

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION

Technical Assistance Paper

APPEAL OF MESTA CHARTER SCHOOLS, INC.
CHARTER TERMINATION

APPLICANT: MESTA CHARTER SCHOOLS, INC
SCHOOL BOARD: ORANGE COUNTY SCHOOL BOARD

JULY 20, 2004

INTRODUCTION

On February 10, 2004, The School Board for the School District of Orange County (hereinafter “School Board”) voted unanimously to terminate the charter of MESTA Charter School (hereinafter “Charter”) held by MESTA Charter Schools, Inc. (hereinafter “Applicant”). Written notice of denial was provided to the Applicant in a letter dated February 6, 2004 (hereinafter “Notice of Termination”). Applicant filed an appeal of the charter termination to the State Board of Education on February 23, 2004 (hereinafter “Notice of Appeal”).¹ On April 30, 2004, Applicant filed a Motion to Amend Notice of Appeal, and provided proof of service to School Board. The School Board filed a Response to the Notice of Appeal on April 6, 2004 (hereinafter “Appeal Response”).

There are three (3) procedural issues and 24 substantive issues on appeal. All procedural issues raised by Applicant in its Notice of Appeal as “Arguments A, B and C” relate to the alleged violation of Applicant’s due process rights, and are herein consolidated and set forth under “Issue One.” Based upon the available evidence presented by the parties, the following is a summary of the findings in relation to the issues raised.

ISSUE ONE:

WHETHER THE SCHOOL BOARD VIOLATED APPLICANT’S RIGHT TO DUE PROCESS IN THE IMMEDIATE TERMINATION OF ITS CHARTER, WITHOUT GIVING APPLICANT REASONABLE NOTICE AND AN OPPORTUNITY TO RESPOND.

- A. School Board denied Applicant a meaningful opportunity to be heard prior to the decision to terminate the Charter**
 - B. School Board denied Applicant reasonable notice of the Charter termination**
 - C. School Board’s decision to terminate the Charter was not based on an immediate and serious threat to health, safety, or welfare**
- In its Notice of Appeal, Applicant argues that School Board did not provide reasonable notice of its decision to terminate the charter. Applicant states that it received notice only four days prior to the February 20 School Board meeting, and that this time was inadequate to prepare a response to the issues and “documentation in excess of 1000 pages.”
 - In its Appeal Response, School Board counters that Applicant’s Charter was an immediate termination for good cause, and as such, there was no requirement to give notice of the decision to terminate to Applicant.
 - The findings show that by letter dated February 6, 2004, School Board’ Superintendent provided notice to Applicant that a recommendation for immediate termination of Applicant’s Charter would be discussed at the February 10 School Board meeting. (School Board Attachment 2)

¹ No termination hearing was scheduled at this time because it was learned that Applicant had not notified Orange County School Board of its appeal, as required by section 1002.33 (6), FS.

- Applicant states in its Notice of Appeal that the February 10 School Board meeting was a “sham hearing” in that Applicant’s speakers were allowed only five (5) minutes each to speak; that Applicant was not provided an opportunity to offer evidence or cross examine witnesses; and that School Board presented only hearsay and allegations without evidentiary proof.
- School Board argues that Applicant was given an opportunity for presentation in accordance with school board meeting procedures, policy, and state law. Further, documentation supporting the recommendation to terminate the Charter consisted of emails and letters to Applicant from 2002 through 2004.
- The findings show that the following individual’s presented testimony in support of Applicant at the School Board meeting held on February 10: two (2) attorneys; the Chair of the Governing Board; the Principal; two (2) teachers; and two (2) community leaders. All speakers were allowed to speak until their statements were completed, and no content was censored. (Applicant R-B1394)
- The findings show that School Board presented evidence on and engaged in discussion of the following issues from October 2002 through February 2004: Failure to obtain a certificate of occupancy; Failure to complete the FTD survey; Failure to acquire required insurance coverage; Non-payment of employees and bills; Failure to submit the Annual Financial Audit; Failure to allow School Board employees access to school; Unsupervised students; Lack of student discipline; Events of failure to provide electricity and lights at school; Failure to provide timely Program Cost Report; Noncompliance with ESE regulations; Failure to follow student withdrawal procedures; Failure to accurately record student attendance/grades on Student Information System; and, Failure to staff school with certified teachers. (Applicant R-B1394)
- The findings also show that after the presentation of Applicant’s speakers, and during the discussion of the issues, School Board Member Gordon expressly invited Applicant’s Board of Governors Chair or Applicant’s attorneys to present any evidence they had which could dispute the various allegations presented against Applicant. The record does not reflect that Applicant presented any further evidence to dispute the evidence in support of termination at this time. (Applicant R-B1394, Pgs 46-47)
- Applicant argues that School Board’s immediate termination of the Charter was improper since there was no existing or imminent threat to the public health, safety, or welfare.
- Florida Statute 1002.33 (8) (d) provides as follows:
 - (d) A charter may be terminated immediately if the sponsor determines that good cause has been shown **or** if the health, safety, or welfare of the students is threatened. The school district in which the charter school is located shall assume operation of the school under these circumstances. The charter school's governing board may, within 14 days after receiving the sponsor's decision to terminate the charter, appeal the decision pursuant to the procedure established in subsection (6). (Emphasis added)

▪ The findings show that the Notice of Termination provides that the “recommendation to terminate the charter agreement with MESTA Charter School is based upon good cause as it directly relates to the school’s failure to comply with Florida Statute 1002.33 and the school’s contract.” (School Board Attachment 2)

▪ The findings show that the Notice of Termination does not allege a public health, safety and welfare threat as a basis for termination. However, the record of the February 10 School Board meeting does reflect that the two (2) events of electrical service interruption² were addressed as reasons for concern for the health, safety and welfare of the students. (Applicant R-B1394)

WHETHER SCHOOL BOARD’S IMMEDIATE TERMINATION OF APPLICANT’S CHARTER WAS BASED ON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE 1002.33 (8) (d).

▪ The findings show that the Notice of Termination provides the following reasons for as its “good cause” basis for immediate termination of Applicant’s Charter: 1) failure to meet generally accepted standards of fiscal management, 2) mismanagement of the school and, 3) failure to demonstrate meeting requirements for student performance as stated in the Charter. (School Board Attachment 2)

▪ The findings show that the Notice of Termination delineates 11 specific reasons as grounds for its determination that Applicant failed to meet generally accepted standards of fiscal management; 12 specific reasons as grounds for its determination that Applicant failed to manage the school; and one (1) specific reason as the basis for its determination that Applicant failed to meet the requirements for student performance stated in the Charter.

▪ Applicant argues in its Notice of Appeal that many of School Board’s allegations are completely false, contradictory, and hearsay; and, as such, do not constitute good cause for immediate termination.

SUB-ISSUE ONE

WHETHER THERE IS COMPETENT, SUBSTANTIAL EVIDENCE THAT APPLICANT FAILED TO MEET GENERALLY ACCEPTED STANDARDS OF FISCAL MANAGEMENT, RESULTING IN GOOD CAUSE FOR IMMEDIATE TERMINATION, WITHIN THE MEANING OF FLORIDA STATUTE 1002.33 (8) (d).

Issue One: Failure to submit the required annual financial audit

▪ School Board alleges that Applicant failed to complete the annual financial audit due on October 31, 2003, as required by Florida Statute 1002.33 and the Charter. Further, that despite several written reminders and deadline extensions, Applicant never submitted the audit.

▪ Applicant argues that it acted diligently by entering into a contract with an auditor at the beginning of the school year, with a October 27 deadline. Applicant states the auditor worked on the audit from

² Jason Powell testified that electrical service was disconnected by the Orlando Utilities Commission on two different occasions (April, 2003 and February, 2004), and that service was restored on the same day.

early September 2003 until October 27, 2003 when he advised Applicant that the audit would be delayed due to a situation beyond the auditor's control.

- The findings show that Applicant and auditor entered into a contract on October 8, 2003, with the audit was to begin on October 10th and be completed by October 27, 2003. (Applicant RB85-89)
- Applicant argues that School Board did not cooperate with its request for an extension, and interfered with the audit process without Applicant's knowledge; and that it was forced to hire a new auditor. Applicant states that School Board agreed to a new completion date of January 31, 2004, and alleges that School Board "again began surreptitiously interfering with the preparation of the audit." Applicant argues that the audit was "substantially complete" when the Charter was terminated.
- Applicant proffered no evidence to support its allegations regarding School Board "interference" with the professional duties of Applicant's auditors.
- The findings show that School Board granted Applicant two (2) audit deadline extensions (November 30 and December 12), and that Applicant missed both deadlines. School Board met with Applicant and Applicant's attorney on December 16, regarding the non-compliance and a deadline of January 5th was given.

Issue Two: Failure to submit an annual cost accounting report in a timely manner

- School Board alleges that Applicant failed to provide the Program Cost Report due on August 15, 2003; that technical assistance training was provided to charter school administrators; and a reminder email (with form attached) was sent to Applicant on July 10.
- Applicant argues School Board requested this report on or about November 13, 2003, and that this was the first time this report was ever mentioned. Applicant further states that School Choice Director, Jason Powell, admitted the report had not been requested before because he had confused the Program Cost Report with other reports.
- Applicant proffered no evidence to support the aforementioned allegations.
- The findings show School Board held a technical assistance meeting for charter school administrators on June 10th, and that Applicant's representatives did not arrive until after the financial reporting presentation. (School Board Attachment 4, #24) School Board sent Applicant numerous letters and emails regarding financial reporting non-compliance. (School Board Attachment 4, Issue #2)

Issue Three: Failure to submit an annual unaudited financial report in a timely manner

- School Board alleges that Applicant failed to provide the Annual Unaudited Financial Report, due on August 15, 2003, until four (4) months later, on December 5, 2003.
- Applicant argues that School Board failed to submit documentation of this issue at the February 10 School Board termination meeting.

- The findings show that the package of supporting documents presented in support of its recommendation for termination at the February 10 meeting included evidence of five (5) letters regarding the requirement to provide this financial reporting information. (School Board Attachment 3, Issue #3)

Issue Four: Failure to consistently submit monthly financial statements in a timely manner

- School Board alleges that Applicant consistently failed to timely submit its monthly financial statements, particularly in the months of July, November, December, January and February.
- Applicant counters that it submitted all of its monthly financial reports in a timely manner, except for the month of July 2003.
- The findings show that School Board sent numerous reminders and communications to Applicant requesting monthly statements which had not been submitted during the months of July, November, December of 2002, and January and February of 2003. (Applicant R-B816-838)

Issue Five: Failure to submit documentation in order for district staff to complete an audit

- School Board states that because Applicant failed to submit the Annual Financial Audit Report, School Board initiated an internal audit. School Board alleges that Applicant refused to provide documentation or access to documentation requested.
- Applicant counters that School Board already possessed the information requested; that it never refused to provide information, and was cooperative and timely in responding.
- The findings show that 11 items requested by School Board had been previously provided by Applicant. By letter dated January 22, 2004, Applicant's attorney informed School Board of two (2) items which were in possession of Applicant's auditor, and 12 items which would be available for copying at the school. (Applicant R-B846) The findings also show that by letter dated January 23, 2004, School Board informed Applicant's attorney that a recommendation would be made to immediately terminate the Charter if the requested information was not submitted by January 30. (Applicant R-B848) See Applicant R-B854 for a list of documents requested and resolution of each request.

Issue Six: Failure to provide a realistic budget that reflects the documented pattern of declining enrollment and failure to reach enrollment projections

- School Board alleges that since its opening, Applicant's annual budget has failed to realistically reflect actual student enrollment; and that budgets submitted have not accounted for declining enrollment trends.
- Applicant argues that it timely submitted the 2003-2004 budget on July 14, 2003, and that this is the only budget required under the Charter. Applicant states that School Board made unreasonable demands

for budget revisions reflecting present enrollment, causing Applicant to submit revised budgets in November and December 2003, and January 2004.

The findings show that School Board began communicating with Applicant regarding the discrepancy in reported enrollment and actual enrollment in August 2002 through February 5, 2004. Also, that School Board's requests for revised budgets were related Applicant's request for approval to move the school to a new location. (Applicant R-B873-892)

Issue Seven: Failure to maintain required insurance coverage

- School Board alleges that Applicant failed to maintain all insurance coverage, exposing the school and the School Board to unprotected risk.
- Applicant denies this allegation stating it has consistently maintained all insurance coverage required under the Charter and law.
- The findings show that Applicant provided documents for the record on appeal to show proof of insurance coverage. (Applicant R-B196-202) There is no evidence that this evidence was presented to School Board prior to this appeal.
- The findings show that School Board requested Applicant to file its Insurance Certificate, originally due on July 14, 2003, in August, October, November, and December of 2003; and proof of the required Directors & Officers liability coverage from December 2003 through January 2004. (Applicant R-B919-936)

Issue Eight: Failure to resolve disputes regarding payment of employees

- School Board alleges that Applicant failed resolve compensation disputes with eight (8) former employees, establishing a pattern of unresolved claims.
- Applicant argues that each former employee has been paid in full, and that it never received any complaints from the employees regarding payment. Applicant alleges that School Board "encouraged the former employees to write these letters in an effort to build its case against MESTA."
- Applicant proffered no evidence to support its allegation that School Board "encouraged" the disgruntled employees to take action against Applicant.
- The findings show that several employees contacted School Board regarding disputes about the amount of compensation owed upon termination by Applicant, and/or the non-payment of same. One employee filed suit against Applicant. School Board sent letters to Applicant on March 14 and April 4, 2003 regarding various non-compliance issues, and included the employee dispute issue in each letter. (Applicant R-937-986)

- The findings show that Applicant distributed funds to 9 former employees. However, there is no evidence that the employees agreed that the amount paid was full payment, except for the stipulation agreement signed by the employee who sued Applicant. Applicant R203-236)

Issue Ten:³ Failure to provide an FTE projection as required by the school's charter agreement.

- School Board alleges that Applicant violated the Charter by failing to meet the deadline for submittal of its FTE projections, causing School Board to exclude Applicant's data from the FTE forecast. Further, that technical assistance training was provided to charter schools to meet this requirement.
- Applicant argues that this issue is a repetition of Issue 6;⁴ that it timely submitted its budget for 2003-2004, on July 14, 2003, and revised budgets in November and December 2003, and January 2004.
- The findings show that School Board held a technical assistance meeting on June 10, 2003, and that Applicant's representatives did not arrive until after the information on finance procedures for July payments had been presented.
- The findings also show that School Board notified Applicant of non-compliance regarding FTE reporting in various communications from July 2003 through January 2004. (Applicant R-B991-1016)

Issue Eleven: Failure to complete the FTE survey for Fall of 2002

- School Board alleges that Applicant failed to generate revenue for the fall survey, and that School Board provided money to the school to assist, in good faith. Further, that upon completion of the FTE amendment, it was determined that Applicant had been overpaid.
- Applicant argues that on October 18, 2003 School Board told Applicant that it would have to report student enrollment on School Board's mainframe system. Applicant states that training was inadequate to address its technical computer problems in entering data in the mainframe. Applicant states that it informed School board of its problems, and despite School Board's refusal to help, managed to enter the information in a timely manner. (Applicant R-B298-334)
- The findings show that on October 18, 2003 School Board informed Applicant that the failure to comply with the October FTE survey procedure resulted in a failure to generate revenue. As such, School Board would not receive any funding from FDOE to distribute to the school. School Board informed Applicant that it was entitled to request the return of all funds previously provided to the school (\$73,901, plus capital funding), but that School Board would provide funding for one additional month. As a condition, School Board required Applicant to enter all data on the mainframe by November 1. (Applicant R-B1018)

³ Issue 9 (failure to resolve disputes regarding payment of rent) was removed at the February 10 School Board hearing due to information provided by Applicant.

⁴ Failure to provide a realistic budget that reflects the documented pattern of declining enrollment and failure to reach enrollment projections

SUB-ISSUE TWO

WHETHER THERE IS COMPETENT, SUBSTANTIAL EVIDENCE THAT APPLICANT FAILED TO MANAGE THE SCHOOL, RESULTING IN GOOD CAUSE FOR IMMEDIATE TERMINATION, WITHIN THE MEANING OF FLORIDA STATUTE 1002.33 (8) (d).

Issue Twelve: Failure to follow ESE procedures

- School Board alleges that Applicant's failure to properly register ESE students resulted in Students attending the school without updated Individual Education Plans (IEP), making it impossible to monitor instructional services for these students.
- Applicant argues that this issue is redundant, involving the same facts alleged in Issue 11.⁵ Applicant states mainframe system training was inadequate; School Board refused to help; but that the information was submitted in a timely manner.
- The findings show that School Board sometimes had difficulty gaining access to the school for monitoring (Applicant R-B1056); and that on January 8, 2004, School Board held a meeting with Applicant to review on-going ESE transfer problems and proper procedure for transferring ESE students from district schools to charter schools. (Applicant R-B1074)

Issue Thirteen: Failure to follow procedures for student withdrawal

- School Board alleges that Applicant's failure to follow proper withdrawal procedures prevented students from registering at their new school; and student records were not provided to the receiving school.
- Applicant states the delay in forwarding a student's records only occurred once; and that the delay was to ensure protection of the confidential information contained therein.
- The findings show that School Board received numerous complaints from parents and/or other schools regarding problems withdrawing students from Applicant's school, or obtaining student records from Applicant. (Applicant R-B1086-1220) One parent seeking withdrawal also reported filing a child abuse report against Applicant using the state child abuse hotline. (Applicant R-B1093)

Issue Fourteen: Failure to provide an annual disposition report for student records

- School Board alleges that Applicant failed to file the disposition report by the deadline specified in the Charter.
- Applicant argues that it timely filed the disposition report in December 2003. Applicant states that it later learned that the district had a specific form for this report, which was also completed and submitted in December 2003.

⁵ Failure to complete the FTE survey for Fall of 2002

- The findings show that the Charter requires the disposition report to be filed each year prior to July 1. (School Board Attachment, pg 16) School Board sent 10 letters to Applicant requesting compliance with this Charter requirement between July 9 and December 17, 2003. (Applicant R-B1121-1147)

Issue Fifteen: Failure to report student attendance and grades

- School Board argues that Applicant failed to accurately report student attendance and grade information.
- Applicant argues that this issue is a repetition of allegations made in Issue 11.⁶ Applicant states mainframe system training was inadequate; School Board refused to help; but that the information was submitted in a timely manner.
- The findings show that Applicant sent an email entitled “Technical Difficulty in accessing OCPS system – Student Registration” to School Board on August 29, 2002. No text was provided in this email. School Board sent a reply email to Applicant on August 30, acknowledging receipt of the email, notified Applicant of the lack of text in the body, and asked Applicant to resend its email. School Board also provided the telephone number of the technology help desk. (Applicant R-B1149)
- The findings show that School Board notified Applicant on October 10, 2002, the day before the Fall FTE survey was due, that Applicant could use the workstation in the School Choice offices to input the information; offering access from 7:30am until 4:30pm. School Board indicated that the “matter was urgent” in order for Applicant to generate FTE funding. (Applicant R-B1150) School Board scheduled a meeting with Applicant to address FTE issues on November 14. (Applicant R-B1151)
- The findings show that problems continued with the correct filing of FTE data as indicated by School Board emails to Applicant, a letter from a teacher and parent of a student seeking a transfer (April 7, 2003), and a memo from school seeking to enroll former students of the school (February 2, 2004). Computer printouts of student attendance and grade records for four students enrolled at Applicant’s school show neither daily attendance or grades are entered. (Applicant R-B1153-1173)

Issue Sixteen: Failure to report life-safety drill information

- School Board argues that a Technical Assistance-Safety Drill Reporting training meeting was held on October 1, 2003 for all charter school principals; and that Applicant did not attend. School Board alleges that despite follow-up reminders, Applicant continues to fail to report safety drill information online.
- Applicant states that in November 2003, School Board notified Applicant that this information would have to be reported on its mainframe. Applicant argues School Board’s refusal to help resolve technical problems required Applicant to provide this report via facsimile instead.
- The findings show that training was held during which specific instructions were provided on the reporting requirement and the necessary steps to access the intranet. Emails from Applicant to School

⁶ Failure to complete the FTE survey for Fall of 2002

Board indicate problems downloading a file from the intranet. Applicant was given a name and phone number to seek technical assistance on November 11, 2003. (Applicant R-B1183) On January 28, 2004, Applicant faxed the safety drill information to School Board stating that it was “unable to locate the link/site to enter information online.” (Applicant R-B185-1187) On February 4, School Board sent a letter to Applicant setting out the reporting procedure originally provided in the October 2003 technical assistance meeting. (Applicant R-B1188)

Issue Seventeen: Failure to follow student discipline procedures as required by the Orange County Public Schools (OCPS) Code of Student Conduct

- School Board argues that Applicant suspended students for a Level 4 offense, and failed to involve the Area Administrator in facilitating the disciplinary response to the offense as required by the OCPS Code of Student Conduct.
- Applicant denies violating the disciplinary procedures set forth in the OCPS.
- The findings show that IV.A.4 of the Charter gives Applicant’s Board of Directors the authority to recommend expulsions to the Sponsor. (School Board Attachment #2, pg 24) By letter dated November 14, 2002, School Board notified Applicant of the failure to comply with this requirement by not working with the Area Administrator assigned to Applicant for any Level 4 discipline issues. (Applicant R-B1192) There is no evidence in the Charter’s Code of Student Conduct to establish the requirement of contact with the Area Administrator.
- The findings show that Applicant suspended several students, with at least one being a Level 4 disciplinary issue. (Applicant R-B558) Applicant’s Student Code of Conduct provides that all levels of discipline require a mandatory “contact” with the student’s parents. (Applicant R-B547) There is no evidence to establish that Applicant met with the student’s parents. Nor is there evidence to establish that Applicant included the School Board in the decision to suspend any of the students.

Issue Eighteen: Applicant failed to staff the school with certified teachers

- School Board states that Applicant has not had a certified language arts instructor since October 14, 2003; that the teacher assigned to all ESE courses is only certified in Elementary Education; and that the science teacher is not eligible to teach Biology I.
- Applicant denies the allegations, and states that Lisa Worsham, the ESE teacher is certified for grades K-12, and has a Master’s Degree in ESE.
- The findings show that Lisa Worsham’s Professional Educator’s Certificate certifies her to teach Elementary Education (Grades 1-6). (Applicant R-B580) Other documents referred to by Applicant as proof of Lisa Worsham’s ESE certification fail to provide such evidence and/or are illegible documents. (Applicant R-B588-590)
- Applicant argues that after the Language Arts teachers vacated their positions, Dr. Morris (principal) and Ms. Edwards (teaching assistant) taught the class, stating that both are “more than qualified to teach language arts” based on their advanced degrees.

- The findings show that neither Dr. Moore nor Ms. Edwards is certified to teach Language Arts.
- Applicant argues that Ranu Gabra was hired as the certified biology teacher, and is certified to teach general sciences, which includes chemistry, physics, and biology.
- The findings show that Ranu Gabra Official Statement of Status of Eligibility certifies him to teach Chemistry (Grades 6-12). (Applicant R-B583)
- The findings also show that documents filed by Applicant as supporting evidence are wholly without probative value regarding teacher certification. (Applicant R-B592-613)

Issue Nineteen: Failure to provide the sponsor with access to the school

- School Board states that on many occasions Applicant failed to cooperate in providing access to the school, preventing School Board from meeting its responsibility to monitor the instructional environment of the school. School Board further states that multiple complaints and non-compliance led to unannounced visits to the school in December 2003, to which Applicant objected. During two visits in January 2004, Applicant denied access to School Board upon their arrival and statement of intent to visit the school.
- Applicant argues that it did not prevent access to School Board, and that 23 members of School Board's staff visited the school from September 2003 to February 12, 2004.
- The findings show that Sign-In sheets submitted by Applicant indicate numerous visits by School Board staff. (Applicant R-B614-618) Applicant's attorney requested notification of visits prior to arrival at the school (Applicant R-619-624), and School Board responded that due to non-compliance issues, unannounced visits would continue (Applicant R-B1224-1226)
- The findings show that School Board was denied access on January 26, 2004, returning the next day unannounced. (Applicant R-1233-1234)
- School Board states that on January 27 it was observed that the student bathrooms were in disrepair and unusable. Also that this area included a dark, concealed, enclosed area where students were allowed to gather without supervision.
- The findings show that on February 4, 2004, School Board was denied access by Applicant. Both parties agree that Applicant contacted the Orange County Sheriff's Department, requesting that School Board staff be removed from the grounds as trespassers. Sheriff's Deputies arrived and escorted School Board staff from the grounds. (Applicant R-B1235-1236)
- School Board states on February 4, 2004 it was observed that there were no lights inside the school except for six dual emergency lights; that there was noise and a "disruption" involving a desk being slammed down; and students behaving in a loud, boisterous manner and using profanity.

- The findings show that Section II.B.8 of the Charter, entitled “Access of Sponsor to School,” provides as follows in pertinent part:

“As part of that oversight function, school board administrators are permitted to make random visits to the charter school’s campus as they deem necessary.”

No conditions are included in the Charter requiring prior notification by School Board of a school visits, nor is there any language prohibiting unannounced visits.

Issue Twenty: Failure to provide Governing Board information in a timely manner

- School Board states that Applicant’s failure to provide updated information for the Board of Directors made it impossible to refer parents with complaints to the Board. School Board further states that, since the President of the Board of Directors is married to the Principal, there were many months when they were the only individuals for whom School Board had contact information.
- Applicant argues that it provided updated contact information to School Board in July, September and December of 2003; and posted a copy of board member contact information at the school.
- The findings show that the record on appeal includes copies of a list of board members and their telephone numbers. No evidence is provided to prove whether these documents were posted at the school, where they were posted, or when. A document indicating the dates monitoring information was submitted to School Board fails to include proof that board member addresses and telephone numbers were submitted. (Applicant R-B627-630)
- The findings show that on April 4, 2003, School Board notified Applicant that only the names and backgrounds of board members had been received, and requested the phone numbers of members be submitted immediately. School Board sent communications to Applicant requesting board member information in May, July, August, October, November and December 2003. (Applicant R-B1238-1257)

Issue Twenty-One: Failure to maintain open communication with sponsor and public

- School Board states that both staff and parents have been unable to reach Applicant on many occasions, reporting unanswered telephones, lack of voice messaging capability, emails and US mail communications returned as “undeliverable.”
- Applicant denies that there has been a lack of communication.
- The findings show that supporting documentation provided by Applicant to disprove this allegation is unrelated to the issue and has no probative value. (Applicant R-B632-635)
- The findings show that between August 30, 2002 and September 23, 2003, School Board sent 10 communications to Applicant regarding the inability to reach the school by telephone; certified mail returned as undeliverable (3); emails returned as undeliverable; and failure to return phone calls. (Applicant R-B1258-1286)

Issue Twenty-two: Failure to maintain adequate supervision of students

- School Board alleges that during unannounced visits to the school students were observed in areas of the school without supervision, e.g. the unlit restroom area that is out of service. Upon entering the school, School Board reports experiencing students yelling inappropriate comments. School Board states that it observed the principal, acting as the language arts teacher, leave the students to attend to operational matters. At those times, students have been left under the supervision of a community volunteer or teacher assistant. School Board also alleges being contacted by a parent/board member regarding the lack of structure and high number of student suspensions at the school.
- Applicant denies the allegation stating that the staff and student ratio is adequate for the students in the school, and that the one or two disruptions at the school were caused by School Board calling staff members away from their duties during class time.
- The findings show that Applicant provided lesson plans and the student handbook as supporting evidence of their position. Other evidence referred to regarding this issue could not be found in the record. (Applicant R-B637-658)
- The findings show that in a letter to School Board dated April 7, 2003, a parent wrote that she became a teacher assistant at the school to ensure the safety of her son. This individual reported observing unsupervised students playing in the parking lot and fighting on several occasions. She reported that the children “did as they pleased.” (Applicant R-1288-1294) The findings also show that School Board informed Applicant of inappropriate student behavior by letter dated April 25, 2003. (Applicant R-B1300-1301)

The findings show that School Board received a report of child abuse at the school and reported same to the abuse hotline; included student discipline problems in its November 21, 2003 Title I report; informed Applicant of observed discipline problems on December 5 and December 9 2003, and January 13, 2004. (Applicant R-B1305-1316)

Issue Twenty-three: Failure to obtain a certificate of occupancy for the school’s current location for the first eight months of operation

- School Board alleges that Applicant was initially notified of the need to provide a Certificate Of Occupancy on October 2, 2002; and, that Applicant failed to provide same until the end of the 2002-03 school year. School Board states that it sent numerous letters to Applicant regarding non-compliance from October 2, 2002 through August 5, 2003, acknowledging receipt of the certificate by letter dated August 28, 2003. (Applicant R-B1317)
- Applicant disputes this allegation stating that the school had a Certificate Of Occupancy and occupational license throughout the time it occupied the current location; and that the certificate was provided to School Board in July 2003, and again in August 2003. Applicant provided no evidence to show that the Certificate of Occupancy was obtained before occupying the facility located at 5370 Silver Star Road.

- The findings indicate that Applicant occupied the Silver Star facility on or about October 2, 2002. The findings show that a certificate of occupancy was issued to Applicant as occupant on August 6, 2003 for property located at 5300 Silver Star Road. (Applicant R-B660) Other evidence referred to by Applicant to regarding this issue could not be found in the record.
- The findings show that on October 10 and October 22, 2002, the Orange County Building Division issued inspection notices to Applicant citing a change in occupancy without a proper Certificate Of Occupancy. Each notice specified that failure to comply could result in being required to vacate the property and discontinuation of electric service.
- The findings show that Applicant filed an application for a use permit for the 5370 Silver Star Road facility on October 10, 2002. On October 25, 2002, Applicant's landlord requested Applicant close the school immediately until the certificate was obtained.

SUB-ISSUE THREE

WHETHER THERE IS COMPETENT, SUBSTANTIAL EVIDENCE THAT APPLICANT FAILED TO MEET THE REQUIREMENTS FOR STUDENT PERFORMANCE STATED IN THE CHARTER, RESULTING IN GOOD CAUSE FOR IMMEDIATE TERMINATION, WITHIN THE MEANING OF FLORIDA STATUTE 1002.33 (8) (d).

Issue Twenty-four: Failure to submit the required annual report in a timely manner and to meet the statutory requirement of reporting on student achievement outcomes as outlined in the charter agreement.

- School Board alleges that Applicant was notified on July 9, 2003 that the Annual Report was on November 1, 2003, and provided specific guidelines as to what is required by Florida Statute 1002.33 (9) (l) to be included in the report; and that Applicant did not file the report until December 2003. School Board further states that the failure to timely file the report negatively impacted School Board's ability to monitor the school by completing an analysis of the annual report.
- Applicant states that it submitted the Annual Report to School Board on December 5, 2003.
- The findings show that section II.G.1 of the Charter Agreement requires the filing of the Annual Report with the Sponsor, but does not include a deadline for submission. (School Board Attachment 1, pg 14-15)