

THE FLORIDA DEPARTMENT OF EDUCATION  
CHARTER SCHOOL APPEALS COMMISSION

# Technical Assistance Paper

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APPEAL OF THE LEARNING CURVE, INC.

APPLICATION DENIAL

Appeal Date: February 24, 2005

APPLICANT: THE LEARNING CURVE, INC.

SCHOOL BOARD: THE SCHOOL BOARD OF  
LAKE COUNTY, FLORIDA

## INTRODUCTION

On October 25, 2004, the School Board of Lake County (hereinafter “School Board”) voted to deny the charter application (hereinafter “Charter Application) submitted by The Learning Curve, Inc. (hereinafter “Applicant”). Written notice of School Board’s action was transmitted to Applicant in a letter dated November 14, 2004 (hereinafter “Letter of Denial”). Applicant filed an appeal of School Board’s action in a letter dated December 15, 2004 (hereinafter “ Notice of Appeal”). School Board filed its Response to the Notice of Appeal on January 25, 2005. (hereinafter “Appeal Response”).

Based upon the available evidence presented by School Board and Applicant, the following is a summary of the research findings.

## **ISSUE ONE**

### **WHETHER SCHOOL BOARD FAILED TO PROVIDE WRITTEN GOOD CAUSE REASONS FOR DENIAL IN A TIMELY MANNER, AS REQUIRED BY FLORIDA LAW.**

- The Letter of Denial was dated November 16, 2004. School Board decided to deny Charter Application at its October 25, 2004, meeting. School Board states that the reasons upon which the denial was based were the same reasons enunciated verbally and in writing at an October 11, 2004, workshop and at its October 25, 2004, meeting.
- In its Notice of Appeal, Applicant points out that it did not receive the Notice of Denial within the ten day statutory period. Applicant states that the ten day requirement is without exception and is necessary to satisfy Applicant’s procedural due process rights. Applicant claims that the purpose of a strict timeline is to specify reasons for denial, ensure the integrity of the charter appeals process, and minimize hurdles to opening charter schools.
- In its Appeal Response, School Board acknowledges that it was eleven days late in providing the Letter of Denial, but alleges that no harm occurred to Applicant’s rights to “apply or appeal as a result of this brief delay.” School Board claims Applicant received “actual” notice of both the denial and the grounds for denial at the October 25, 2004, Board meeting, where Applicant was provided a written memo from staff to School Board members outlining the reasons for a recommendation of denial. School Board observes that the later Letter of Denial provides little additional information or clarification.
- Florida Statute §1002.33(6)(b)(3) provides, 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.”

- Florida Statute §1002.33(6)(c) provides, in pertinent part:

“ An applicant may appeal...to the State Board of Education no later than 30 days **after receipt of the district school board’s decision...**”

## ISSUE TWO

### **WHETHER SCHOOL BOARD’S DENIAL OF CHARTER APPLICATION BASED ON REASONS RELATED TO PREVIOUS OPERATIONAL EXPERIENCES ARE STATUTORY GOOD CAUSE UNDER FLORIDA LAW.**

#### SUBISSUE ONE— No demonstration of Skills and Abilities to Operate

- In its Letter of Denial, School Board finds that Applicant has not demonstrated “the skills and abilities required to start-up a charter school and to provide for appropriate governance of the school.” School Board points out that this is Applicant’s fourth application, and relates Applicant’s history of one withdrawal, one denial, and one approval, followed by closure of the school for failure to adhere to requirements of a previously approved charter agreement. Specifically, School Board relates that Applicant opened its doors without the appropriate certificate of occupancy, against School Board’s directive.
- In its Notice of Appeal, Applicant states that School Board must base its decision on the provisions of Charter Application, not on the number of previous applications or the past acts of school directors no longer involved with Applicant. Feeling “compelled to respond” to School Board despite its position concerning the relevance of past acts and past applications, Applicant states that it opened its doors based on engineering advice and anticipation of receipt of the required certificate. Applicant points to testimonials from parents claiming confidence in the Executive Director’s ability to provide a safe learning environment. As well, Applicant states that its Executive Director was merely following the orders of her Board, whose members no longer serve Applicant.
- In its Appeal Response, School Board argues that consideration of financial concerns of previous applications and failure to adhere to safety requirements, i.e. certificates of occupancy, are indeed relevant to whether Applicant has the financial and governance capabilities—including adequate concern for student safety—to operate a charter school. School Board states that there are hold-over Board members on Applicant’s current Board of Directors.

## SUBISSUE TWO—Concerns about Financial Management

- In its Letter of Denial, School Board finds Applicant exhibited inadequate financial management capability to operate a charter school based on unauthorized expenditure of start-up funds by Applicant's Executive Director after approval of Applicant's third charter application. Start-up grant provisions allow three month's of facility rental fees and salary prior to start-up. School Board finds that Applicant paid four months' worth of such expenditures.
- In its Notice of Appeal, Applicant argues that start-up payments made under a previously approved charter bear no relationship to the merits of Charter Application and are not appropriate grounds for denial. Conversely, Applicant "feels compelled" to state that its retained CPA firm handled expenditure of start-up grants and points to an opinion from the firm that expenditures were in line with grant provisions.
- In its Appeal Response, School Board argues that CPA's explanation of accounting for grant fund expenditures is inadequate and that expenditures did not comport with grant fund requirements.

## SUBISSUE THREE—Background Checks and Teacher Qualifications

- In its Letter of Denial, School Board finds that Applicant has "failed to provide background checks for any of school's employees and proof of certification for the teachers employed at the school."
- In its Notice of Appeal, Applicant argues that the background and certification matters relate back to operation of its school under the cancelled charter agreement, and that they are not relevant to consideration of Charter Application. Despite the relevance, Applicant states that background checks and certifications "were in the process of being compiled," at the time of closure under the approved third application. Further, Applicant states that it provided lists of employees and status of background and certification information at the October 25, 2004, School Board meeting.
- In its Appeal Response, School Board asserts that Applicant's failure to provide completed and correct background and certification information were violations "of their contractual obligation to open the school with employees who had the appropriate" employment requirements. School Board alleges that these violations of previously approved charter agreements are indicators of future problems—and good cause basis for denial of current Charter Application.
- Florida Statute §1002.33(6) provides, in pertinent part:  
“(b) A district school board shall receive and review all applications for a charter school. A district school board shall receive and consider charter school applications received on or before September 1 of each calendar year for charter

schools to be opened at the beginning of the school district's next school year, or to be opened at a time agreed to by the applicant and the district school board....

“(b)(3) ...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.”

### **ISSUE THREE**

#### **WHETHER THE SCHOOL BOARD'S DENIAL OF CHARTER APPLICATION ON THE BASIS OF PROVIDING INCOMPLETE FINANCIAL INFORMATION IS STATUTORY GOOD CAUSE UNDER FLORIDA LAW.**

- In its Letter of Denial, School Board finds that the financial information provided in Charter Application is incomplete and that the budget projections exceed the projected FTE.
- In its Notice of Appeal, Applicant states that all the financial information provided in Charter Application is identical to information submitted in the application approved by School Board in 2003. Applicant states that basing its revenue projections on enrolling one third of its students with an ESE matrix level of 253 is reasonable because 1) its purpose is to serve students with special needs in an inclusion environment and 2) at the time of the school was closed in August, 2004, “just under” 30% of its students were ESE. Finally, Applicant states that Charter Application provides contingency balanced budgets at the 50% and 75% level of enrollment projections.
- In its Appeal Response, School Board claims that the income figures in the budget are “manufactured” to cover expenses, that questionable calculations and assumptions are made from year to year, and that only four years of financial data is actually provided for Applicant's five year budgetary projections. School Board claims that income projections based on having 30% ESE enrollment of matrix level 253 are unreasonable because it requires Applicant to 1) enroll one third of all 253 students available throughout Lake County, and 2) hire substantially more faculty because of the severity of handicaps among the 253 matrix level population. Finally, School Board states that Applicant's enrollment of matrix level 253 ESE students prior to closing was considerably less than 30%, resulting in financial concerns raised at the October 11, 2004, workshop.
- Florida Statute §1002.33(6) provides, in pertinent part:

“(a)(5) Contains an annual financial plan for each year requested by the charter for operation of the school 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)(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.

“(b)(3) .....If an application is denied, the district school board shall...articulate ...the specific reasons based on good cause supporting its denial of the charter application.”

THE LEARNING CURVE, INC.

v.

THE SCHOOL BOARD OF LAKE COUNTY

ISSUE ONE

- A. Whether the School Board failed to provide written good cause reasons for denial of the Applicant's Charter Application in a timely manner, as required by Florida Statute §1002.33(6)(b)(3).

**MOTION:**

**SECONDED:**

I move that the Commission find that the School Board **did** provide written good cause reasons for denial of the Applicant's Charter Application in a timely manner, as required by Florida Statute §1002.33(6)(b)(3).

VOTE: Yes \_\_\_\_\_ No \_\_\_\_\_

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- B. If the Commission finds that the School Board **did not** provide written good cause reasons for denial of the Applicant's Charter Application in a timely manner the Commission must determine whether such failure was harmless error.

I move that the Commission find that the School Board's failure to provide written good cause reasons for denial of the Applicant's Charter Application in a timely manner **was** harmless error.

VOTE: Yes \_\_\_\_\_ No \_\_\_\_\_

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ISSUE TWO

Whether School Board's denial of charter application based on reasons

related to previous operational experiences are statutory good cause under Florida law.

SUBISSUE ONE

- C. Whether the School Board’s concerns related to **demonstration of skills and abilities to operate a charter school** are sufficient grounds for denial under Florida law.

**MOTION:**

**SECONDED:**

I move that the Commission find that the School Board **did** have competent, substantial evidence to support its finding that the **applicant failed to demonstrate the necessary skills and abilities to operate a charter school in its prior attempt.**

- D. If the Commission finds that the School Board **did** have competent, substantial evidence to support its finding, a vote must be taken on whether that finding constitutes **statutory good cause** for denial.

Whether the applicant’s failure to demonstrate the skills and abilities to operate a charter school in its prior attempt **is** statutory good cause for denial.

**MOTION:**

**SECONDED:**

I move that the Commission find that the School Board’s denial of the Charter Application based on the applicant’s failure to demonstrate the skills and abilities to operate a charter school in its prior attempt **is** statutory good cause for denial.

VOTE: Yes \_\_\_\_\_

No \_\_\_\_\_

SUBISSUE TWO

- E. Whether the School Board’s concerns related to **financial management of**

**the previously terminated charter** are sufficient grounds for denial under Florida law.

**MOTION:**

**SECONDED:**

I move that the Commission find that the School Board **did** have competent, substantial evidence of **poor financial management of the previously terminated charter.**

VOTE: Yes \_\_\_\_\_

No \_\_\_\_\_

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F. If the Commission finds that the School Board **did** have competent substantial evidence to support its finding, a vote must be taken on whether that finding constitutes **statutory good cause** for denial.

Whether the poor financial management of the previously terminated charter is statutory good cause for denial.

**MOTION:**

**SECONDED:**

I move that the Commission find that the School Board's denial of the Charter Application based on the area of financial management **is** statutory Good cause for denial under Florida law.

VOTE: Yes \_\_\_\_\_

No \_\_\_\_\_

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SUBISSUE THREE

G. Whether the School Board's concerns related to **background checks and teacher qualifications** are sufficient grounds for denial under Florida law.

**MOTION:**

**SECONDED:**

I move that the Commission find that the School Board **did** have competent, substantial evidence of failure to provide **background checks and teacher qualifications.**

VOTE: Yes \_\_\_\_\_

No \_\_\_\_\_

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- H. If the Commission finds that the School Board **did** have competent, substantial evidence to support its finding, a vote must be taken on whether that finding constitutes **statutory good cause** for denial.

Whether the failure to provide background checks and teacher qualifications is statutory good cause for denial.

**MOTION:**

**SECONDED:**

I move that the Commission find that the School Board's denial of the Charter Application based on the failure to provide **background checks and teacher qualifications** is statutory good cause for denial under Florida law.

VOTE:      Yes \_\_\_\_\_                      No \_\_\_\_\_

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ISSUE THREE

- I. Whether the School Board's concerns related to **financial information and budget projections** provided in the Charter Application are sufficient grounds for denial under Florida law.

**MOTION:**

**SECONDED:**

I move that the Commission find that the School Board **did** have competent, substantial evidence to support its finding that the **financial information and budget projections** provided in the Charter Application was not sufficient.

VOTE:    Yes \_\_\_\_\_                      No \_\_\_\_\_

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- J. If the Commission finds that the School Board **did** have competent, substantial evidence to support its finding, a vote must be taken on whether that finding constitutes **statutory good cause** for denial.

Whether the insufficient financial information and budget projections provided in the Charter Application are statutory good cause for denial.

**MOTION:**

**SECONDED:**

I move that the Commission find that the School Board's denial of the Charter Application based on the insufficient **financial information and budget projections** provided in the Charter Application **is** statutory good cause for denial under Florida law.

VOTE: Yes \_\_\_\_\_ No \_\_\_\_\_

FINAL MOTION:

**MOTION:**

**SECONDED:**

I move the Commission provide a written recommendation to **grant** / **deny** the appeal.

VOTE: Yes \_\_\_\_\_ No \_\_\_\_\_