

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION

Technical Assistance Paper

APPEAL BY BERKLEY ACCELERATED MIDDLE SCHOOL
APPLICATION DENIAL

APPLICANT: BERKLEY ACCELERATED MIDDLE SCHOOL
RESPONDENT SCHOOL BOARD: SCHOOL BOARD OF POLK COUNTY

INTRODUCTION

On October 22, 2003 the Polk County School Board (hereinafter “School Board”) voted to deny the application for the Berkley Accelerated Middle School Charter (hereinafter “Applicant”). Written notice of denial was provided to the Applicant in a letter dated October 28, 2003 (hereinafter “Denial Letter”). On December 1, 2003, Applicant timely filed an appeal of the application denial (hereinafter “Notice of Appeal”). The School Board filed a Response to the Notice of Appeal on January 12, 2004 (hereinafter “Appeal Response”).

Two major issues are in dispute. Based upon the available evidence presented by the parties, the following is a summary of the research findings in relation to the issues raised:

ISSUE ONE:

CONCERNS REGARDING THE SIZE AND POTENTIAL FUTURE UTILIZATION BY THE SCHOOL DISTRICT OF THE PROPOSED SCHOOL SITE, WHICH IS IN COMPLIANCE WITH ALL APPLICABLE STATUTES AND BUILDING CODES, ARE NOT GROUNDS FOR DENYING APPELLANT’S COMPREHENSIVE CHARTER SCHOOL APPLICATION

A. The size of a proposed school site is not a recognized basis for denying a charter school application that complies with all applicable statutes and building codes

B. Whether the proposed site could feasibly be utilized by the District in the event the school failed, is not a recognized basis for denying a charter school application.

- School Board’s Appeal Response states that since section 1002.33, FS, does not define or provide specific guidance as to what constitutes “good cause” school boards have the discretion to make decisions based on their constitutional authority to “operate and supervise all free public schools within the school district” (Constitution of Florida, Article IX, Section 4), and their statutory powers and duties as set forth in Florida Statutes 1001.41 (General Powers Of District School Board) and 1001.42 (Powers And Duties Of District School Board).

The pertinent part of F.S. §1002.33(3) states:

“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.

- School Board’s Appeal Response states that Applicant’s plan to build a charter school on 4 acres of land is too small for 600 students, notwithstanding the proposal to share adjacent facilities at Berkley Elementary Charter School. School Board states that it is within its power to determine that the proposed site facilities are inadequate.

The pertinent part of F.S. §1001.41 states:

“The district school board, after considering recommendations submitted by the district school superintendent, shall exercise the following general powers:

- (1) Determine policies and programs consistent with state law and rule deemed necessary by it for the efficient operation and general improvement of the district school system”(emphasis added).

- Applicant’s Appeal argues that funding is available for the target children in the application through “FTE” (full time equivalent) funding under §10011.62(1)(e)(1)(c), and State Board Rule 6A-603026 (Special Programs for Prekindergarten Children with Disabilities).

The pertinent part of F.S. §10011.62(1)(e)(1)(c) states:

“Students identified as exceptional, in accordance with chapter 6A-6, Florida Administrative Code, who do not have a matrix of services as specified in sub-subparagraph b. shall generate funds on the basis of full-time-equivalent student membership in the Florida Education Finance Program at the same funding level per student as provided for basic students.” (emphasis added.)

- School Board’s Appeal Response states that State Board Rule 6A-603026 provides guidelines for identifying established conditions for children birth through two years of age to be used when a school district chooses to serve these children under §1003.21(1)(e), FS.

ISSUE TWO:

**DESEGREGATION OVERSIGHT COMMITTEE SUGGESTIONS
REFERENCED IN DENIAL LETTER ARE NOT A SPECIFIC BASIS
FOR DENIAL, AS REQUIRED BY §1003.22(6)(b)(3), AND ARE**

OTHERWISE INSUFFICIENT TO SUPPORT DENIAL

- Florida Statute §1002.33(3) states in pertinent part:

“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.
- School Board’s Denial Letter states that School Board relied on the following items in making its decision to deny the charter application:
 - The charter application
 - Comments of the Charter Review Committee
 - The Desegregation Oversight Committee
 - School Board work sessions

The Denial Letter states the denial was based specifically on concerns regarding the inadequacy of the school site size, and that in the event the school is returned to the district, it would not be feasible to utilize the site. The denial letter refers Applicant to the Charter School Proposal Review Compilation and the recommendation of the Desegregation Oversight Committee.

- The record does not contain a copy of the Desegregation Oversight Committee recommendation.
- School Board’s Appeal Response is silent as to this issue.