

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION

Technical Assistance Paper

APPEAL OF KREATIVE KIDS YOUTH FOUNDATION, INC.
RENEWAL APPLICATION DENIAL

APPLICANT: KREATIVE KIDS YOUTH FOUNDATION, INC.

SCHOOL BOARD: DUVAL COUNTY SCHOOL BOARD

INTRODUCTION

On February 3, 2004, The School Board for the School District of Duval County (hereinafter “School Board”) voted unanimously to deny the renewal application for Kreative Kids Center of Academic Development (hereinafter “Renewal Application”) made by Kreative Kids Youth Foundation, Inc. (hereinafter “Applicant”). Written notice of denial was provided to the Applicant in a letter dated February 11, 2004 (hereinafter “Notice of Non-renewal”). Applicant filed an appeal of the renewal application denial to the State Board of Education on March 8, 2004 (hereinafter “Notice of Appeal”). The School Board filed a Response to the Notice of Appeal on April 6, 2004 (hereinafter “Appeal Response”).

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:

WHETHER THE SCHOOL BOARD VIOLATED APPLICANT’S RIGHT TO DUE PROCESS BY FAILING TO PROVIDE NOTICE OF THE PROPOSED CHARTER NON-RENEWAL AND FAILING TO INFORM APPLICANT OF THE RIGHT TO AN INFORMAL HEARING ON THE PROPOSED ACTION, IN VIOLATION OF F.S. 1002.33 (8).

- In its Notice of Appeal, Applicant argues that School Board took final action to deny its Renewal Application without informing Applicant of its right to request an informal hearing, thereby denying Applicant of its due process right to respond to the grounds for non-renewal prior to School Board’s vote to deny, in violation of §1002.33 (8) (c), F.S. Applicant further argues that the School Board’s action to deny the Renewal Application is therefore invalid and should be set aside.
- Florida Statute 1002.33 (8) (c) provides as follows:

(c) At least 90 days prior to renewing or terminating a charter, the sponsor shall notify the governing body of the school of the proposed action in writing. The notice shall state in reasonable detail the grounds for the proposed action and stipulate that the school's governing body may, within 14 calendar days after receiving the notice, request an informal hearing before the sponsor. The sponsor shall conduct the informal hearing within 30 calendar days after receiving a written request. The charter school's governing body may, within 14 calendar days after receiving the sponsor's decision to terminate or refuse to renew the charter, appeal the decision pursuant to the procedure established in subsection (6). (Emphasis added.)

- The findings show that by letter dated January 29, 2003, School Board informed Applicant that the Charter School Review Committee would recommend denial of the Renewal Application on February 3, 2004. The School Board indicates that the Applicant did not attend the hearing before the School Board on this issue. (School Board Exhibit A)
- The findings show that at the February 3rd School Board meeting, School Board voted unanimously to accept the recommendation to deny Applicant's Renewal Application. The verbatim transcript of the meeting does not contain language indicating that the vote taken was a "preliminary" vote not to renew the application, prior to an informal hearing and final action at a later date. (School Board Exhibit B1)
- In its Appeal Response, School Board counters that the action taken at the February 3rd meeting was only "the *inception* of proposed action with respect to the renewal or non-renewal of the School." School Board argues that Applicant knew of the February 3rd School Board meeting and would have been allowed to rebut the grounds for non-renewal at that meeting, but that Applicant chose not to attend.

- The findings show that by letter dated February 11, 2004, School Board informed Applicant of the denial of the Renewal Application; the basis for the non-renewal; and advised Applicant of its right to request an informal hearing within 14 days of receipt of notice. This letter does not indicate that School Board’s decision was a “proposed” decision not to renew. (School Board Exhibit D)
- Applicant argues that the Board took final action and voted not to renew the Application only five days after the notice of intent not to renew was received, preventing the opportunity to prepare a rebuttal to the recommendation at the February 3 meeting. Applicant further argues that School Board’s letter of February 11, giving notice of the right to request an informal hearing was only after a final decision had been made.
- A letter dated February 13, 2004, was sent by legal counsel for Applicant advising School Board of its noncompliance with section 1002.33(8)(c), F.S., by depriving Applicant of due process, and giving notice intent to file an appeal with the State Board of Education. (School Board Exhibit E)
- The record lacks evidence to support a finding that School Board intended the vote taken at the February 3rd meeting to be anything other than a final vote to deny the Renewal Application.

ISSUE TWO

WHETHER SCHOOL BOARD’S DENIAL OF APPLICANT’S RENEWAL APPLICATION WAS BASED ON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE 1002.33 (8).

- Applicant argues that even if School Board had allowed Applicant it’s due process rights, the grounds cited by School Board as the basis of its non-renewal decision are not legally sufficient to deny the Renewal Application.

- School Board’s February 11, 2004 Notice of Non-Renewal stated the following reasons as the basis for School Board’s decision not to renew:
 - “1) Kreative Kid’s failure to meet generally accepted standards of fiscal management; 2) Kreative Kids’ failure to achieve satisfactory academic growth during the term of the Charter; 3) Kreative Kid’s commission of contract violations during the term of the Charter; and 4) Kreative Kid’s submission of a deficient renewal application.” (School Board Exhibit D)

- Florida Statute 1002.33(8)(a) provides in pertinent part, as follows:
 - “At the end of the term of a charter, the sponsor may choose not to renew the charter for any of the following grounds:
 1. Failure to participate in the state's education accountability system created in s. 1008.31, as required in this section, or failure to meet the requirements for student performance stated in the charter.
 2. Failure to meet generally accepted standards of fiscal management.
 3. Violation of law.
 4. Other good cause shown.

SUB-ISSUE ONE

WHETHER APPLICANT FAILED TO MEET GENERALLY ACCEPTED STANDARDS OF FISCAL MANAGEMENT.

- School board states that in FY 2001-2002 prior to the implementation of GASB 34, the charter schools utilized financial reporting templates; and in FY 2002-2003 switched to the financial reporting templates provided by the Department of Education, which are consistent with Red book and GASB standards.

- School Board states that information Applicant provided in the first, second, and third quarter financial reports of FY 2002-2004 did not balance at the time of submission, requiring revisions; and that the fixed financial information did not follow a consistent pattern each reporting period and/or was inaccurately reported.

- School Board also states that during the final quarterly financial report, deficiencies were noted which were not resolved by Applicant, resulting in Annual Financial Reports which were not balanced. Major concerns were the capitalized fixed assets and general fund expenditures. School Board states that it attempted to resolve these issues through technical assistance in August 2003, but was unsuccessful.
- The findings show that on August 20, 2003, School Board issued a memorandum to Applicant citing deficiencies in the 2002-2003 Annual Financial Report; and that Applicant's reporting schedule was increased from quarterly to monthly.
- School Board states that a meeting was held with Applicant in September 2003 regarding the deficiency notice, and Applicant was asked to resolve two major compliance issues discovered during the audit process. (School Board Exhibit K) On October 31, School Board issued a memorandum identifying deficiencies in the September 2003 Financial Report, but that on November 20, Applicant submitted a revised 2003 Financial Report which contained a number of errors and omissions.
- The findings show that the December 2003 Auditor General's Review of School Board's charter schools for FY 2002, identified 22 deficiencies in Applicant's financial reporting. (School Board Exhibit L, Appendix A) The findings also show that on December 11, 2003, School Board sent a formal notice of unsatisfactory financial reporting to Applicant, recommending a change in accounting service provider. (School Board Exhibit N)
- In its Notice of Appeal, Applicant counters that School Board did not notify Applicant of any reporting deficiencies during the first two years of the contract (2001-2002 and 2002-2003), and that the first notice of deficiency was not received until August 2003, the last year in the contract. Further, that Applicant has worked with School Board to cure the situation and has begun to "turn the situation around."

- Applicant argues that template work sheets being out of balance, funds not being recorded where School Board felt they should be, and omission of funds, are not legally sufficient errors upon which to base non-renewal of the charter.
- Applicant states in its Notice of Appeal that it has a history of five years of clean audits and has operated in the black for two years; providing independent audit reports (for years ending June 30, 2002 and June 30, 2003) as evidence of same. (Applicant Attachment 9) In addition, Applicant alleges that an investigation with the accounting firm and CPA firm employed by Applicant revealed an “unscrupulous attempt to misrepresent Applicant’s financial solubility.” As support of this allegation, Applicant provided the following: 1) A letter from its CPA stating that he was contacted by an employee of School Board who stated that he “would be interested in hearing any information that could be used to close the school.” (Applicant Attachment 10) And, 2) A letter from Applicant’s accountant describing problems working with School Board representatives, and failure of School Board to provide notice of reporting errors. (Applicant Attachment 11)
- School Board argues that Applicant’s fiscal mismanagement resulted in the failure to demonstrate a viable plan to accommodate projected growth. As proof, School Board cites the budget section of the Renewal Application projecting to increase its student population by approximately 215% while at the same time increasing its FCAT score by three grade levels (from an “F” to a “B”), despite student FTE counts never being above 130 and a steady decline in students over the last three years. School Board states that the Renewal application did not provide supporting documentation for the student projections.
- School Board also argues that Applicant’s financial mismanagement led to the loss of a deposit for breach of contract. School Board alleges that during FY2002-2003, Applicant’s failure to secure facilities financing for a new building resulted in the return of the portable classroom vendor deposit, less a penalty of \$11,823. School Board further alleges that \$295,872.38 in capital dollars were required to be returned to School Board

because of Applicant's failure to sign the charter contract in a timely manner, and failure to secure a financing agreement with a financing company. (School Board Exhibit O)

- Applicant does not contest that the deposit was lost, or that the capital funding had to be returned to School Board, but counters that these circumstances occurred solely because School Board caused a delay in the signing of the charter contract. Applicant argues that a signed contract was not delivered by School Board until March 2002, seven months after approval. At that time Applicant states un-agreed upon changes were discovered in the contract, causing further delays; resulting in receipt of a signed contract in May 2003. Applicant argues that with only one year left in the contract period, the new facility project had to be cancelled because of time-related contract expirations. (Applicant Attachment 14)
- Section 1002.33 (8) (a), F.S., provides, in pertinent part:

“At the end of the term of a charter, the sponsor may choose not to renew the charter for any of the following grounds:

 2. Failure to meet generally accepted standards of fiscal management.”

SUB-ISSUE TWO

WHETHER APPLICANT FAILED TO ACHIEVE SATISFACTORY ACADEMIC IMPROVEMENT DURING THE TERM OF THE CHARTER.

- In its Appeal Response, School Board argues school data on the Florida Comprehensive Assessment Test (FCAT) for 2001-2002 and 2002-2003 reflect overall school grade points of 207 and 211, respectively; with both scores correlating with a school grade of “F”. Further, that Applicant demonstrated minimal gains in Reading, Math and 4th grade Writing; that no student scored a level 3 or higher for three consecutive years in 3rd grade Math; and that the school ranked 105 out of 106 elementary schools in Reading, 106 out of 106 in Math and 105 out of 106 in Writing.

- Applicant argues that it has only received one “F” grade, which was during the 2002-2003. Applicant disputes School Board’s data as incorrect, and states that four students (15% of the 3rd grade population in 2003) scored at a level 3 and above in Math; and two students (8% of the population) scored a level 3 in Math.
- The findings show that School Board’s Charter School Renewal Executive Summary indicates Applicant’s overall school grade points in 2001-2002 was 207, but that, Applicant did not receive a grade in 2002. The Executive Summary also indicates that 20% of the 3rd grade population in 2003 scored at level 3 or higher in Math; and 8% of the 3rd graders scored at level 3 or higher in Math. (School Board Exhibit A, page 6)
- Section 1002.33 (8) (a), F.S., provides, in pertinent part:
 - “At the end of the term of a charter, the sponsor may choose not to renew the charter for any of the following grounds:
 1. Failure to participate in the state's education accountability system created in s. 1008.31, as required in this section, or failure to meet the requirements for student performance stated in the charter.”

SUB-ISSUE THREE

WHETHER APPLICANT COMMITTED CONTRACT VIOLATIONS DURING THE TERM OF THE CHARTER.

- The findings show that between August 6, 2003 and December 11, 2003, School Board cited Applicant regarding the following contract violations: 1) Teacher certification, 2) Transportation-un-certified driver and un-inspected bus, 3) Transportation-un-certified, 4) Financial Reporting – Quarterly Financial Statements unsatisfactory, 5) Attendance Reporting – School has not reported student absences since 10/13/03. (School Board Exhibit A, page 7)
- Applicant does not dispute that the contract violations occurred, but states that all violations have been “cured”, and that the first notification of the violations was in the last year of the term of the charter.

- Florida Statute 1002.33(8)(a) provides in pertinent part, as follows:
“At the end of the term of a charter, the sponsor may choose not to renew the charter for any of the following grounds:
 4. Other good cause shown.

SUB-ISSUE FOUR

WHETHER APPLICANT FILED A DEFICIENT RENEWAL APPLICATION.

- School Board states in its Appeal Response that its renewal application review includes school administrator and school board member interviews; a series of review committee workshops; and review of Annual Report Data, Performance Accountability Reports, and monitoring instruments to assess compliance. Applicants are scored in 13 categories. The review committee reviews a draft of the renewal application and provides technical assistance prior to submission of the final application.
- The findings show that Applicant was deficient in 9 of the 13 categories: Academic Design, Educational Program, Student Assessment, Governance & Management, Governance, Risk Management, Class Size Requirements, Human Resources, and Transportation. Applicant’s Renewal Application received an overall ranking of 188 points out of 312 possible points, the equivalent of 60%. (School Board Exhibit T)
- Applicant argues that it expected School Board’s review committee to review and evaluate the draft renewal application; that Applicant would then make all noted changes and submit the final draft for approval. Applicant states that it received feedback and made all corrections to the application, but that the review committee found deficiencies in the final application that it failed to outline in the draft application. Applicant also states that it did not receive a matrix/scoring guide with the renewal application. (School Board Exhibit U)

- School Board does not dispute this allegation, but counters that the technical assistance provided by the review committee was to “provide further clarification regarding the standard of review,” and not designed to provide applicants with substantive responses, or as a rewrite of the renewal application.

- Florida Statute 1002.33(8)(a) provides in pertinent part, as follows:
“At the end of the term of a charter, the sponsor may choose not to renew the charter for any of the following grounds:
 4. Other good cause shown.