

**STATE BOARD OF EDUCATION**

**Action Item**

September 14, 2018

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**SUBJECT:** Tallahassee Classical School, Inc. v. School Board of Leon County, Florida

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**PROPOSED BOARD ACTION**

Accept the Recommendation of the Charter School Appeal Commission to grant the Appeal

**AUTHORITY FOR STATE BOARD ACTION**

Section 1002.33, Florida Statutes

**EXECUTIVE SUMMARY**

This is an appeal by Tallahassee Classical School, Inc., of the decision of the School Board of Leon County to deny the charter application submitted by the Applicant.

**ISSUE:**

Whether the School Board had good cause to deny the application based on the Applicant's failure to comply with section 1002.33, Florida Statutes.

**STANDARD OF REVIEW:**

The School Board's determination must be based on good cause. The standard by which the State Board is to review the School Board's decision is whether the School Board had competent substantial evidence to make that determination. The question, therefore, is whether the evidence upon which the School Board based its determination is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. If so, the School Board's decision must be upheld.

**SCHOOL BOARD'S GROUNDS FOR DENIAL:**

The School Board of Leon County based its denial on the following pursuant to section 1002.33, Florida Statutes:

- Application failed to meet the requirements of the Educational Plan
  - Exceptional Students: Section 1002.33(16)(a)3., Florida Statutes.
- Application failed to meet the requirements of the Organizational Plan
  - Student Recruitment and Enrollment: Sections 1002.33(7)(a)7.; 1002.33(7)(a)8.; 1002.33(10), Florida Statutes.
- Application failed to meet the requirements of the Business Plan
  - Transportation: Section 1002.33(20), Florida Statutes.

**CSAC CONCLUSION:**

The School Board did not have competent, substantial evidence to support its denial of the Application for failure to meet the requirements of the Educational Plan, the Organizational Plan, or the Business Plan.

**CSAC RECOMMENDATION:**

The Charter School Appeal Commission recommends overturning the decision of the School Board of Leon County by granting the appeal of Tallahassee Classical School, Inc.

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**Supporting Documentation Included:** Charter School Appeal Commission Recommendation. Appeal of Charter School, Response and CSAC Transcript (under separate cover)

**Facilitator/Presenter:** Adam Miller, Executive Director, Office of Independent Education and Parental Choice

**STATE OF FLORIDA  
CHARTER SCHOOL APPEAL COMMISSION**

TALLAHASSEE CLASSICAL SCHOOL, INC.,

Appellant/Applicant,

v.

DOE No. 2018-3703

SCHOOL BOARD OF LEON COUNTY,  
FLORIDA,

Appellee/School Board.

**RECOMMENDATION OF THE CHARTER SCHOOL APPEAL COMMISSION**

This is an appeal regarding the denial by the School Board of Leon County (“School Board”) of an Application by Tallahassee Classical School, Inc. (“Applicant”), to establish and operate a new charter school. For such appeals, section 1002.33(6)(e)1., Florida Statutes, directs the Charter School Appeal Commission (“Commission”) “to assist the Commissioner and the State Board of Education with a fair and impartial review of appeals by applicants whose charter applications have been denied.” The Commission “may receive copies of the appeal documents forwarded to the State Board of Education, review the documents, [and] gather other applicable information regarding the appeal.” § 1002.33(6)(e)2., Fla. Stat. The Commission must include a fact-based justification in this recommendation to the State Board. Sch. Bd. of Palm Beach County v. Fla. Charter Ed. Found., Inc., 213 So. 3d 356 (Fla. 4th DCA 2017).

The Commission held a hearing on August 9, 2018, in Tallahassee, Florida. After review of the Application, the appeal brief filed by the Applicant, the response brief filed by the School Board, other documents submitted by the parties, argument by the parties, and other applicable information regarding the Application gathered by the Commission, the Commission makes the following recommendation regarding this appeal of the School Board’s denial of the Application.

**I. Standard of Review**

Section 1002.33(6)(b)3.a., Florida Statutes, provides that if a school board denies a charter school application, the school board “shall . . . articulate in writing the specific reasons, based upon good cause, supporting its denial of the application.” The specific reasons for denial must be based upon the statutory requirements for charter school applications, Sch. Bd. of Osceola County v. UCP of Central Fla., 905 So. 2d 909 (Fla. 5th DCA 2005), and must constitute good cause for denial. Sch. Bd. of Volusia County v. Academies of Excellence, Inc., 974 So. 2d 1186 (Fla. 5th DCA 2008). The decision of the State Board, and this recommendation by the Commission, must be based upon competent, substantial evidence. Imhotep-Nguzo Saba Charter Sch. v. Dept. of Ed., 947 So. 2d 1279 (Fla. 4th DCA 2007). The Commission “may receive copies of the appeal documents forwarded to the State Board of Education, review the documents, [and] gather other applicable information regarding the appeal.” § 1002.33(6)(e)2.,

Fla. Stat. The Commission must include a fact-based justification in this recommendation to the State Board. Sch. Bd. of Palm Beach County v. Fla. Charter Ed. Found., Inc., 213 So. 3d 356 (Fla. 4th DCA 2017).

## **II. Fact-Finding and Analysis**

### **a. Brief Background**

Section 1002.33(6)(b), Florida Statutes, requires a school board to review all charter school applications that were timely submitted to it by using the evaluation instrument (“Evaluation Instrument”) that was developed by the Department. The Evaluation Instrument was adopted by Florida Administrative Code Rule 6A-6.0786. The Evaluation Instrument incorporates the statutory requirements for a charter school application and provides three main issues for evaluation of a charter school application: Education Plan, Organizational Plan, and Business Plan. Once the Evaluation Instrument is complete, the school board shall vote to approve or deny the application and then, if denied, articulate in writing the specific reasons, based upon good cause, for the denial, and provide a copy to the applicant and the Department along with the supporting documentation.

The School Board held two meetings in April to discuss the Application, and at the second meeting in April, the School Board voted to deny the Application based on the Superintendent’s recommendation. The Agenda for the April 24, 2018, meeting stated that the Charter Application Review Committee (“CARC”) voted to approve the Application because it met all requirements for approval under Florida Statutes; however, the Superintendent recommended denial of the Application because the Superintendent is mandated “to approve the establishment of schools as needed to provide adequate educational opportunities,” and the Department of Education had recently declined Leon County’s request to add student stations. There was also some reference to the financial impact on the district should the Application be approved. Subsequently, in a letter dated May 2, 2018, the School Board reduced its decision to writing and identified three areas of the Application that it found to be insufficient. The Applicant then timely filed this appeal.

### **b. Issue One: Educational Plan, Exceptional Students**

The School Board’s denial letter stated that the Application failed to address how the Applicant would not discriminate against students with disabilities. The letter stated that the School Board staff compiled data from other classical charter schools that worked with the Barney Initiative and that the percentage of students with disabilities in those classical charter schools was “very far below the percentages served by the school districts in which these charter schools are located.” At the meeting, the School Board argued that the denial was appropriate because of re-segregation in its schools, the potential for exacerbating that trend, and that the plan should include a provision reserving seats for subgroups, such as ESE students. The School Board acknowledged that the Applicant had a desire to identify and enroll ESE students; however, it was concerned that the Applicant’s plan did not provide concrete steps to enroll ESE students.

Section 1002.33(16)(a)3., Florida Statutes, specifies that a charter school must be in compliance with the statutes that pertain to providing services to students with disabilities. The Exceptional Students portion of the Evaluation Instrument provides that the Application should demonstrate that the Applicant understands the requirement to serve all students and include a plan for meeting the broad range of educational needs to all students. One of the criteria is a description of how the school will ensure that students with disabilities have an equal opportunity to be selected for enrollment.

Here, the Application provides a marketing plan that adheres to the statute, and the enrollment application does not inquire whether a student has a disability. The Application states that the Applicant will not discriminate on the basis of disability and that the Applicant will comply with federal and Florida law. Finally, although the School Board is concerned with the low-levels of ESE populations at other classical charter schools, the statistics of the other classical charter schools do not provide good cause to deny the Application because the Applicant is independently operated, has not previously operated a classical charter school, and is not associated with any of the classical schools referenced.

Based on the foregoing, the School Board did not have competent, substantial evidence to support its denial of the Application based on the Applicant's alleged failure to meet the standards for the Educational Plan.

**c. Issue Two: Organizational Plan, Student Recruitment and Enrollment**

The School Board's denial letter stated that the Application did not adequately address how the Applicant would make reasonable efforts to achieve a racial/ethnic balance reflective of the community. In particular, the denial letter expressed concern with other classical charter schools allegedly underserving certain groups of students. At the CSAC meeting, the School Board stated that the Application's recruitment and enrollment plan was deficient because the proposed transportation plan potentially eliminated certain subgroups of students from applying and enrolling. The School Board was also concerned about the potential re-segregation of its schools.

Section 1002.33(7)(a)7., Florida Statutes, requires that a charter school address the admissions procedures and dismissal procedures, including the code of student conduct, and requires that admission or dismissal not be based upon academic performance. Section 1002.33(7)(a)8., Florida Statutes, requires that the charter school address the ways by which the school will achieve a racial/ethnic balance reflective of the community it serves, or within the racial/ethnic range of other public schools in the district. Section 1002.33(10), Florida Statutes, sets forth requirements for determining which students are eligible to attend the school.

The evaluation criteria set forth in the Evaluation Instrument include that (1) the school must have a student recruitment plan that will enable the school to attract its targeted population; (2) it must have an enrollment and admissions process that is open, fair, and in accordance with applicable law; and (3) the plan and process will likely result in the school meeting its enrollment projections.

Here, the Applicant's targeted population is all students in the school district that are interested in a classical school education. The Application states that the student recruitment and

enrollment plan includes distributing informational flyers to multiple zip codes and utilizing the media (television, newspaper, and social) to further reach a wide audience. The materials will be available in other languages and will clearly state that the school does not discriminate based on race, gender, ethnicity, national or ethnic origin, or disability. At the CSAC meeting, the Applicant expanded upon this plan and explained that it will also meet with various organizations that serve underserved student populations in order to see how best to recruit these students. These organizations include groups such as the NAACP, libraries, churches, and mosques.

The enrollment process, as described in the Application, is open, fair, and in accordance with applicable law. The Applicant stated that their enrollment process uses an open lottery, as required by Florida law.

The Applicant projects to have 458 students. The plan to meet that projection includes flyers; reaching out to homeschool students, especially those participating in homeschool co-ops; and hosting information sessions at the library locations in Leon County. The Applicant stated that it already received 300 letters of interest, which is an indication that their process will likely result in the Applicant meeting its enrollment projections.

Based on the foregoing, including the statements made in the Application and the fact that the Applicant is independently operated, the School Board did not have competent, substantial evidence to deny the Application based on the “Student Recruitment and Enrollment” section of the Evaluation Instrument (and the related statutory provisions).

**d. Issue Three: Business Plan, Transportation**

The School Board’s denial letter stated that the Application’s plan for transportation of students, which relies on parents to transport students rather than bus transportation, would create barriers to access.

Section 1002.33(20), Florida Statutes, states that:

Transportation of charter school students shall be provided by the charter school consistent with the requirements of subpart I.E. of chapter 1006 and s. 1012.45. The governing body of the charter school may provide transportation through an agreement or contract with the district school board, a private provider, or parents. The charter school and the sponsor shall cooperate in making arrangements that ensure that transportation is not a barrier to equal access . . . .

The Evaluation Instrument states that an Application meets the standard if it outlines a reasonable transportation plan that serves all eligible students and will not be a barrier to access for students residing within a reasonable distance of the school.

Here, the Application states that for at least the first year, the Applicant will coordinate a carpool cooperative for parents. The Application also states that it will provide transportation as required by a student’s individualized education plan. At the meeting, the School Board admitted

that the transportation plan was legally sufficient. Carpooling can and does serve as a reasonable transportation plan for a charter school. Further, the Application was approved by the School Board’s review committee.

The School Board argued that denial was appropriate because the transportation plan would exclude working parents and low-income parents from participating in a carpool and that it lacked any specific detail about transporting students from poorer sections of the county to the school. However, these issues are matters to be addressed in the contract negotiations and not in this preliminary stage. What is required at this time is an outline of a reasonable transportation plan. The Applicant assured the Commission and the School Board that it should the appeal be granted, it will work with the school district to ensure that transportation is not a barrier to access.

Based on the Application and information presented in response to questions by members of the Appeal Commission, the Application met the criteria for the Business Plan section of the Evaluation Instrument (and the related statutory provisions), and the School Board did not have competent, substantial evidence to deny the Application based on the Applicant’s alleged failure to meet the standard.

**III. Recommendation**


Based on the factual justifications provided above, the Commission recommends that the State Board of Education find that:

1. the School Board did not have competent, substantial evidence to support its denial of the Application based on the Applicant’s alleged failure to meet the standards for the Educational Plan;
2. the School Board did not have competent, substantial evidence to support its denial of the Application based on the Applicant’s alleged failure to meet the standards for the Organizational Plan; and
3. the School Board did not have competent, substantial evidence to support its denial of the Application based on the Applicant’s alleged failure to meet the standards for the Business Plan.

**IV. Overall Recommendation**

Based on the foregoing, the Charter School Appeal Commission recommends that the State Board issue a final order overturning the School Board’s denial of the Application by granting the appeal of Tallahassee Classical School, Inc.

August 23, 2018

  
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 Lois Tepper, Chair  
 Charter School Appeal Commission

