

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

FLORIDA EAST COAST CHARTER
SCHOOL, INC.

Applicant/Appellant,

**APPEAL FROM DENIAL OF
CHARTER SCHOOL APPLICATION**

vs.

THE SCHOOL BOARD OF
VOLUSIA COUNTY, FLORIDA,

School Board/Appellee

_____ /

**RESPONSE BY SCHOOL BOARD
TO APPEAL FROM DENIAL OF
FLORIDA EAST COAST CHARTER SCHOOL, INC.'S
CHARTER SCHOOL APPLICATION**

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PRELIMINARY STATEMENT

In this brief, the Appellee, the School Board of Volusia County, Florida, will be referred to by name or as "School Board." The Appellant, Florida East Coast Charter School will be referred to by name or as "FECCS" or "Applicant." The Florida Department of Education will be referred to by name or as "Department." Citations to the Exhibits will be made by the letter "E" and the appropriate page number.

STATEMENT OF THE CASE AND FACTS

On or about February 1, 2019, FECCS applied to the School Board, for the second time,¹ to open a charter elementary school under Section 1002.33, Florida Statutes (2018), for the 2020-2021 school year, designed to instruct students in kindergarten through fifth grade. On April 9, 2019, the School Board conducted a hearing on the Application and voted to deny it after hearing all of the testimony and reviewing the evidence. (E 469-592)

At the April 9, 2019 hearing, the School Board staff presented its review of the Application, which covered twenty-two areas under the categories of I. Educational Plan; II. Organizational Plan; and III. Business Plan. Three of the areas were not scored. Of the remaining nineteen areas, each area was reviewed using the Florida Department of Education's approved rubric of "Meets the Standard," "Partially Meets the Standard" and "Does Not Meet the Standard," with an explanation of the Applications "strengths," "concerns," and "additional questions." Those areas with a score of "Partially Meets the Standard" and "Does Not Meet the Standard" failed to meet the standards for minimal acceptance and served as a basis for denial of the Application. In accordance with the Florida Department of Education approved rubric, "Partially Meets the Standard" rating was given to a response that addressed most of the criteria, but lacked meaningful detail and required important additional information. "Does Not Meet the Standard" was given to a response that lacked meaningful detail,

¹ FECCS applied in 2018, but withdrew its application prior to the hearing before the School Board.

demonstrated lack of preparation, or otherwise raised substantial concerns about the Applicant’s understanding of the issue in concept or ability to meet the requirement in practice.

FECCS’s Application met thirteen out of the applicable nineteen standards for approval. It partially met the standards in four areas (a) Facility, (b) Food Service, (c) Financial Management and Oversight, and (d) Curriculum and Instructional Design. It did not meet the standard in two areas. These two areas were (a) Budget and (b) Start-Up Plan. On April 9, 2019, based on the aforementioned “partially meets” and “does not meet” scores and supporting testimony and evidence made part of the record at the hearing, the School Board voted to deny FECCS’s application to open an elementary school. (E 469-592) Within ten (10) days of denying FECCS’s Application at the April 9, 2019 hearing, the School Board rendered its written decision of denial on April 18, 2019. (E 23-34) On May 20, 2019, FECCS filed this appeal.

JURISDICTION

FECCS filed this appeal seeking review of the School Board’s denial of its charter school application, pursuant to Section 1002.33(6)(c), Florida Statutes (2018). This response is timely filed with the State Board of Education, in accordance with the aforementioned statute, for consideration by the Commission and State Board.

STANDARD OF REVIEW

Good Cause Standard

The School Board satisfied the requirements of Section 1002.33(6)(b)(3), Florida Statutes. (2018) which provides in pertinent part that 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.” (Emphasis added). While the statute does not define “good cause” the Fifth District Court of Appeal has found that “a denial based on good cause contemplates a *legally sufficient reason.*” School Board of Osceola County v. UCP of Central Florida, 905 So. 2d 909, 914 (Fla. 5th DCA 2005) (Emphasis added). Additionally, a denial for good cause must be upheld if it supported by

competent substantial evidence. Imhotep-Nguzo Saba Charter School v. Dep't of Education, 947 So.2d 1279, 1285 (Fla. 4th DCA 2007).

The “good cause” standard includes giving deference to the School Board as a finder of fact. See Orange Avenue Charter School v. St. Lucie County School Board, 763 So. 2d 531, 534 (Fla. 4th DCA 2000)(in affirming a school board’s non-renewal of a charter school, the court ruled that, “as to matters of agency discretion, such as the validity and weight to be given educational testing, we would defer to the judgment of the school board.”); Imhotep-Nguzo Saba Charter School, supra, 947 So.2d at 1285 (finding that an agency’s interpretation of the statute that it is charged with enforcing is entitled to great deference and will be approved on appeal unless it is clearly erroneous).

In this case, the School Board extensively reviewed all of the evidence and testimony before making its decision to deny FECCS’s charter school Application. (E 23-34, 469-592) Superintendent James T. Russell evaluated the Application and recommended that the School Board deny it due to the cumulative deficiencies in FECCS’s Application in several areas, including Curriculum, Facility, Food Service, Financial Management and Oversight, Budget and Start-Up Plan. (E 465-468) The School Board is entitled to give special weight to the Superintendent’s recommendations. See generally, ABG Real Estate Development v. St. Johns County, 608 So. 2d 59, 62 (Fla. 5th DCA 1992); Hillsborough County v. West Shore Realty, Inc., 444 So. 2d 25, 26 (Fla. 2d DCA 1983). Moreover, the School Board heard testimony from the District, as well as from FECCS, on April 9, 2019 that addressed the very areas in the Application that were rated “Partially Meets the Standard” and “Does Not Meet the Standard.” As a result, the School Board’s factual findings should be given deference in this appeal and the School Board’s denial of FECCS’s application based on good cause upheld where there is sufficient competent evidence supporting the School Board’s decision.

In its Notice of Appeal, FECCS asserts that, “Even where an application is statutorily deficient. Florida courts have found that such a deficiency is not good cause to deny an application where the applicant recognizes the problem and is willing to correct it.” (E 6.) FECCS cites Sch. Bd. of Volusia

County v. Academies of Excellence, Inc., 974 So.2d 1186, 1190-91 (Fla. 5th DCA 2008) for this proposition. However, FECCS’s assertion is misguided where the Fifth District Court of Appeal’s ruling was limited to an applicant’s willingness to correct a *typographical error*. *Academies of Excellence*, 974 So.2d at 1188-91 (Applicant admitted that its application included a typographical error—states 25th percentile to be an acceptable level of student performance when it should be 51st percentile—and was willing to correct it). In response to the Fifth District Court of Appeal’s ruling in *Academies of Excellence*, the Florida legislators amended the Florida Statutes to provide that “Before approving or denying any 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.*” (emphasis added). Thus, FECCS’s argument that the statutory amendment did not abrogate the precedent in *Academies* is without merit. To adopt FECCS’s interpretation of *Academies* would render the statute meaningless.

Compellingly, the statute does not permit the applicant to make substantive changes to its application, thus, any expressed willingness by FECCS to make substantive changes to its application post-submission was irrelevant to the School Board’s assessment of FECCS’s charter school application and is now irrelevant to the Department of Education’s determination of whether the School Board’s denial of FECCS’s charter school application for good cause is supported by competent substantial evidence.

ARGUMENT

A. THE SCHOOL BOARD’S WRITTEN DECISION DATED APRIL 18, 2019 DENYING FECCS’S APPLICATION SHOULD BE AFFIRMED AS IT WAS BASED UPON “GOOD CAUSE”

Pursuant to Section 1002.33(6)(a)(1)-(7) of the Florida Statutes, a charter school applicant is required to meet the following criteria in its application:

1. Demonstrate how the school will use the guiding principles and meet the statutorily defined purpose of a charter school;
2. Provide a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards;
3. Contain 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. Describe the reading curriculum and differentiated strategies that will be used; and
5. Contain an annual financial plan for each year requested by the charter for operation of the school for up to 5 years. The plan must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends.
6. Discloses the name of each applicant, governing board member, and all proposed education services providers; the name and sponsor of any charter school operated by each applicant, each governing board member, and each proposed education services provider that has closed and the reasons for the closure; and the academic and financial history of such charter schools, which the sponsor shall consider in deciding whether to approve or deny the application.
7. Contains additional information a sponsor may require, which shall be attached as an addendum to the charter school application described in this paragraph.

Fla. Stat. § 1002.33(6)(a)(1)-(7) (2019) (emphasis added). In addition, in assessing the charter application, the School Board must consider their fiscal responsibility over all free public schools, including charter schools, within their district and responsibility *to ensure that all children are provided with adequate educational facilities and instructional materials*. *School Bd. Of Osceola County v. UCP of Cent. Florida*, 905 So.2d 909 (Fla. 5th DCA 2005). The School Board is also required to consider the *financial feasibility of each new school*, and to assess the impact that newly approved charter schools will have on each existing school's ability to provide a quality education to each of its students. *Id.*

Moreover, the “Guiding Principles; Purpose” section of the charter school statute, *Fla. Stat.* §1002.33(2) provides further standards and considerations that the School Board must consider in reviewing charter school applications:

(a) Charter schools in Florida shall be guided by the following principles:

1. Meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state’s public school system.
2. ***Promote enhanced academic success and financial efficiency by aligning responsibility with accountability.***
3. Provide parents with sufficient information on whether their child is reading at grade level and whether the child gains at least a year’s worth of learning for every year spent in the charter school.

(b) Charter schools shall fulfill the following purposes:

1. Improve student learning and academic achievement.
2. Increase learning opportunities for all students, with special emphasis on low-performing students and reading.
3. Encourage the use of innovative learning methods.
4. Require the measurement of learning outcomes.

(c) Charter schools may fulfill the following purposes:

1. Create innovative measurements tools.
2. Provide rigorous competition within the public school district to stimulate continual improvement in all public schools.
3. Expand the capacity of the public school system.
4. Mitigate the educational impact created by the development of new ownership of the learning program at the school site.

It is the obligation of the Applicant to present a sound application meeting the aforementioned requirements of the Act and the duty of the School Board to measure the application against those high standards and grant only those applications that demonstrate strong capacity to establish and operate a quality charter school. See *Florida Principles and Standards for Quality Authorizing* (2018). In this case,

FECCS's Application was deficient in six areas, specifically, it failed to meet the standards for a charter school in the areas of Budget and Start-Up Plan, and only partially met the standard in the areas of Curriculum Plan, Facilities, Food Service, and Financial Management and Oversight. (E 23-34, 435-464, 465-468) FECCS submitted an Application that failed to provide proper accountability for the school, contained inconsistencies in the budget and accompanying financial information, inconsistencies in its insurance policy and financial oversight, and failed to provide a projected curriculum and instructional materials. These deficiencies, collectively, provided "good cause" for the School Board to deny FECCS's Application.

1. FECCS'S APPLICATION FAILS TO MEET ALL STATUTORY STANDARDS IN THE AREA OF START-UP PLAN AND BUDGET

The School Board found that FECCS's application failed to meet the statutory requirement as required by Section 1002.33(6)(a)(5), Florida Statutes (2018). Under Florida law, each school board is charged with fiscal responsibility over all free public schools, including charter schools, within their district and must ensure that all children are provided with adequate educational facilities and instructional materials. §1001.42(4)(c)(requiring the school board to provide adequate educational facilities); § 1001.42(9) (requiring the school board to provided adequate instructional materials); and § 1001.42(11) (requiring the school board to determine the amount of funds necessary to operate all schools). Each school board is required to consider the financial feasibility of each new school, and to assess the impact that newly approved charter schools will have on each existing school's ability to provide a quality education to each of its students. Fla. Stat. § 1002.33(5)(b)1.b (requiring the school board, as sponsor, to monitor the revenues and expenditures of each charter school); and § 1002.33(6)(a)5 (requiring the school board to review the financial plan contained in each charter school application).

Under section 1002.33(6)(b)(2), Florida Statutes, a charter school application must "include a full accounting of expected assets, a projection of expected sources and amounts of income, including income derived from projected student enrollments and from community support, and an expense projection that

includes full accounting of the costs of operation, including start-up costs.” Evaluating the finance section of a charter school application requires due care and attention to the details. The budget and financial documents should be consistent and the School Board should not be forced to make un-stated or unrealistic assumptions in order to evaluate the budget. The School Board should be able to trust the information contained within the Application and budget.

In this case, FECCS presented a document evidencing a start-up loan from Centennial Bank in the amount of \$40,000 at 6 percent interest. (E 350) FECCS stated that it planned on using the start-up loan to finance start-up costs with the School only making interest payments on the loan until year 2025. (E 142). However, the start-up loan document provided requires as collateral “Perfected lien on Furniture, Fixtures and Equipment” (E 350), which is in direct conflict with the lease agreement FECCS provided for the facility. (E 248). The agreed upon lease specifically prohibits the Tenant from subjecting the “Landlord’s interest in the Premises or Building to any liens of any kind” or encumbering the Landlord’s interest in the Premises or Building. (E 251).

In its appeal, FECCS argues that it is not the role of the School Board to second guess Centennial Bank’s commitment and argues that the School Board “has relied on speculation and conjecture in determining that Centennial Bank loan commitment and draft lease are irreconcilable.” (E 10-11, 13-14) However, contrary to FECCS’s statements and as direct proof of the School Board’s concerns, the start-up loan document requires as a condition precedent to closing, “satisfactory evidence that Centennial Bank upon attachment of the conditional security interests, will hold a perfected, first priority lien in all of the collateral for the Loan, subject to no other liens except for permitted liens to be determined.” The start-up loan goes on to state that “any misrepresentation of a material fact, whether intentional or otherwise, made prior to issuance of this commitment or any change of any material fact after the issuance hereof shall, at the lender’s sole option, render this commitment void without further notice to the borrower. In such event, the Lender, at its sole option, may elect not to close the loan.” (E 302). Thus,

the documents on their face provided sufficient competent evidence to support the School Board's denial of FECCS's application.

In its Notice of Appeal, FECCS makes futile attempts to resolve the facially conflicting terms of the loan and lease agreement. FECCS's argues that its representatives at the April 9 hearing stated that only the School's own furniture, fixtures and equipment would serve as collateral for the loan (E 10, 13, 14) and that its budget beginning Year 1 includes line items for the purchase of such items. (E 11, 13, 14). However, FECCS's claim conflicts with the terms of the loan requiring a perfected lien prior to closing (E 301), and also conflicts with the agreed-upon lease agreement's provision that provides for a Landlord's lien on "all personal property, fixtures, furnishings and merchandise which may, from time to time, be placed on the Premises" as security for rent payments. (E 255).

Interestingly, FECCS indirectly acknowledges that it gave inconsistent statements regarding what items would serve as collateral for the loan. (E 10). At the Capacity Interview, FECCS stated that the facility FECCS planned on leasing included certain furniture, fixtures and equipment, which would serve as collateral for the start-up loan. (E 10; E 429) However, FECCS's application provided no documentation to support what furniture, fixtures and equipment are in the building, what the value of those items are, and that FECCS even has the authority to use those items as collateral for the loan. (E 523). At the April 9 hearing, FECCS back peddled from its position, to state that the collateral for the start-up loan would be the School's own furniture, fixtures, and equipment, which it planned on purchasing in year 1.

FECCS also argues that any conflict between its start-up loan and lease agreement could be easily resolved by a modification of its lease agreement. (E 10) Unfortunately for FECCS, t Florida Statutes do not permit substantive changes to be made to an application post-submission, and the School Board is not obligated to resolve patent conflicts or make unstated assumptions in its review of charter school applications. Moreover, FECCS stated in its application that it planned on completing lease negotiations by November 2018, which is three months *prior* to when it submitted its application, and the lease

agreement specifically provides that it could not be amended without written consent by both parties, thus, undermining FECCS's assertion that modification of the lease agreement was a feasible option. (E 136, 305).

Such blatant inconsistencies, conflicts, and substantive errors within the Application provided sufficient competent evidence for the School Board to find that FECCS did not meet the statutory requirements for Start-Up Plan.

FECCS also failed to meet the statutory requirements for Budget where FECCS' failed to ensure the financial viability of the school by ensuring a sufficient ending fund balance. (E 461) FECCS asserts that the District's arguments were flawed due to math errors. However, FECCS does not dispute that the fund balance at the end of the start-up period is \$136 and that the start-up budget does not contain any line item for contingency expenses. In its Notice of Appeal, FECCS asserts that it has sufficient funds to cover contingent expenses by asserting that their fund balance should be added to its budgeted "3% contingency" to derive the fund balance as a percentage of revenues. However, budgets are spending plans and a contingency line item is a *budget* for unforeseen expenses or safety net for under-calculated expenses in the budget, as often happens during a fiscal year. By including contingent expenses as a line item in its operating budget, it is assumed that these contingency amounts will be expended during the fiscal year, resulting in an ending fund balance that does not include the contingent amount. Thus, for the District to assess the adequacy of the fund balance it should not include the 3% contingency amount.

Moreover, under the Florida Department of Education's Red Book guidelines, ending fund balance (including assigned and unassigned amounts) should be a minimum of 3% of revenues (without relying on any contingency basis). For year 1, the ending fund balance in FECCS's budget is \$15,161, which is less than 1% of revenues. Under the 75% and 50% enrollment plan, FECCS's fund balance is also less than 1 %, specifically 0.2% for year 1. In year 2 under the 75% and 50% enrollment plan, the fund balance is less than 2 %, which still does not meet the Florida Department of Education's Red Book

guidelines. Thus, FECCS's fund balance during its start-up and year 1 is insufficient to ensure not only financial stability and sustainability of the school, but the viability of the School in its first year.

FECCS claims that the School Board unfairly portrayed FECCS' start-up budget by failing to account for the fact that the School will have significantly lower than normal expenditures. However, FECCS's argument does not address how it would account for contingencies during start-up when its fund balance is \$134. Moreover, while FECCS claims that the facility comes equipped with certain furniture, fixtures, equipment and technology reducing the overall costs for FECCS to start-up the School, no documentation was provided to support FECCS's claims, not even a list of what the furniture, fixtures, equipment and technology were. In fact, FECCS represented at the Capacity Interview it did not know what types of furniture, equipment and technology were located at the facility. (E 429) In light of this uncertainty, School Board's concerns that the start-up budget was insufficient is well-founded and supported. FECCS also argues that in the event the start-up loan is insufficient, FECCS could defer payments until year 1. However, FECCS does not explain what "payments" could be deferred, and once again, there was no evidence provided by FECCS in its application that supports that its start-up expenses, such as compensation for its Principal, could be deferred. Again, the School Board is not obligated to make assumptions in assessing FECCS's application and must determine FECCS's financial feasibility based on what was provided in FECCS's application. Thus, there was good cause to deny FECCS's application where FECCS's start-up budget was inadequate.

As for the specific line item in the operating budget, FECCS's budget shows a guardian's salary at a cost of \$27,000. However, the current annual salary of a school guardian in the District is \$27,750 plus benefits. While FECCS asserts that as a private employer, it is free to establish its own salaries for its employees, FECCS provided no proof that it would be able to obtain a guardian at a lower rate than the District. Most significantly, FECCS's claims that it would be willing and able to amend its budget to provide for a guardian's salary of \$27,750 is irrelevant where it would be a substantive change to its application, and thus barred by the Florida Statutes. Likewise, FECCS's statement that it would amend its

budget to properly account for a 1.0 FTE for the guardian each year under the 50% enrollment budget plan to be compliant with Florida Statutes is irrelevant where it is again a prohibited substantive change.

FECCS also fails to address the School Board's concerns that FECCS leaves many decisions regarding technology and other areas to the principal of the school, who has not been chosen yet. Thus, creating uncertainty as to whether the budget will sufficiently meet the financial needs of the school.

Accordingly, FECCS's clear deficiencies in its operating and start-up budget supports the School Board's denial of FECCS's application based on good cause.

2. FECCS'S "FACILITY" SECTION OF THE APPLICATION FAILS TO MEET STATUTORY STANDARDS

School Board is required to evaluate whether FECCS has provided "evidence that the proposed facility complies with all applicable laws, regulations, and policies and can be ready for school's opening." Form IEPC-M2, adopted by Rule 6A-6.0786 (2018).

As addressed more fully above in Section 1, FECCS failed to meet the statutory standards where its start-up loan conflicted with the lease agreement for the facility.

3. FECCS'S "FOOD SERVICES" SECTION OF THE APPLICATION FAILS TO MEET STATUTORY STANDARDS

FECCS failed to meet the statutory standard for this section where it stated in its application that it would work with the District to verify eligibility for the free/reduced lunch program. However, the District does not approve free and reduced meal applications if outside vendors will be hired and since FECCS stated it planned on hiring outside vendors, that process would have to be done through the outside vendor. FECCS asserts that the School Board's denial was based on conjecture where FECCS stated at the April 9 hearing that it would utilize its own vendor. However, FECCS's statement at the April 9 hearing is inconsistent with its application and is simply an attempt to make a substantive change to its application. Moreover, FECCS provides no evidence that its plan to utilize an outside vendor to verify eligibility for the free/reduced lunch program would be feasible; for example, there is no item in its budget allocated for this.

Moreover, FECCS failed to meet statutory standards where it failed to show a clear understanding of the U.S. Department of Agriculture (“USDA”) guidelines and reimbursable rates. USDA provides different reimbursable rates for breakfast and lunch. For example, FECCS lists students paying “full price” as \$3.39, but USDA reimburseable rate is lower depending on lunch or breakfast. Thus, the School Board was unable to determine whether FECCS’s food service plan would properly serve all students who may qualify for free and reduced lunch, and to determine where the reimbursement would be applied, and where the extra funds, if any, would be applied. Therefore, School Board’s finding that FECCS failed to meet statutory standards is supported by substantial competent evidence.

4. FECCS’S "FINANCIAL MANAGEMENT AND OVEERSIGHT" SECTION OF THE APPLICATION FAILS TO MEET STATUTORY STANDARDS

FECCS failed to meet statutory standards in the area of Financial Management and Oversight where it does not provide for proper oversight by the governing board and accountability for all financial operations of the school. Specifically, FECCS states that the governing board would receive monthly financial updates beginning September, which would mean beginning Year 1. Thus, there is no plan in the application for oversight by the governing board during the start-up months leading up to the opening of the School.

Moreover, FECCS’s application specifically states that after the first year, cash and budget performance statements would be provided to the governing board “as needed or as requested by the board.” (E 146). FECCS’s assertion that it states in its application that “Detailed financial statements will be prepared on a monthly basis for analysis by the board in compliance with Rule 6A-1.0081, Florida Administrative Code,” simply evidences that there are conflicting statements in FECCS’s application.

Moreover, FECCS’s application fails to meet statutory standards where its property insurance does not include 100% of replacement value, Fidelity bonds do not meet a minimum limit of \$500,000, and School leaders’ errors and omissions coverages are not at a minimum of \$1million per occurrence and \$2 million aggregate. FECCS’s argument that it stated in its application it would comply with School

Board's insurance requirements, again, simply evidences conflicting statements in FECCS' application. Moreover, FECCS' statement in the Capacity Interview and at the April 9 hearing that it would be willing to amend its insurance policy to meet School Board's policy is irrelevant, where FECCS cannot make substantive changes to its application post-submission.

In summary, School Board is not obligated to resolve conflicts in the application and FECCS is barred from making substantive changes to its application post-submission. Thus, the School Board had good cause to deny FECCS's application.

5. FECCS'S "CURRICULUM AND INSTRUCTIONAL DESIGN" SECTION OF THE APPLICATION FAILS TO MEET STATUTORY STANDARDS

Section 1002.33(6)(a)2, Florida Statutes (2018) requires that FECCS provide a "detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards. Moreover, the School Board must ensure that all children are provided with adequate educational facilities and instructional materials. §1001.42(4)(c)(requiring the school board to provide adequate educational facilities); § 1001.42(9) (requiring the school board to provided adequate instructional materials). Section 1002.33(7)(a)2 provides that the School Board address and criteria for approval of the charter based on "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 education and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and professional standards."

First, FECCS' assertion that the School Board "found the Educational Plan to meet the standard for approval," (citing to page 437 of Exhibit 2) and thus should be precluded from using the "Curriculum and Instructional Design subsection" as a basis for denial, is false. As evidenced on page 437 of Exhibit 2, the Superintendent found that the Mission, Guiding Principles and Purpose subsection met the standard, not that the entire Educational Plan met the standard.

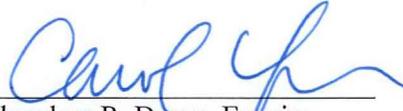
In the area of Physical Education (“PE”), section 1003.455, Florida Statutes, requires that all physical education programs and curricula be reviewed by a certified physical education instructor, thus providing oversight over the PE program. In its application, FECCS does not state who will provide PE instruction. It is only during the Capacity Interview that FECCS stated that PE instruction would be provided by its instructional staff. (E 384). While FECCS is correct that in the secondary school level, PE instruction does not have to be provided by certified PE instructors, FECCS failed to provide in its application how it will meet Florida law’s requirement that PE programs and curricula be *reviewed by a certified PE instructor*. (E 76-77) FECCS’ statement at the April 9 hearing acknowledges that it did not specifically state how it would abide by Florida Statutes for PE instructions. (E 497)

FECCS’s application also only partially met the standard where it failed to identify instructional materials in all subjects and left the final decisions regarding curriculum to the principal, who had not been obtained at the time of FECCS’s application submission. (E 74). As stated above, School Board is charged with ensuring that all children are provided adequate instructional materials and FECCS’s failure to clearly present curricular choices (e.g. textbooks) as required under the Florida Model Charter School Application is a good cause to deny its application.

CONCLUSION

The School Board’s decision of April 18, 2019 was proper under Section 1002.33, Florida Statutes (2018). The Rubric, transcript of the hearing, and the April 18, 2019 letter clearly outline the deficiencies of the FECCS’s Application. The deficiencies of the Application were significant and amount to good cause for denying the Application. While FECCS asserts that a willingness to amend its application post-submission undermines the School Board’s finding of good cause, Section 1002.33(6), Florida Statutes (2018) does not provide for substantive changes to be made by the applicant and thus, FECCS’ argument is meritless.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Response by School Board to Appeal From Denial of Charter School Application was furnished via electronic mail and federal express to Shawn A. Arnold, Esq. and Braxton A. Padgett, Esq. with The Arnold Law Firm, 6279 Dupont Station Court, Jacksonville, Florida 32217, this 19th day of June, 2019.



Carol A. Yoon