately 48,793 students. Charter schools represent 25% of our schools. There are eight charter schools serving elementary students. During the last four school years, two new charter schools were approved and opened within the District. In addition, when compared with similar sized school districts in the State, Manatee County Schools has one of the highest percentages of charter schools.

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).

The District received an application from Parrish Charter Academy on February 1, 2017, for the 2017-2018 application cycle. [Exh. 2:001-639.] The application was prior to the District's orientation for all charter school applicants. [Exh. 5:19.] Prior to Applicant's submission of their application, the District respectfully referred Applicant to the "detailed information" that was already provided to Applicant through past applications. [Exh. 7:2, 7:4.]

The District's Charter Review Committee met on February 2, 2017, February 7, 2017, and February 14, 2017. A Capacity Interview was thereafter conducted on February 26, 2017. [Exh. 4:1-59.] The Capacity Interview was an integral part of the application review process. The purpose of a Capacity Interview is to determine if the plan is sound, sufficiently comprehensive and cohesive, and to establish if the applicant is likely to implement the proposed program successfully.

An analysis of the application from Parrish Charter Academy and results of the Capacity Interview revealed significant substantive deficiencies. [Exh. 3:1-36.] There was a recommendation by the Charter Review Committee to deny the application. Upon review and analysis, the Superintendent confirmed the Committee's recommendation.

On March 3, 2017, notification was provided to the sponsor of Parrish Charter School advising of the Superintendent's recommendation to the School Board for the denial of the Charter School Application of Parrish Charter Academy.

On March 14, 2017, at a duly advertised and noticed School Board meeting, the application was denied by the School Board. [Exh. 5:1-22.] On March 27, 2017, a confirming statutory letter was sent to the Applicant with a copy of the evaluation instrument. This was also filed with the Florida Department of Education's Agency Clerk. [Exh. 1:1-10, 3:1-36.]

The District Charter Review Committee determined that Parrish Charter Academy's application did not demonstrate an understanding of key issues, nor did it

meet the statutory requirements set forth in the State's standards. [FS §1002.33(6)(a).] Combined with the Capacity Interview, this translated into a lack of capacity to open and operate a quality charter school. [Exh. 3:1-36, Exh. 5:6, 5:11, 5:14-19.]

Based upon six prior applications and extensive written feedback to Parrish Charter Academy, the District had informed Parrish Charter Academy of critical areas in the application that needed updating to meet the requirements/standards of the Florida Department of Education. The prior applications were voluntarily withdrawn. [Exh. 5:5, Exh. 7:2, 7:4.] When submitting their 2017-2018 application, Applicant should have been able to review the material deficiencies of past applications, identify the appropriate standards in the application, address 'various concerns' and revise those sections. [Exh. 5:4.] The Florida Department of Education website focuses on these standards, which constitute the basis for all aspects of the educational program and curriculum. Most telling is a statement made during the Capacity Interview regarding prior applications by Ms. Metheny Hayes:

"I'd just like to explain again where we are coming from with the Application because you all have been very helpful to us, and, I want to acknowledge that. As you know, we were here in the fall and we had an Application that we really thought followed Florida Standards, and we were very comfortable with that. You gave us feedback that allowed us to realize that we were not as clear in some areas, and that really helped us to go back and address every single concern, every question that you had about our Application. [Exh. 4:8]

It is also undisputed as per Appellant's Consultant Ms. Metheny Hayes that "In Florida, districts are required to review Charter School Applications to a standard and then approve the application if they meet the standard." [Exh. 5:11.] Conversely, cases have held that if a Charter School Application fails to meet the standard set forth under statute, a denial is not only proper, but mandated. See: Fla. Stat. §1002.33(6)(a) et. seq., Imhotep-Nguzo Saba Charter Sch. v. Dep't of Educ., 947 So. 2d 1279, (Fla. 4th DCA 2007); School Board of Volusia County v. Academies of Excellence, Inc., 974 So.2d 1186 (Fla. 5th DCA 2008).

The District 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.]

Contrary to Appellant's assertion on page 7 of the brief, the District properly applied the correct standard of an "Educational Program Design". The language quoted on page 5 of the brief is identical to the language quoted in the Evaluation Instrument. [Exh. 3:4.]

The letter to the School Board from Collier County School Board emailed March 3, 2017 [Exh. 6], has absolutely no bearing on this appeal and should be given no weight nor consideration due to the fact that the learning model (Experiential Learning) and proposed curriculum is entirely different and not the same curriculum used in Collier County. [Exh. 2:013, 2:028, 5:4-5.] It "has not been implemented in a Florida school yet . . ." [Exh. 5:13.]

It is the District's position that the grounds for denial of Parrish Charter Academy's application are legally sufficient and supported by competent substantial evidence as required by law and that the District met the standard of review that the School Board had "good cause" to justify their denial. See: Sch. Bd. Of Osceola County v. Universal Educ. Servs., 990 So. 2d 1210, 2008 (Fla.5th DCA. 2008).

Applicable Statutory Standards for Charter School Applicants

A charter application is the opportunity for a charter school applicant to demonstrate a thorough command of application requirements and determine the capacity to open and operate a quality charter school. In order to be approved as a charter school, an applicant must submit an application, which meets the requirements set forth in Fla. Stat. §1002.33(6)(a) and comply with all of Florida's requirements.

Florida Statute Section 1002.33(6)(a), state in pertinent part:

1. Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.
2. Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.
3. Contains goals and objectives for improving student learning and measuring that improvement. These goals and objectives must indicate how much academic improvement students are expected to show each year, how success will be evaluated, and the specific results to be attained through instruction.
4. Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher and a separate curriculum and strategies for students who are reading below grade level. A sponsor shall deny an application if the school does not propose a reading curriculum that is consistent with effective teaching strategies that are grounded in scientifically based reading research. . . .

Under Florida Statute Section 1002.33(7)(a), the approval of the charter shall be based on:

1. The school's mission, the students to be served, and the ages and grades to be included.
2. The focus of the curriculum, the instructional methods to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and professional standards.

The District by statute is charged with the responsibility to evaluate the merits of each charter application and uses the Florida Charter School Application Evaluation Instrument as its guide. The District has the responsibility and obligation to approve only those charter applications that meet statutory guidelines and those requirements set forth by the Florida Department of Education. The Florida Charter School Application Evaluation Instrument [Exh. 3], provides a comprehensive guide to review and evaluate the application and the Capacity Interview. Using the Florida Charter School Evaluation Instrument, the District Charter Review Committee determined that of the categories required in Florida Statute, that Parrish Charter Academy's Application combined with the Capacity Interview did not meet the criterion in two

critical areas and only partially met the criterion in seven areas. The areas where Parrish Charter Academy did not meet the criterion were fatal to the approval of the application by the District.

Comprehensive Findings by the District Warranting Denial

**The Applicant Failed To Meet the Statutory Requirements
for the Educational Program Design and Curriculum Section**

The Application and supporting documents submitted by Parrish Charter Academy fails 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”.

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, Applicant 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]

Charter Applicants are required to not only differentiate strategies that will be used for students at, above and below grade level, but Applicants must also provide a separate curriculum for students who are reading below grade level. Applicant failed to comply with statute. [FS §1002.33(6)(a)(4).] Accordingly, the application is deficient and there exists “good cause” for the denial of the Parrish Charter School application.

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. 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.]*

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).

The Applicant Failed To Fully Meet the Statutory Requirements for the Target Population and Student Body, Student Performance, Assessment and Evaluation, Exceptional Students, English Languish Learners, School Culture and Discipline Sections

A. The applicant only partially met statutory requirements of the Target Population and Student Body section

During the Capacity Interview, [Exh. 4:13], the Applicant was questioned regarding their plans to differentiate instruction among the targeted population as per the application. [Exh. 2:011, 2:034-035]. The response included discussion about 152 Experiential Learning schools in the US, and reference to page numbers that discuss Differentiated Instruction in application. However, Applicant failed to present how differentiated instruction would work in a classroom. Small groups were mentioned, [Exh. 4:16], but the relevant aspects of differentiated instruction were not discussed. The Education Consultant responded that she has visited one Experiential Learning school in Idaho, but no other person represented in the interview has seen Experiential

Learning curriculum in action. [Exh. 4:13.] The Applicant did not respond with specific examples of differentiated instruction for their targeted population; thus, alignment of the targeted student body with the overall mission of the school was not evident. [Exh. 4:13-14.]

B. The applicant only partially met statutory requirements of the Student Performance, Assessment, and Evaluation section

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."

It was also stated that administrators would build benchmark assessments for grade levels taking state assessments in the spring. Future use of IBTP items must be housed in a purchased testing platform. However, there is no plan to purchase a testing platform referred to in the application, and the Applicant did not mention one. The Item Bank Test Platform is not only inadequate for all content area benchmark testing to monitor student progress, it will be extinct prior to any potential opening of school for this application cycle. [Exh. 3:12.]

Question items within the IBTP aligned for state assessed courses are also limited and there was no elaboration and use of the IBTP provided by the applicant. Applicant will clearly be limited in its ability to execute baseline and mid-term assessments. [Exh.

2:419-420.] In addition, there was no evidence that the person(s) responsible would develop the tests that are aligned and appropriate to the curriculum being taught. There was no evidence of a comprehensive and effective plan to use student achievement data to inform decisions about and make adjustments to the educational program. [Exh. 4:25-26.] In Orange Ave. Charter Sch. v. St. Lucie County Sch. Bd., 763 So. 2d 531, (Fla. 4th DCA 2000), the Court affirmed the denial of the continuation of a charter because the Charter School failed to undertake the assessments to which it agreed in its charter.

During the Capacity Interview, [4:27-29], Applicant failed to explain the promotion criteria of Parrish Charter Academy, and how it will be communicated to students and parents. The Applicant did not articulate any understanding of the grade levels that require student retention. There was no clear explanation to support third grade students that do not meet the state expectation for promotion or Good Cause to fourth grade as set forth in Fla. Stat. §1008.25(6)(b). [Exh. 041.]

Likewise, Credit Recovery for students in middle school was not addressed. Parrish Charter Academy failed to indicate how Credit Recovery would be implemented. [Exh. 2:053.] The Application indicates that promotion in middle grades will be determined by the number of years in middle school. [Exh. 2:047] Later the application states, “if a student does not meet criteria for promotion to 9th grade, intensive remediation will be provided in the next grade level the following year.” This proposed arrangement does not follow Manatee County Student Progression Plan, which Applicant indicated would be followed. In addition, it violates Florida Statute §1003.4156 for Middle School grade promotion to High School.

C. The applicant only partially met statutory requirements of the English Language Learners section

With a projected population of 14% ESOL students, there is apprehension over how the model that the Applicant has chosen for compliance with ESOL paperwork,

meetings, and testing will work. The Application reflects that ESOL staff member will be contracted to do paperwork and duties via stipend. [Exh. 2:059.]

There is an unclear threshold for hiring an ELL teacher if the population is 14% ELL. There are concerns over the plan to mainstream students and have only one ESOL endorsed teacher per grade level. There is lack of a concrete plan to offer a sheltered class. [Exh. 4:30-31.] This does not follow the District's ELL plan, which Applicant indicated they will follow. [Exh.2:064.]

SIOP training of teachers is mentioned several times in the application [Exh.2:062], but is not reflected in the budget. [Exh.2:0577-0581] The SIOP model has been confused with a sheltered instruction classroom by Applicant. The SIOP model identified in the Manatee County ELL plan is an 18 hour training with follow up components. [Exh. 2:062.] The training plan typically involves training, coaching, modeling, and lesson study. [Exh. 4:30-31.]

The initial SIOP training can cost approximately \$15,000.00 not counting books or follow-up. None of these costs were budgeted by Applicant. [Exh. 2:577-581, Exh. 2:062, 2;109-115.] At the Capacity Interview, the answer given by Applicant did not show any knowledge of SIOP model training. The Applicant's answers did not support the research that was included in the application. [Exh. 4:30-31.]

In addition, the Application [Exh. 2:062] refers to specific strategies and accommodations for instruction for ELLs, but are not enumerated. To clarify these strategies the Applicant was asked at the Capacity Interview, "What, specifically, will teachers be expected to do to make [inaudible] for their ELLs?" [Exh. 1.8, 4:38.] The response did not identify any specific strategies that a teacher would use to make content comprehensible. The applicant had previously referred to a Marzano list, and said teachers, will be "well-versed." [Exh. 4;40.] With no specifics mentioned, the lack thereof demonstrated no real knowledge of what kinds of strategies teachers would use

to make content comprehensible. The Applicant did not answer the question. There was no mention of English Language Development standards, which demonstrates a lack of understanding of the Manatee County ELL plan. Furthermore, the Manatee County ELL plan was misquoted by the Applicant. [Exh. 4:38-42.]

D. The applicant only partially met statutory requirements of the School Culture and Discipline section

At the Capacity Interview, the Applicant was questioned about the rights of students with disabilities regarding Code of Conduct violations. There was not a clear and coherent plan on the rights of students with disabilities regarding Code of Conduct violations. The attorney did not mention 10-day OSS. The attorney did not mention 504 (only ESE). There was no mention of FBA/BIP and no mention of revisiting IEP to address behavior issues. [Exh. 4:42-43.]

E. The applicant only partially met statutory requirements of the Facilities section

Based upon the application, there was no site commitment and the proposed site is on a very busy highway. Students would not be able to walk there safely. Construction would be new, as there is currently no building on site. Timeline for completion is also unrealistic, as permits and site plans are not complete. [Exh. 3:026, Exh. 4:42-43.]

F. The applicant only partially met statutory requirements of the Budget section

Information is lacking to determine if program needs discussed in Section 4 of the Parrish Charter Academy application are satisfactory. There is no list of the programs, nor is there an explanation of the professional development needed to implement the programs. Additionally, a list of the software/subscriptions information needs to be provided for determining the adequacy of the budget plan. Florida Statute 1002.33(6)(a)5 requires a financial plan for operation up to 5 years. Applicant failed to comply with this statutory requirement. [Fla. Stat. §1002.33(6)(a)5; Fla. Stat

§1002.33(6)(b)2.] For the reasons set forth above, the application of Parrish Charter Academy does not meet the requirements in Florida Statute and the Florida Charter School Application Evaluation Instrument. [Fla. Stat. §1002.33(6)(a).]

Specific Responses to Appellant's Arguments

Contrary to Applicant's assertions, the School Board had "competent" and "substantial evidence" and a "good cause" statutory basis as established in the record to support the School Board's denial of Parrish Charter Academy's Application. See: Fla. Stat. §1002.33(6)(a); [Exh. 1:1-9], [Exh. 2:001-639.]; [Exh. 3:1-36]; [Exh. 4:1-59.]

Repeated throughout the record are improper inferences that the District had an obligation to meet with the Applicant prior to the submission of an application and after the Capacity Interview. There is no legal requirement in Fla. Stat. § 1002.33(6).

Based upon six prior applications and extensive written feedback to Parrish Charter Academy, the District had informed Parrish Charter Academy of critical areas in the application that needed updating to meet the requirements/standards of the Florida Department of Education. The prior applications were voluntarily withdrawn. [Exh. 5:5, Exh. 7:2, 7:4.] Ms. Metheny Hayes, on behalf of the Applicant, conceded during the Capacity Interview that the prior applications were insufficient and did not follow the Florida Standards. [Exh. 4:8.]

On April 4, 2017 the District provided an annual orientation for all applicants and would have met with Applicant, along with other potential charter applicants for the Application Orientation, had Applicant not submitted their application prior to that orientation. [Exh. 5:19.]

Applicant met with the District during the Capacity Interview, [Exh. 4:1-59.] Contrary to Applicant's contention, Applicant also had an opportunity and did question District staff during the Capacity Interview. [Exh. 4:2, 4:56-57.]

Applicant improperly relies on the case of Sch. Bd. v. Academies of Excellence, Inc., 974 So. 2d 1186 (Fla. 5th DCA 2008) for the proposition that Parrish Charter Academy's application can be amended for substantive reasons. The Academies case involved an "omitted sentence from its application" for student grades. [Id. at 1191] and a "typographical error" on the promotion rates. [Id. at 1188.]. That case did not address the significant deficiencies that are present in the existing application or a requirement for a school board to accept non-substantive amendments that go to the very core of the application. [Attached hereto as Exhibit "A" is the Academies case.]

In addition, the Legislature has addressed this issue by Statute and limit the scope and amendments and when such amendments can be made. Applications can be amended under Fla. Stat. §1002.33(6)(b):

Before approving or denying any final application, the sponsor shall allow the applicant, upon receipt of written notification, at least 7 calendar days to make 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.

Accordingly, the District is under no obligation to allow Applicant to now amend their charter school application to address substantive issues, or cause this commission to believe that the District can resolve all matters in a charter school contract. The standard of review in this matter is whether a School Board had competent substantial evidence to justify a denial. See: Sch. Bd. Of Osceola County v. Universal Educ. Servs., 990 So. 2d 1210, 2008 (Fla. 5th DCA. 2008).

Parrish Charter Academy admits that it is not aware of any public schools in the State of Florida implementing Experiential Learning as an educational delivery model. [Exh. 2:013, 2:028, 5:5, 5:13.] There was no proof that the proposed educational delivery model complied or will comply with the Florida Standards. [Exh. 4:12-13, 4:21-22.] In fact, Applicant's reliance on an expiring testing bank, and the Experiential

Learning Model (which is not tied to Florida Standards), reveals that Parrish Charter Academy does not demonstrate a thorough understanding of key issues, accurate information or thorough preparation as required in the Florida Charter School Application Evaluation Instrument. [Exh.3:001.]

During the Capacity Interview, when questioned how the Experiential Learning model aligned to the Florida Standards, the Applicant was non-responsive. [Exh. 4:12-15, 4:20-23.] The District was under no obligation to prod the Applicant for further explanation. The District had every statutory right to rely upon the application. Fla. Stat. §1002.33(6)(a)(1) through §1002.33(6)(a)(6). See also: School Board of Volusia County v. Academies of Excellence, Inc., 974 So.2d 1186 (Fla. 5th DCA 2008). Additionally, the Denial Notice does not have to be solely based upon the Capacity Interview. [Exh. 1:2; 4:1-59]; Fla. Stat. § 1002.33(6)(a)(1) through § 1002.33(6)(a)(6).

Contrary to Applicant's contention, the 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 prior applications submitted by Parrish Charter Academy for the past four applications. [Exh. 5:16.]

The Application attaches as curriculum "Wilson Foundations®" "Correlated to Common Core State Standards". [2:362]. Reference is made to the "Common Core" and not the "Florida Standards" in Exh. 2:361-2:418. In addition, Applicant admits that "Expeditionary Learning" is "common core" aligned. [Exh. 4:48.] Applicant, when contrasting "Expeditionary Learning" with the need to align curriculum with the Florida Standards, stated:

“Just in that one area because everything else – everything else is aligned to the Florida Standards but I’ve looked at it, and there’s not a lot of differences. . . .” [Exh. 4:49.]

From the above statement it is clear that Parrish Charter Academy equates “Common Core” with Florida Standards, acknowledging that Expeditionary Learning is tied to the common core. [Exh. 4:48.] The curriculum in the underlying application is undeveloped and the curriculum that is relied upon by Parrish Charter Academy is not aligned to the Florida Standards. Applicant has provided no indication how it will be aligned or how students will attain Florida Standards. [Exh. 3:7, Exh. 4:12, 4:14-15, 4:20-23; Exh. 2:009-010, 2:014-15, 2:023, 2:029, 2:041, 2:070; 2:074, 2:082.]

The Court in Imhotep-Nguzo Saba Charter Sch. v. Dep’t of Educ., 947 So.2d 1279, (Fla. 4th DCA 2007) in upholding the denial of a charter school application stated that “an agency’s interpretation of a statute that it is charged with enforcing is entitled to great deference and will be approved on appeal unless it is clearly erroneous. BellSouth Telecomms., Inc. v. Johnson, 708 So. 2d 594, 596-97 (Fla. 1998); Dep’t of Ins., 438 So. 2d at 820.”

Conclusion

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:

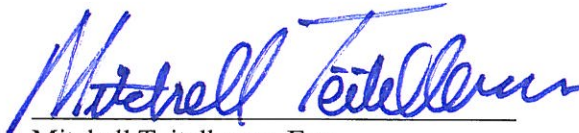
- 1) Lack of a clear and coherent educational program and curriculum plan aligned with the Florida Standards.
- 2) Lack of a comprehensive reading plan aligned with Florida Standards and designed to meet the needs of students reading at, above and below grade level.
- 3) Lack of assessment plan, including 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.

WHEREFORE, the District respectfully requests that the Charter School Appeal Commission uphold the District's denial of Parrish Charter Academy's Application.

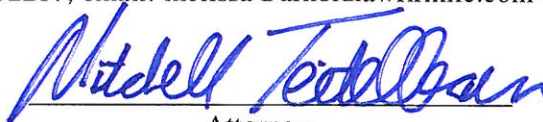
Respectfully submitted the 25th day of May, 2017.



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CERTIFICATE OF SERVICE

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



Attorney

EXHIBIT

A

Sch. Bd. v. Academies of Excellence, Inc.

Court of Appeal of Florida, Fifth District

February 22, 2008, Opinion Filed

Case No. 5D06-1054

Reporter

974 So. 2d 1186 *; 2008 Fla. App. LEXIS 5177 **; 33 Fla. L. Weekly D 569

SCHOOL BOARD OF VOLUSIA COUNTY, Appellant, v.
ACADEMIES OF EXCELLENCE, INC., ETC., ET AL.,
Appellee.

Subsequent History: Released for Publication March 12, 2008.

Review dismissed by *Sch. Bd. v. Academies of Excellence, Inc.*, 981 So. 2d 1200, 2008 Fla. LEXIS 656 (Fla., Apr. 7, 2008)

Prior History: [**1] Administrative Appeal from the Department of Education.

Sch. Bd. v. Academies of Excellence, Inc., 2007 Fla. App. LEXIS 18808 (Fla. Dist. Ct. App. 5th Dist., Nov. 30, 2007)

Core Terms

school board, state board of education, charter school, state board, district school, recommendation, percentile, charter, calendar days, finance, public school, good cause, requirements, deficient, statutorily, argues, applications, provides, reasons, substantial evidence to support, class size, supervise, grade

Case Summary

Procedural Posture

Pursuant to § 1002.33, Fla. Stat. (2005), appellee school filed a charter school application. Appellant district school board denied the application. The school appealed. The Florida Charter School Appeal Commission reversed the board's ruling. The board appealed; the Florida Department of Education affirmed. The board sought further review.

Overview

The board's witnesses testified that the school's application

failed to set a goal of attaining an A, B, C, or D grade; that its standard that students who scored at or above the 25th percentile on norm referenced tests demonstrated acceptable performance was lower than the State's standard; and that the application lacked evidence of sound financial planning. The board denied the application on these grounds. The Commission ruled that the board had established that the application was deficient in the area of student assessment/accountability, but that this was not good cause for denial. The Department affirmed. The appellate court held that neither § 1002.33(6)(a), Fla. Stat., nor the Florida charter schools standard application required a charter school to include a school grade. The school had rebutted the board's claim that it was statutorily deficient in the finance/class size requirement. The Department's authority under § 1002.33(6)(c) to approve or deny a charter school application did not violate the authority of district school boards under Art. IX, § 1(a), Fla. Const., to control public schools, as only those boards were authorized to open and supervise charter schools.

Outcome

The decision of the Department was affirmed.

LexisNexis® Headnotes

Education Law > Administration & Operation > Elementary & Secondary School Boards > School Board Proceedings

Education Law > Administration & Operation > Charter Schools

Education Law > Departments of Education > State Departments of Education > Authority of Departments of Education

Education Law > Departments of Education > State Departments of Education > State Boards of Education

HNI [] Upon receipt of notification from the Florida Board of Education that a charter school applicant is filing an appeal, the Florida Commissioner of Education shall convene a meeting of the Florida Charter School Appeal Commission

to study and make recommendations to the Florida Board of Education regarding its pending decision about the appeal. § 1002.33(6)(c), Fla. Stat. (2005).

Education Law > Administration & Operation > Elementary & Secondary School Boards > School Board Proceedings

Education Law > Administration & Operation > Charter Schools

Education Law > Departments of Education > State Departments of Education > Authority of Departments of Education

Education Law > Departments of Education > State Departments of Education > State Boards of Education

HN2 [⚡] See § 1002.33(6)(b)(3), Fla. Stat. (2005).

Education Law > Administration & Operation > Charter Schools

Education Law > Departments of Education > State Departments of Education > Authority of Departments of Education

Education Law > Departments of Education > State Departments of Education > State Boards of Education

HN3 [⚡] See § 1002.33(6)(f), Fla. Stat. (2005).

Education Law > Administration & Operation > Charter Schools

Education Law > Departments of Education > State Departments of Education > State Boards of Education

HN4 [⚡] Section 1002.33(6)(f), Fla. Stat. (2005), clearly states that the Florida Charter School Appeal Commission, not the Florida Department of Education, must include a fact-based justification for its recommendation. Therefore, the failure of the Department to include a fact-based justification for its decision does not constitute reversible error.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN5 [⚡] An appellate court will not consider an issue raised by a party for the first time on appeal.

Education Law > Administration & Operation > Charter Schools

HN6 [⚡] Section 1002.33(6)(a), Fla. Stat. (2005), contains no

requirement that one of the goals stated in an application for a charter school include a school grade, and the Florida charter schools standard application includes no such requirement.

Education Law > Administration & Operation > Charter Schools

HN7 [⚡] Although a charter school application is statutorily deficient, such a deficiency is not good cause for denial of the application when the applicant recognizes the problem and is willing to correct it.

Education Law > Administration & Operation > Charter Schools

Education Law > Departments of Education > State Departments of Education > Authority of Departments of Education

Education Law > Departments of Education > State Departments of Education > State Boards of Education

HN8 [⚡] See § 1002.33(6)(c), Fla. Stat. (2005).

Education Law > Administration & Operation > General Overview

HN9 [⚡] See Art. IX, § 1(a), Fla. Const.

Education Law > Administration & Operation > Elementary & Secondary School Boards > Authority of School Boards

Education Law > Administration & Operation > School Districts > Financial Liabilities

HN10 [⚡] See Art. IX, § 4(b), Fla. Const.

Education Law > Administration & Operation > General Overview

Governments > State & Territorial Governments > Employees & Officials

HN11 [⚡] See Art. IX, § 2, Fla. Const.

Education Law > Administration & Operation > Elementary & Secondary School Boards > Authority of School Boards

Education Law > Administration & Operation > Charter Schools

Education Law > Departments of Education > State Departments of Education > Authority of Departments of Education

HN12 [L] *Section 1002.33(6)(c), Fla. Stat.* (2005), does not permit the Florida Department of Education to open a charter school. Rather, *§ 1002.33(6)(c)* permits the Department to approve or deny a charter application after it completes an extensive review process. Granting a charter application is not equivalent to opening a public school. The approval of an application is just the beginning of the process to open a charter school. Once the charter application has been granted, the school board still has control over the process because the applicant and the school board must agree on the provisions of the charter. *§ 1002.33(6)(h), Fla. Stat.* (2005). A school board can also cause a charter to be revoked or not renewed. *§ 1002.33(8), Fla. Stat.* (2005). Furthermore, under the Constitution of Florida, while the school board shall operate, control and supervise all free public schools within their district, the Department has supervision over the system of free public education as provided by law.

Counsel: Theodore R. Doran, Audrie M. Harris and Michael Ciocchetti of Doran, Wolfe, Ansay & Kundid, Daytona Beach, for Appellant.

Christopher V. Carlyle, Shannon McLin Carlyle and Gilbert S. Goshorn, Jr., of The Carlyle Appellate Law Firm, The Villages, for Appellee.

Judges: PALMER, C.J. SAWAYA, J., concurs. GRIFFIN, J., concurs specially, with opinion.

Opinion by: PALMER

Opinion

[*1187] PALMER, C.J.

ON MOTION FOR REHEARING AND REHEARING EN BANC

The motion for rehearing and for rehearing en banc filed by the School Board of Volusia County is denied. However, the prior opinion of this court, dated November 30, 2007 is withdrawn, and we substitute the following in its place.

The School Board of Volusia County (School Board) appeals the final order entered by the State of Florida, Department of Education (State Board), reversing the School Board's denial of the charter school application filed by Academies of Excellence, Inc. (Academies). Determining that the record contains competent, substantial evidence to support the State Board's decision, we affirm.

Academies applied to the School Board for permission to open a charter elementary school in Volusia County, Florida. Pertinent to [*2] this appeal, in the application the following information was set forth:

L. Student Performance Standards

4. To be considered as meeting student performance standards, students must perform at Level 3 and above on the mathematics and reading sections of the Florida Comprehensive Assessment Test.

5. Students who score at or above the 25th percentile on norm-referenced tests are considered to have demonstrated acceptable student performance standards.

Additionally, as part of the finance portion of the application, Academies indicated that it expected to initially enroll 450 students.

The School Board held a hearing to consider Academies' application. During the hearing, Dr. Chris Colwell, Deputy [*1188] Superintendent for Instruction Services, testified that Academies' application failed to set a goal for itself of attaining an A, B, C, or D grade in terms of success of the school. He stated that a specific stated goal was required and appropriate. Next, Colwell took issue with Academies' standard that "students who score at or above the 25th percentile on norm referenced tests are considered to have demonstrated acceptable student performance standards." He testified that the standard was lower [*3] than the standards held by public schools in Volusia County and lower than the standards that would be expected by the State of Florida.

Bill Kelly, Jr., Deputy Superintendent of Finance, opined that Academies' application lacked evidence of sound financial planning. Specifically, Kelly found Academies' enrollment projection of 450 students in the first year of operation to be unreasonable. Based on the unreasonable enrollment figure, Kelly stated that Academies' budget revenues were overstated. Kelly also stated that Academies was understating its capital budget by one million dollars for facilities and land costs.

At the conclusion of the hearing, the School Board denied Academies' application. Specifically, the School Board concluded that Academies' application failed to meet the standards for minimal acceptance in the areas of student assessment/accountability and finance/class size requirements.

Academies appealed the School Board's ruling to the State Board of Education. The Charter School Appeals Commission

¹ conducted a hearing on the matter. During that hearing, Kathleen Schoenberg, attorney for Academies, argued that Academies' application properly addressed the statutory requirement [**4] regarding student assessment and that the argument over finances was just a difference of opinion between the School Board and Academies.

Ted Doran, attorney for the School Board, argued that Academies had failed for the fourth time to produce an application sufficient statutorily to proceed to the next level. Dr. Colwell testified that Academies' failure to include a school goal in its application made Academies unaccountable for its performance under the Governor's A-Plus Plan. Further, Colwell stated that it was unacceptable that Academies considered the 25th percentile to be an acceptable level of student performance. However, he did indicate that Academies had admitted that this figure on their application was a typographical error and that the figure should have been 51st percentile instead of 25th percentile.

In response, [**5] Schoenberg stated that Academies mistakenly omitted a sentence stating that the school's goal was to be an "A" school. However, she argued that omission of that one sentence was not enough to make the entire application deficient.

The Commission asked the parties whether there was a specific requirement that a school grade be part of the application. Colwell admitted that the application template did not include such a requirement and Schoenberg stated that the statute does not require the school to include a school grade as one of its goals.

At the conclusion of the comments on student assessment/accountability, the [*1189] Commission voted that the School Board had competent, substantial evidence to support its finding that the application was statutorily deficient in the area of student assessment/accountability. However, immediately thereafter, the Commission voted that the School Board's finding that the application was statutorily deficient in the area of student assessment/accountability was not good cause for denial. ² After more discussion, the

Commission voted that the School Board did not have competent substantial evidence to support its finding that the application was statutorily [**6] deficient in the areas of finance/class size requirements. Subsequently, the Commission voted to recommend to the State Board that Academies' appeal be granted.

The Commission's recommendations were submitted to the State Board. [**7] The State Board conducted a hearing during which it considered whether to accept the Commission's recommendation to overturn the decision of the School Board and to grant Academies' application. During the hearing, a member of the State Board requested clarification regarding the 25th percentile versus the 51st percentile. The head of the appeals commission responded:

I absolutely admonished the applicant that that's not acceptable. They had noted it. They admitted it. They said it was a typo. They absolutely agree on the record and in writing, it should be 51 percent which is the norm for the FCAT.

Subsequently, the State Board issued a written order upholding the findings and recommendations of the Commission. This appeal timely followed.

The School Board challenges the State Board's final order claiming first that the Board deviated from the record below and improperly created its own record during the appeal process. Specifically, the School Board argues that the School Board and Academies were bound by the record developed before the School Board and thus it was error for the parties to add new evidence during the appeal process. We reject this argument because both the School Board [**8] and

(6) HNI [↑] Application process and review.--Beginning September 1, 2003, applications are subject to the following requirements:

[b] 3. A district school board shall by a majority vote approve or deny an application no later than 60 calendar days after the application is received, unless the district school board and the applicant mutually agree to temporarily postpone the vote to a specific date, at which time the district school board shall by a majority vote approve or deny the application. If the district school board fails to act on the application, an applicant may appeal to the State Board of Education as provided in paragraph (c). If an application is denied, the district school board shall, within 10 calendar days, articulate in writing the specific reasons based upon **good cause** supporting its denial of the charter application.

¹ HNI [↑] Upon receipt of notification from the State Board of Education that a charter school applicant is filing an appeal, the Commissioner of Education shall convene a meeting of the Charter School Appeal Commission to study and make recommendations to the State Board of Education regarding its pending decision about the appeal. § 1002.33(6)(c), Fla. Stat. (2005).

² Section 1002.33(6)(b)3 of the Florida Statutes provides:

Academies presented, without any objection, testimony before the Commission regarding the issues of student assessment/accountability and finance/class size requirements. Additionally, the School Board did not raise any objections to the comments made during the State Board meeting regarding the 25th percentile promotion rate, nor did the School Board raise the argument before the State Board that it now raises on appeal. Accordingly, the School Board failed to preserve this issue for our review.

In a related argument, the School Board claims that the State Board improperly conducted a *de novo* review of the evidence [*1190] by accepting testimony at the State Board hearing. Again, this argument was not properly preserved for our review.

The School Board further argues that the State Board's order must be reversed because it fails to include a fact-based justification for the Board's decision. We disagree.

Section 1002.33(6)(f)1. & 5. of the Florida Statutes (2005) provides:

1002.33. Charter schools

(6) HN3 [↑] Application process and review. Beginning September 1, 2003, applications are subject to the following requirements:

(f) 1. A Charter School Appeal Commission is established to assist the [*9] commissioner and the State Board of Education with a fair and impartial review of appeals by applicants whose charter applications have been denied, whose charter contracts have not been renewed, or . . .

5. Commission members shall thoroughly review the materials presented to them from the appellant and the sponsor. The commission may request information to clarify the documentation presented to it. In the course of its review, the commission may facilitate the postponement of an appeal in those cases where additional time and communication may negate the need for a formal appeal and both parties agree, in writing, to postpone the appeal to the State Board of Education. A new date certain for the appeal shall then be set based upon the rules and procedures of the State Board of Education. **Commission members shall provide a written recommendation to the state board as to whether the appeal should be upheld or denied. A fact-based justification for the recommendation must**

be included. The chair must ensure that the written recommendation is submitted to the State Board of Education members no later than 7 calendar days prior to the date on which the appeal is to be heard. Both parties [*10] in the case shall also be provided a copy of the recommendation.

§1002.33(6)(f)1. & 5., Fla. Stat. (2005)(emphasis added).

HN4 [↑] The statute clearly states that the Commission, not the State Board, must include a fact-based justification for its recommendation. Therefore, the failure of the State Board to include a fact-based justification for its decision does not constitute reversible error.³

The School Board next challenges the State Board's final order, claiming that the School Board's basis for denying Academies' charter school application constituted good cause because Academies' application was unsound in student assessment/accountability and finance/class size requirements. The School Board claims that, because [*11] the Commission found that Academies' application was statutorily deficient in the area of student assessment/accountability, the Commission erred in concluding that this deficiency was not good cause for denial of Academies' application. We disagree.

[*1191] While Academies admitted at the hearing before the Commission that it had mistakenly omitted a sentence from its application that should have said the school's goal was to be an "A" school, a representative from the School Board also admitted that the application template did not include a requirement that one of the goals include a school grade. HN6 [↑] Section 1002.33(6)(a) of the Florida Statutes also contains no such requirement, and the Florida charter schools standard application includes no such requirement. Therefore, competent substantial evidence supports the Commission's conclusion that the School Board did not have good cause to deny Academies' application on that basis.

Next, the School Board argues that the Commission erred in concluding that the School Board did not have good cause to deny Academies' application based on statutory deficiencies in Academies' basis for promotion of students. Specifically, the School Board argues that [*12] Academies' could not

³ To the extent the School Board argues that the Commission's order is insufficient for failure to include detailed factual findings, the School Board failed to preserve this argument because it failed to raise the insufficiency of the Commission's recommendations before the State Board. See Imhotep-Nguzo Saba Charter School v. Department of Educ., 947 So.2d 1279 (Fla. 4th DCA 2007)(holding HN5 [↑] appellate court would not consider issue raised by charter schools for first time on appeal).

promote students based on reaching the 25th percentile. This issue was extensively discussed at the meeting before the Commission. Academies indicated that it was willing to correct this language. Academies' willingness to rectify the situation appeared to be the reason that the Commission concluded that this error on Academies' application was not good cause to deny the application. Based on the testimony and argument presented at the hearing, the Commission had sufficient evidence before it to properly conclude that, HN7 [↑] although Academies' application was statutorily deficient, such a deficiency was not good cause for denial of the application when Academies recognized the problem and was willing to correct it.

The School Board also argues that the Commission erred in concluding that the School Board did not have competent substantial evidence to support its finding that Academies' application was statutorily deficient in the area of finance/class size requirement. We again disagree. The record demonstrates that Academies rebutted the reasons the School Board gave for denying its application, and the evidence demonstrated that many of the School Board's reasons for [**13] denial were based on opinion. Also, a School Board representative admitted that Academies' budget was correct if it could achieve its estimated enrollment number.

Finally, the School Board challenges the State Board's final order, claiming that the order which was entered pursuant to section 1002.33 of the Florida Statutes conflicts with, and thereby violates, the School Board's constitutional authority under Article IX, section 4(b), of the Florida Constitution, to operate, control and supervise public schools, and its authority under Article IX, section 1(a), of the Florida Constitution, to make adequate provision for a uniform and high quality system of free public schools. Specifically, the School Board argues that, because the act of operating and controlling all free public schools in Volusia County is conferred exclusively on the School Board, section 1002.33(6)(c) is unconstitutional because it permits the State Board to open a charter school.

Section 1002.33(6)(c) of the Florida Statutes provides:

1002.33 Charter Schools

(6) HN8 [↑] Application process and review.--Beginning September 1, 2003, applications are subject to the following requirements:

(c) An applicant may appeal any [**14] denial of that applicant's application or failure to act on an application to the State Board of Education no later than 30 calendar days after receipt of the district [*1192] school board's

decision or failure to act and shall notify the district school board of its appeal. Any response of the district school board shall be submitted to the State Board of Education within 30 calendar days after notification of the appeal. Upon receipt of notification from the State Board of Education that a charter school applicant is filing an appeal, the Commissioner of Education shall convene a meeting of the Charter School Appeal Commission to study and make recommendations to the State Board of Education regarding its pending decision about the appeal. The commission shall forward its recommendation to the state board no later than 7 calendar days prior to the date on which the appeal is to be heard. The State Board of Education shall by majority vote accept or reject the decision of the district school board no later than 90 calendar days after an appeal is filed in accordance with State Board of Education rule. The Charter School Appeal Commission may reject an appeal submission for failure to comply [**15] with procedural rules governing the appeals process. The rejection shall describe the submission errors. The appellant may have up to 15 calendar days from notice of rejection to resubmit an appeal that meets requirements of State Board of Education rule. An application for appeal submitted subsequent to such rejection shall be considered timely if the original appeal was filed within 30 calendar days after receipt of notice of the specific reasons for the district school board's denial of the charter application. The State Board of Education shall remand the application to the district school board with its written decision that the district school board approve or deny the application. The district school board shall implement the decision of the State Board of Education. The decision of the State Board of Education is not subject to the provisions of the Administrative Procedure Act, chapter 120.

§1002.33(6)(c), Fla. Stat. (2005).

Article IX, Section 1(a) of the Florida Constitution provides:

§1. Public education

(a) HN9 [↑] The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the [**16] education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs

that the needs of the people require

Article IX, section 4(b) of the Florida Constitution provides:

§ 4. School districts; school boards

(b) *HN10*[↑] The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

Article IX, section 2 of the Florida Constitution provides:

§ 2. State board of education

HN11[↑] The state board of education shall be a body corporate and have such supervision of the system of free public education as is provided by law. The state board of education shall consist of seven members appointed by the governor to staggered 4-year terms, subject to confirmation by the senate. The state board of education shall [*17] appoint the commissioner of education.

[*1193] *HN12*[↑] *Section 1002.33(6)(c)* does not permit the State Board to open a charter school. Rather, the statute permits the State Board to approve or deny a charter application after it completes an extensive review process. Granting a charter application is not equivalent to opening a public school. The approval of an application is just the beginning of the process to open a charter school. Once the charter application has been granted, the school board still has control over the process because the applicant and the school board must agree on the provisions of the charter. See *§1002.33(6)(h), Fla. Stat.* (2005). A school board can also cause a charter to be revoked or not renewed. See *§1002.33(8), Fla. Stat.* (2005). Furthermore, under the Constitution of Florida, while the school board shall operate, control and supervise all free public schools within their district the State Board of Education has supervision over the system of free public education as provided by law.

AFFIRMED.

SAWAYA, J., concurs.

GRIFFIN, J., concurs specially, with opinion.

Concur by: GRIFFIN

Concur

GRIFFIN, J., concurring specially.

For what it is worth, in my view, the School Board acted appropriately in [*18] denying the application. This was the fourth time that Academies had submitted its application for this charter school. In the previous application, the minimum standard Academies identified for assessment of the school itself was not to receive an "F" from the State's grading system for two consecutive years. The County found such a standard unacceptable so, in this fourth application, Academies simply eliminated *any* measure for the school. As for the 25th percentile threshold for individual student evaluation, the application says that it would be acceptable if students scored at or above the 25th percentile on norm reference tests. This is clearly not an acceptable standard for several reasons that were discussed in the hearing. Academies' response was that their standard *appeared* to be unacceptable due to an inadvertently omitted sentence and poor wording, but in fact, they intended to have a standard that would not be unacceptable. The Board concluded that it could only act on the application that had been submitted, not the application that might be submitted if errors were corrected, and accordingly denied the application. Surely, they could not have approved the application [*19] in its current form.

Few things in the administrative process are more destructive than the belief on the part of the applicant and the decision-maker that the "review" of administrative action is really nothing more than a "do-over" with more receptive listeners. A fact-finder and decision-maker who knows its decisions will not be accorded respect is less inclined to worry over their accuracy. Nevertheless, for reasons best known to others, this is apparently the way this process has been designed to operate. Therefore, I concur in the result.

End of Document