

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION

Technical Assistance Paper

APPEAL OF IMHOTEP-NGUZO SABA CHARTER SCHOOL
APPLICATION DENIAL

September 28, 2005

APPLICANT: THE JOSEPH LITTLES-NGUZO SABA CHARTER SCHOOL, INC.

SCHOOL BOARD: SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA

INTRODUCTION

On September 21, 2004 the Joseph Littles-NGUZO SABA Charter School, Inc. (hereinafter, "Appellant" or "Applicant") submitted an application to open the Imhotep-NGUZO SABA Charter School (hereinafter, "Proposed School") to the School District of Palm Beach Country, Florida (hereinafter "School District"). The Applicant submitted a revised application (hereinafter, "Charter Application") on March 1, 2005 and on April 27, 2005 the School Board of Palm Beach County, Florida (hereinafter, "School Board") voted to deny the Charter Application. The Applicant received notice of the denial (hereinafter "Notice of Denial") on May 9, 2005

On June 9, 2005, the School Board acknowledged receipt of a Notice of Appeal of the Application denial and on June 21, 2005 the Applicant filed a revised Notice of Appeal (hereinafter "Appeal") that the School Board states it received on June 27, 2005. On July 27, 2005 the School Board filed an Answer Brief (hereinafter "Response").

ISSUE ONE:

WHETHER THE SCHOOL BOARD MAY DENY THE CHARTER APPLICATION BASED ON SCHOOL BOARD POLICY WHICH DEFINES STATUTORY GOOD CAUSE

- The School Board states that it has the authority to adopt a Policy to clarify what it will deem to be "good cause" and in doing so has set the standards for approval of a charter application, which includes standards that operators of existing charter schools in the county must meet or exceed in order to have an application for a new charter school approved.
- The Appellant states that under Florida Statute §1002.33(5)(b)(4) that the School Board's policies do not apply to the Charter School.
- Florida Statute §1002.33(5)(b)(4) states that a sponsor's policies shall not apply to a charter school.
- The School Board states that the statutory restriction on a sponsor's policies applying to a charter school applies only to operating charter schools and bears no relevance to the consideration of the Charter Application.

ISSUE TWO:

WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO DENY THE APPLICATION BASED ON A STANDARD THAT REQUIRES OPERATORS OF EXISTING CHARTER SCHOOLS TO MEET THE SCHOOL BOARD'S DEFINITION OF BEING AN "EXEMPLARY" CHARTER SCHOOL BEFORE BEING ALLOWED TO OPEN ADDITIONAL CHARTER SCHOOLS

- The School Board states that it has the right to set standards of charter application approval, and that it may use the performance of an existing charter school operated by the Applicant to deny the Charter Application.
- The School Board states that School Board Policy 2.56 had been in effect for two years and that the Appellant had never officially objected to the policy when it was being promulgated under the Administrative Procedures Act.
- The School Board's standards set under Policy 2.56 require that a person or organization operating a charter school under the auspices of the School Board must be considered an "exemplary" charter school for the previous two years. An exemplary charter school is categorized as: (1) remaining in full compliance with its charter; (2) demonstrating fulfillment of the statutory purposes of charter schools...; and (3) for schools subject to state performance grades, maintaining a performance grade of at least "B" or demonstrating significant annual learning gains.
- The Appellant states that there is no basis under Florida law for requiring an applicant's currently operating charter schools to be "exemplary" or that they have maintained a grade of at least a "B" for the past two fiscal years.
- The Appellant states that the School Board granted the existing Charter School a ten (10) year charter contract renewal in 2004, and the School Board would not have granted the ten year renewal if the Applicant had a history of unacceptable noncompliance.
- The School Board states that the renewal of the school's charter contract should not be considered as approval of the school's existing operations by the School Board because the school had originally asked for a fifteen-year renewal and was only granted a ten-year term.
- The Appellant states that an unsolicited letter of recommendation dated December 7, 2004 from the School District Superintendent indicates that the current charter school is "worthy."

ISSUE THREE:

WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO DENY THE APPLICATION BECAUSE THE APPLICANT'S EXISTING CHARTER SCHOOL WAS FISCALLY NON-COMPLIANT

- The School Board states that the Applicant's existing charter school could not be considered exemplary because of the following:
 - Untimely submission of required reports.
 - Failure to have two signatories on every check issued by the school.
 - Failure to meet projected enrollment of 160 students in fiscal year 2003/2004 (actual enrollment was 151).
 - Failure to meet projected enrollment of 225 students in fiscal year 2004/2005 (actual enrollment was 120).
 - Failure to provide the School District with the necessary documentation for \$4,700 of the \$125,000 Dissemination Grant for fiscal year 2003 – 2004.
 - Failure to address items noted in the school's fiscal year 2002 – 2003 audit. The items were: 1. Professional Development; 2. Property and Equipment Tagging; and Disaster Recovery Contingency Planning.
 - Failure to meet the terms of the capital outlay plan which required that the school provide the School District with copies of any rent checks for the period from December 2004 through March 2005.
 - A negative fund balance during a Fiscal Year 2003 – 2004 of \$6,675 and a positive fund balance of \$15,283 as of December 2004 that may have included cash related to grants with various restrictions. But for those grants, the fund balance would have been negative.
- The Appellant states that it has met the dates for all financial reporting and when it receives a request for a report, the School provides those reports quickly.
- The Appellant states that it has operated for 6 ½ years with a policy requiring that non-payroll checks have two signatures and payroll checks have one signature. The School District has been aware of this and the only checks without two signatures are payroll checks.
- The Appellant states that in October of 2003 the school's enrollment was actually 181 and that it had to become more selective in accepting students after the School District Superintendent stated that the School District may close any charter school that received a single "F" grade.
- The Appellant states that bad publicity generated by a letter sent by the School District to the parents of its students and the two hurricanes that hit Palm Beach County during August/September of 2004 significantly limited its ability to

recruit and retain students.

- The Appellant states that it dealt with the reduction in FTE revenue by utilization of fiscal controls and with the help of loans from members of its board of directors.
- The Appellant states that the School District has misrepresented the facts on the Dissemination Grant. The School had requested that the School District ask the Florida Department of Education for a additional time to substantiate the \$4,700 expenditure and rather than do so, the School District deleted the amount from the grant entirely
- The Appellant states that the School District did not receive copies of rent checks for the period beginning December 2004 because the school had been unable to pay its rent during this time. The School District withheld all capital outlay dollars during that period based on School District policy. The School has since paid all rent owed.
- The Appellant states that the negative fund balance that the school “would have if” certain restricted grants were not included mirrored the amount of rent that was owed to the landlord. The rent has now been paid through fundraising and interest-free loans from the school’s board of directors.

ISSUE FOUR:

WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO DENY THE APPLICATION BECAUSE THE APPLICANT’S EXISTING CHARTER SCHOOL WAS ACADEMICALLY NON-COMPLIANT

- The School Board states that the existing charter school could not be considered exemplary because of the following:
 - The school was not graded during fiscal year 2002 – 2003.
 - The school received a grade of “D” during fiscal year 2003 – 2004.
 - The school failed to make adequate yearly progress for fiscal years 2002 – 2003 and 2003 – 2004.
 - The projected grade for the school, based on December 2004 diagnostics is either a “D” or an “F.”
- The Appellant states that not being graded by the state should not be considered a failure by the school.
- The Appellant states that its students passed the FCAT’s in 2003 – 2004 and the school grade should not be considered a failure.

- The Appellant states that while it failed to make annual yearly progress in 2004, so did the School District's own schools serving the same demographic of students. In addition, it did not receive an adequate yearly progress rating in 2003 and thus could not have failed to make that standard for two years as stated in the Notice of Denial.
- The Appellant states that the 2005 grade was a "D," missing a "C" grade by two points.