

**FLORIDA CHARTER SCHOOL APPEAL COMMISSION
APPEAL FROM THE DENIAL OF A CHARTER SCHOOL APPLICATION**

NAL-003, INC.
D/B/A NAVIGATOR ACADEMY
OF LEADERSHIP HIGH SCHOOL
DAVENPORT

Petitioner,

CASE NO 23-

vs.

THE SCHOOL BOARD OF
POLK COUNTY, FLORIDA,

Respondent.

**NOTICE OF APPEAL OF DENIAL OF A CHARTER SCHOOL APPLICATION AND
PETITIONER'S BRIEF**

NAL-003, INC. d/b/a/ Navigator Academy of Leadership High School Davenport ("NAL"), a Florida nonprofit corporation (hereinafter "NAL" or the "Charter School"), files this instant Notice of Appeal, with incorporated brief, to formally appeal the denial of the Charter Application of the Navigator Academy of Leadership High School Davenport (the "Charter Application") by the School Board Of Polk County, Florida (hereinafter or "School Board") made at the School Board's July 25, 2023 School Board Meeting.

Name and Address of Parties and Date of Denial

Applicant/Petitioner
NAL-003, INC.
d/b/a Navigator Academy of Leadership
High School Davenport
495 Holly Hill Road
Davenport, Florida 33837

School Board/Respondent
SCHOOL BOARD OF POLK
COUNTY, FLORIDA,
1915 S. Floral Ave.,
Bartow, Florida 33602

Date of Denial

The School Board denied the Charter Application at a School Board Meeting on July 25, 2023. The formally rendered denial letter from the School Board to the Charter School is dated August 3, 2023 (the "Denial Letter") and is addressed to Mr. Calkins and Ms. LaFrance, Managing Principal and Vice President of Compass Charter Schools, LLC, respectively. A copy of the Denial Letter is attached hereto as "**Exhibit A.**"

Statement of Facts and Procedural Background

NAL submitted the Charter Application in partnership with its selected ESP, Compass Charter Schools, LLC on April 24, 2023. A copy of the Charter Application is attached hereto as "**Exhibit B.**" By way of background, in 2019, Navigator Academy of Leadership Davenport K-8, a charter public school located on the same proposed site as NAL, opened its doors. Through a SMART (Science, Math, Art, Reading & Technology) focus in alignment with a NASA collaboration, and with an intentional and targeted focus using *Leader in Me*, Navigator Academy of Leadership Davenport K-8 has been fulfilling its mission and vision of educating the whole child for four years. As an educational entity, NAL strives to educate children while setting high yet attainable expectations with the mindset of developing each student's ability to think independently, problem solve, and collaborate. Student's ability to analyze, synthesize, and produce a product that is unique is the reason why students need a high school option that follows the same educational philosophy that students may have experienced in grades K-8.

NAL was designed and is intended to continue to develop students to be well-rounded thinkers, problem-solvers, and entrepreneurs. All of which become even more crucial in the High School years. NAL sought to expand the K-8 program for the ever growing demand in Davenport and, once this appeal is granted, will revolutionize instruction through its unique approach of

educating the whole student. Instruction will be centered on students actively engaged and having ownership of their own learning and, by developing the leader in each child, students will see how their education is an investment of a lifetime. The educational approach at Navigator Academy of Leadership will meet the needs of all students, thus making learning and knowledge accessible to the most diverse populations. Navigator Academy of Leadership, Inc. is already part of a wonderful community with educational partnerships that will produce great leaders of the currently existing and ever expanding community.

In the first two years, Navigator Academy of Leadership Davenport K-8 had 14 student-generated projects accepted by NASA as experiments to go into space, the underwater robotics team advanced to the national level of competition two years in a row, and students further developed their leadership and communication skills through participation in classes and clubs such as coding, robotics, journalism, TV productions, and *Leader in Me*. It is the vision of NAL, through a 9-12 charter public high school, will offer a continuum of educational experiences where a student-led culture helps teens find their voice and develop critical skills to successfully navigate college, career, and life.

While the Charter High School will be new, the approach is not. The selected ESP, Compass, through project management and turn-key services, facilitates school development and expansion in quality, state-of-the-art facilities that are aligned with each school's needs and educational approach. Their goal is to rebuild education from the ground up and allow learning to go back to the basics which include inquiry and exploration in a safe and nurturing learning environment. The mission of Compass Charter Schools is to enhance our community by expanding quality educational institutions through a strategic approach to school development which begins

with quality educational facilities, continues with school operations plus curriculum development, and produces well-rounded students that are happy, confident, and successful.

Even more important, this Charter School was well supported not only by its potential staff members, but the financing company and bond holders for the currently existing campus, the parents of students desperately seeking a continuum of grade levels from the already existing and successful K-8 program, but also from the actual City of Davenport itself. Kelly Callihan, the City Manager of the City of Davenport, Florida, wrote a letter dated January 25, 2022 expressing support for approval of NAL, urging, among other statements, to **"[p]lease accept this letter expressing my full support for the development of the high school as it would greatly help support the already overcrowded high schools in the surrounding area."** A copy of the letters of support from the NAL Bond Underwriter, City Manager, and dozens of parents is attached hereto as **"Exhibit C."**

The July 25, 2023 School Board Meeting

However, at the actual School Board meeting on July 25, 2023, only one school board member spoke for less than one minute on the matter and the entire decision was made in approximately two minutes. Clearly there was no meaningful public discussion or consideration from the School Board, despite overwhelming support from the public. The School Board ultimately voted to deny the Charter Application at its July 25, 2023 School Board meeting.¹ A copy of the July 25, 2023 Agenda Item is attached hereto as **"Exhibit D"** and a copy of the Agenda

¹ On April 24, 2023, the School Board received the application for the Charter School for a 2024-2025 school opening. Although the Charter School met the statutory guidelines for submitting the Charter Application, the School Board did not. Pursuant to Section 1002.33(6)(b)(3)(a), Florida Statutes that "[a] sponsor shall by a majority vote approve or deny an application **no later than 90 calendar days after the application is received** . . . If the sponsor fails to act on the application, an applicant may appeal to the State Board of Education as provided in paragraph (c)." As such, the School Board was required to actually vote to approve or deny the Charter Application *no later than* **July 23, 2023**. The School Board, however, failed to vote on the Charter Application until July 25, 2023 and the School Board did not submit its formal Denial Letter until August 3, 2023.

Item Attachment (the evaluation) is attached hereto as "**Exhibit E.**" A copy of the July 25, 2023 School Board Meeting Transcript is provided and attached with this brief as "**Exhibit F (and the relevant portions are highlighted within)**".²"

By letter dated August 3, 2023, the School Board issued its Denial Letter that listed only three sections out of over twenty as the basis for the denial for the Charter Application. Of notable importance, the evaluation instrument noted that the Charter Application fully met or partially met the following standards: Mission, Guiding Principles and Purpose; Target Population and Student Body; Educational Program Design; Curriculum and Instructional Design; Student Performance; Exceptional Students; English Language Learners; School Culture and Discipline; Governance; Human Resources and Employment; Professional Development; Student Recruitment and Enrollment; Parent and Community Involvement; Facilities; Food Service, School Safety and Security; Financial Management and Oversight; Start-Up Plan; and the Education Service Provider. **Of the 22 areas of evaluation, only three (3) did not meet the standard; management and staffing; Transportation Service; and Budget (even though the District provided that NAL fully met the standard for financial management and oversight).** None of the School Board's proffered reasons comport with the Florida charter school statute, are factually justified, legally sound, or supported by any record evidence. As such, this appeal has been filed.

Statement of Law

Under the controlling charter school statute, the School Board was required to set forth the specific reasons, based upon good cause, for denying a charter application in writing. *See* Fla. Stat. § 1002.33(6)(b)(3)(a). By law, the Charter School Appeals Commission must find that the instant Charter Application should have been approved by the School Board if: (1) it determines that there

² NAL has submitted a public records request for the relevant transcripts of both the capacity interview and the July 25, 2023 School Board Meeting and reserves the right to supplement this brief upon receipt.

is insufficient competent and substantial evidence to support the basis for the School Board's denial as set forth in its Denial Letter; or (2) the bases for the denial set out in the Denial Letter do not relate to a mandatory charter school requirement. *See* Fla. Stat. §§ 1002.33(2)(a) & (b); *Sch. Bd. of Volusia County v. Acads. of Excellence, Inc.*, 974 So. 2d 1186, 1191 (Fla. 5th DCA 2008); *Sch. Bd. of Osceola County v. UCP of Cent. Florida*, 905 So. 2d 909, 914-16 (Fla. 5th DCA 2005). Such a finding is warranted in this appeal.

Accordingly, the State Board reviews *de novo* whether the School Board's determination was supported by competent, substantial evidence that meets the “good cause” legal standard. *Sch. Bd. of Palm Beach County v. Florida Charter Educ. Found., Inc.*, 213 So. 3d 356, 361 (Fla. 4th DCA 2017) (citing *Imhotep–Nguzo Saba Charter Sch. v. Dep't of Educ.*, 947 So. 2d 1279, 1285 (Fla. 4th DCA 2007)).

Factual Rebuttal to School Board's Denial Letter

I. *The Charter School Provided A Sufficient Management & Staffing Plan*

The School Board, in its reason for denial in the Denial Letter, provided that the Charter Application did not comply with Sections 1002.33(7)(a)(9) & 1002.33(7)(a)(14), Florida Statutes. These statutes require the following:

The charter shall address and criteria for approval of the charter shall be based on:

9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

...

14. The qualifications to be required of the teachers and the potential strategies used to recruit, hire, train, and retain qualified staff to achieve best value.

As support for this reason, the School Board alleges the following six (6) areas of concerns:

1. The applicant explained on page fifty-seven (57) of the charter application, “Navigator Academy of Leadership High School’s teaching staff will begin with one certified ESE teacher that can act as both the specialist to maintain the ESE program paperwork and provide direct services. Since the first year we will have a smaller enrollment, this ESE teacher will also oversee the gifted EP students.” Contrary to this statement, the School is allocating 0.5 ESE teacher for the first year of operation to serve approximately thirty (30) students (12%). In addition to providing direct services, the teacher is also responsible for preparing and facilitating all IEP and 504 meetings, monitoring, and implementing stipulated goals and expectations, ensuring all legal requirements are fulfilled, etc. This allocation is insufficient to meet the anticipated needs of exceptional students.
2. The applicant affirmed during the capacity interview conducted on May 16, 2023, that the application allocated \$19,275 in budget Function 6130 for a 0.5 Nurse, Contracted Speech Services, and a Mental Health Counselor. This allocation is insufficient to fund services and personnel key to the vitality of the School.
3. The staffing plan located on page eighty-two (82) of the charter application depicted a 0.5 ESOL allocation to serve approximately thirty (30) English Language Learner students (12%). Based on student needs, the existing Navigator Academy of Leadership K-8 school increased personnel to serve ESOL students in its first few years of operation. Considering the history, projected student population, and actions taken by the Navigator K-8 school, 0.5 ESOL allocation is inappropriate for Navigator Academy of Leadership High School.
4. The application did not budget expenses for substitute teachers.
5. The application states on page seventy (70), “In addition to all the initiatives mentioned throughout this application, NAL-003 intends to offer an array of after school activities and clubs including nationally recognized clubs. These activities and clubs enhance the educational program, culture, and overall experience of high school. A sports program including participation in select FHSAA sports also enhances the high school culture, experience, and academics as our students are expected to be scholar athletes. Teachers will be asked to sponsor a club. Certified coaches will be hired for the sports program.”

The applicant stated during the capacity interview on May 16, 2023, that it planned to offer soccer, basketball, and possibly baseball. The School will serve two hundred

fifty (250) students in ninth and tenth grades in year one (1); three hundred seventy-five (375) students in ninth, tenth, and eleventh grades in year two (2); five hundred (500) students in ninth through twelfth grades in year three (3); six hundred twenty-five (625) students in ninth through twelfth grades in year four (4); and six hundred fifty (650) students in ninth through twelfth grades in year five (5). However, the School allocates the following coaching staff for soccer, basketball and possibly baseball:

- One (1) Junior Varsity Coach for all five (5) years.
- One (1) Varsity Coach for years three (3) through five (5).

The application failed to appropriately allocate coaching staff to accommodate the three (3) identified sports. Furthermore, the District has reservations regarding the School's ability to implement Title IX to ensure equitable opportunities for all students wanting to participate in sports.

6. The proposed budget in Attachment X of the charter application does not reflect allocations for the following positions listed in the staffing plan on page eighty- two (82) of the charter application:

- Maintenance.
- 0.5 Curriculum Specialist.
- 0.5 IT Specialist.

NAL, in support and in response to the above areas of concern, acknowledges the concern raised regarding the allocated resources for exceptional students, however, NAL still meets or partially meets this section. The initial plan described in the Charter Application indicated the intention to have a certified ESE teacher who would cover both paperwork responsibilities and direct services, including overseeing gifted EP students due to the smaller first-year enrollment.

NAL allocated 0.5 for an ESE teacher for approximately thirty students and will ensure other already budgeted staff members and administrative employees, with proper training, will be able to assist in managing various tasks such as IEP and 504 meetings, monitoring, and goal implementation. As NAL continues to grow, NAL is amenable to reconsider the allocation and provide one full-time ESE teacher when demand is present. Further, NAL allocated \$19,275 for nurse, \$48,500 for a Guidance Counselor (Mental Health Counselor) and \$5,000 for any outside

service. Given the historical data and actions taken by the Navigator Academy of Leadership K-8 School, as well as the projected student population and their needs, the allocated 0.5 ESOL (English for Speakers of Other Languages) allocation for approximately thirty (30) English Language Learner students (12%) in the Navigator Academy of Leadership High School is sufficient for the projected opening, and may be amended once demand increases.

Also problematic is that the School Board states that there was not an allocation for substitute teachers in its reason for denial. This is directly contradicted as there was an allocation for substitutes included in Function Code 5100-120. Continually, there are available monies allocated for part-time coaching in Function 9100 and 5100. The School Board does not outright reject the staffing plan, and states it has, ‘reservations’ which is not a listed reason for denial. Such a term is presumptuous and shows bias without pointing to any specific reason as to why the School Board would ‘feel’ a certain way, without citing statutory authority. NAL has a proven track record of implementation and execution as acknowledged by the School Board representatives in the Capacity Interview conducted on May 16, 2023. Below are the specific allocations for those positions that the School Board has "reservations for".

1. Maintenance. Code Section 7900-160
 - a. Amount allocated: \$40,000
2. 0.5 Curriculum Specialist. Code Section 7300-160
 - a. Amount allocated: \$24,250 (shared position)
3. 0.5 IT Specialist. Code Section 8200-310.
 - a. Amount allocated: \$20,000 (shared position)

In the Capacity Interview, the School Board acknowledged NAL’s ability to build and maintain a significant fund balance in its current operations at its other schools. To that end, NAL contests that reasons for denial promulgated by the School Board are without merit based on the staffing plan and budget provided for the same as the bases for the denial set out in the Denial Letter do not relate to a mandatory charter school requirement.F

II. *The Charter School's Transportation Plan is in Compliance with Florida Statutory and Legal Requirements*

The School Board, in its reason for denial in the Denial Letter, states that "[t]he application failed to provide a transportation plan that will serve all eligible students and will not be a barrier to access for students residing within a reasonable distance of the school. The application does not provide revenue and expenditures for student transportation in the presented budget." Although the School Board failed to cite any relevant statute, the School Board seemingly is referring to Section 1002.33(20)(C), Florida Statutes, which provides:

(c) 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 sponsor, 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 for all students residing within a reasonable distance of the charter school as determined in its charter.

This may be perhaps the most egregious and intentional misrepresentation by the School Board or it merely shows their clear lack of understanding of the law and recent decisions in the state of Florida. NAL, in its Charter Application, provided the following description in line with the below statutory and judicial decisions:

All students that attend Navigator of Leadership Davenport (K-8) either walk to school, ride their bikes, use a private bus, or arrive and leave school via parent pickup. This in conjunction with a driver shortage in the district, Navigator Academy of Leadership High School will not be providing bus transportation to its students. In the event that Navigator Academy of Leadership High School could find a private bus vendor, in accordance with F.S. §1002.33 (20) (c), transportation will not be a barrier to equal access for all students within a reasonable distance of the school. Navigator Academy of Leadership High School will provide free school bus transportation by contracting out the service to a vendor.

See Exhibit B, Page 97. The legal requirements of student transportation for charter public schools are vastly different from those of traditional public schools and to attempt to paint the Charter Application as creating a "barrier to equal access for all students" is patently misleading.

Section 1006.21, Florida Statutes, titled "Duties of district school superintendent and district school board regarding transportation" requires different obligations of School Boards as compared to public charter schools. In the case of *Renaissance Charter School, Inc., and Renaissance Charter School At Tradition v. St. Lucie County School Board*, Case Nos. 14-3267 and 14-4045RU (DOAH June 30, 2015), one of the issues on appeal was "[w]hether Petitioners, Renaissance Charter School, Inc., and Renaissance Charter School at Tradition, can be required by the St. Lucie County School Board ("School Board") to offer regular school busing to all eligible charter school students residing more than two miles from the charter school." The Final Order entered by Administrative Law Judge Darren A. Schwartz unequivocally provided that "[t]he School Board cannot require Petitioners to offer regular school busing to all charter school students residing more than two miles from Renaissance Charter School at Tradition." This was affirmed by the Fourth District Court of Appeal in Case No. 4D15-2905.

Any direct comparison of transportation requirements as applicable to traditional public schools versus charter schools would violate the very spirit and intent of charter schools, namely that "[t]he sponsor may not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals." Fla. Stat. § 1002.33(7). The Charter Application and state law provides that it may create cooperative agreements, increase the funding for more busses if necessary, and comply with all applicable rules and regulations

surrounding vendors and the transportation requirement. Accordingly, NAL has satisfied this criteria based on its Charter Application projections and such basis for denial is without merit.

III. ***The Charter School's Projected Budget Complies with Florida Statutory Requirements.***

The School Board, in its reason for denial in the Denial Letter, provided that the Charter Application did not comply with Sections 1002.33(6)(a)5 & 1002.33(6)(b)2, Florida Statutes.

These statutes require the following:

(6) APPLICATION PROCESS AND REVIEW.—Charter school applications are subject to the following requirements:

(a) A person or entity seeking to open a charter school shall prepare and submit an application on the standard application form prepared by the Department of Education which:

5. Contains an annual financial plan for each year requested by the charter for operation of the school for up to 5 years. This 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.

...

(b) A sponsor shall receive and review all applications for a charter school using the evaluation instrument developed by the Department of Education. A sponsor shall receive and consider charter school applications for charter schools to be opened at a time determined by the applicant. A sponsor may not charge an applicant for a charter any fee for the processing or consideration of an application, and a sponsor may not base its consideration or approval of a final application upon the promise of future payment of any kind. 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.

2. In order to ensure fiscal responsibility, an application for a charter school shall 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.

The School Board, in its reasons for denial, arbitrarily removes projected revenue and other funding sources to arrive at its own self-serving conclusion that the budget will be insolvent once they are removed. An example is where the School Board provides, "[t]he budget includes \$250,000 CSP Grant revenue for each of the first two (2) years of operation. The CSP Grant is competitive and is considered unguaranteed revenue." The budget also includes other projected sources, but without an already open charter public school, all funds are technically projected and non-guaranteed. Other non-guaranteed **but expected** and properly labeled funding sources include donations, fundraising efforts, capital outlay beginning in year three, and other projected sources, all labeled throughout the Charter Application, Section 20 and Attachment X. Conversely to the School Board's position, if and when these sources are realized, the Charter School will be in a fiscally sound position. Furthermore, NAL will be utilizing already existing administrators and staff of Navigator Academy of Leadership K-8 in the operation and opening of NAL, thus the projected amount of \$34,780.00 for administration is also in line as costs will be shared, and the Education Service Provider will handle administrative tasks.

Lastly, the School Board notes that "[t]he narrative application contains conflicting information regarding debt service, money owed annually for rent. Consequently, the District is unable to determine the actual costs for the utilization of the facility." Exhibit C, Page 1, highlights how the current bond underwriter for NAL will be able to access public bond financing to finance (i) acquisition of the existing facility, (ii) construction costs of building the high school facility, (iii) and fund predevelopment/contingency/FF&E/etc. costs based on the School's leadership, demand profile, and enrollment plan. Even more specifically, NAL provides, on page 96 of the Application, "[a]ll development expenses including, but not limited to; legal, engineering,

permitting, interior renovation construction, site plan related expenses, and playground development are expenses agreed to by the facility's developer/owner in exchange for a lease with the school tenant in the amounts described in the attached financial plan. Once the building is completed, rent will be at a flat rate of: Year 1 - \$270,533; Year 2 - \$531,410; Year 3 - \$678,275; Year 4 - \$793,730; Year 5 - \$879,250. Rent rates beyond year 5 will be calculated on base rent and an accelerator clause using CPI or a minimum 2% to 3% annual increase." **See Exhibit B, Page 96.** The School Board either failed to review the entire Charter Application or intentionally omitted the above which directly contradicts the main reason or denial in Section 20. Accordingly, this reason for denial is without merit.

Conclusion

WHEREFORE, for all the foregoing reasons, Navigator Academy of Leadership, Inc., d/b/a Navigator Academy of Leadership High School Davenport, respectfully requests that the Charter School Appeal Commission: (1) find that there is insufficient competent and substantial evidence to support the Denial Letter and/or that the School Board's Denial Letter lacked good cause within the meaning of the charter statute to deny the Charter Application; (2) find that the Charter Application that is the subject of this appeal be approved (or deemed approved based on the School Board's failure to timely vote on the Charter Application) (4) remand the instant Charter Application to the School Board for immediate approval and/or any further necessary proceedings; and (5) award any further relief deemed just and proper, including attorneys' fees and costs pursuant to Section 1002.33(6)(d)(1), Florida Statutes.³

Dated: September 1, 2023.

³ The Charter School also reserves the right to contest the lack of due process afforded to the Charter School in the School Board's Denial of the Charter Application as the Charter School was not given proper notice nor an opportunity to be heard before the School Board at the July 25, 2023 School Board meeting.

Certificate of Service

I hereby certify that a copy of the instant brief with exhibits was served upon the School Board of Polk County, Florida via the Superintendent at the address identified herein via overnight delivery on the date identified immediately above. Further, the instant brief with exhibits have also been submitted to the Agency Clerk for the Department of Education, 325 West Gaines Street, Room 1520, Tallahassee, Florida 32399-0400.

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