

THE FLORIDA DEPARTMENT OF EDUCATION  
CHARTER SCHOOL APPEALS COMMISSION

# Technical Assistance Paper

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APPEAL OF WEST BREVARD CHARTER ELEMENTARY SCHOOL  
CHARTER APPLICATION DENIAL

APPELLANT: IMAGINE-BREVARD COUNTY, LLC  
SCHOOL BOARD: BREVARD COUNTY SCHOOL BOARD

## INTRODUCTION & HISTORY

Imagine-Brevard County, LLC (hereinafter “Applicant” or “Appellant”) submitted a charter application to open the West Brevard Charter Elementary School (hereinafter “Application”) to the Brevard County School District (hereinafter “School District” or “School Board”) [Note: there is no evidence presented or corroborating statements in the Appeal (as defined below) or the Appeal Response (as defined below) of the actual date of submission of the charter application, although the School Board in its Appeal Response notes that the deadline for submission of applications was September 1, 2005 and makes no note of an untimely submission by the Applicant].

On September 15, 2005, the School Board conducted an interview with the Applicant. The purpose of the interview was for the parties to engage in dialogue about the Application as well as provide the Applicant with preliminary feedback and the opportunity to resubmit the Application (See Appeal Response Exhibit I).

The Applicant then re-submitted the Application to the School Board [Note: there is no evidence presented or corroborating statements in the Appeal or the Appeal Response of the actual date of re-submission of the charter application (hereinafter “Charter Application”), although the School Board in its Appeal Response notes that the deadline for re-submission of applications was September 22, 2005 and makes no note of an untimely submission by the Applicant].

On October 25, 2005 the School Board voted unanimously to deny the Charter Application.

On November 15, 2005 the Florida Department of Education (hereinafter “FLDOE”) received a single-spaced, seven (7) page document (excluding exhibits) entitled the Notice of Charter School Application Appeal – West Brevard Charter Elementary School, dated November 14, 2005 (hereinafter “Appeal”).

On December 16, 2005 the FLDOE received a single-spaced, fifty (50) page document (excluding exhibits) entitled Brevard Public Schools – School Board’s Response to Charter School Appeal – West Brevard Charter School dated December 14, 2005 (hereinafter “Appeal Response”).

ISSUE ONE:

### **WHETHER THE SCHOOL BOARD FAILED TO PROVIDE WRITTEN GOOD CAUSE REASONS FOR DENIAL IN A TIMELY MANNER, AS REQUIRED BY F.S. §1002.33(6)(b)(3).**

- Appellant states that it did not receive a letter of denial of the Charter Application within 10 days of the School Board’s vote to deny the Charter Application on October 25, 2005 as required by Florida law (Appeal pages 1 – 2).

- School Board states that on October 27, 2005 the School District Superintendent mailed via the United States Postal Service a letter to the Applicant dated October 27, 2005 that included the final compilation of deficiencies (Appeal Response Part C, Page 1).
- School Board offers as evidence of their timely mailing of the letter of denial to the Appellant a re-printed email from unrelated third parties replying to a School District official's request stating that they did receive a letter (no date of receipt is asked for by the School District or given by the third parties) from the School District regarding their charter school application (Appeal Response Attachment W).
- School Board states that the Appellant included the final compilation of deficiencies in its Appeal and thus must have received them (Appeal Response Part C, Page 1).
  - ANALYSIS: While it appears that the Appellant did receive a list of deficiencies regarding the Charter Application there is no definitive proof offered by either side as to when or if an actual letter of denial including those deficiencies was sent within the required timeline.
  - The pertinent Florida Statutes on this issue reads as follows (emphasis added):  
  
 F.S. 1002.33(6)(b)3. A district school board shall by a majority vote approve or deny an application no later than 60 calendar days after the application is received, unless the district school board and the applicant mutually agree to temporarily postpone the vote to a specific date, at which time the district school board shall by a majority vote approve or deny the application. If the district school board fails to act on the application, an applicant may appeal to the State Board of Education as provided in paragraph (c). *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 TWO:

**WHETHER THE SCHOOL BOARD APPLIED DIFFERENT STANDARDS AND GUIDELINES TO THIS APPLICANT AS COMPARED TO OTHER UNRELATED CHARTER SCHOOL APPLICANTS RESULTING IN INEQUITABLE TREATMENT OF THIS APPLICATION.**

- Appellant states that out of the six charter applications submitted to the School Board for consideration, five were approved by the School Board with contingencies. These contingencies included allowing one of the other applicants to submit a revised application as late as March 31, 2006 with additional information. No such conditional approval was offered to the Appellant (Appeal page 2, Item Number 2).
- School Board states that it used the same scoring system when considering the Charter Application as it used on other applications (Appeal Response Part C, pages 1-2).

- School Board states that they utilize a rubric method for judging the quality of applications for charter schools and that the Charter Application received the lowest score of all applicants, an average score of 1.7 (based on a scale of 0-5 with “5” being the highest possible score and “3” being the minimum acceptable score) (Appeal Response Part C, page 2).
- School Board states it awarded the other applicants conditional approvals based on various factors, but that the Appellant was not given a conditional approval because of the low score on the School Board’s rubric and its failure to fulfill the requirements under Florida Statute 1002.33(6) (Appeal Response Part C, page 2).
- School Board states that the Applicant did not contact School Board for assistance before submitting the initial application or the re-submitted Charter Application (Appeal Response Part C, page 2).
- ANALYSIS: Florida law does not allow for a “conditional” approval of a charter application. Under F.S. §1002.33(6)(b)(3)(c) the School Board must vote to approve or deny a charter application within 60 days of the application. There are two issues that arise from the School Board’s decisions regarding other charter applicants:
  - (1) Some of the other charter applicants have been offered the opportunity to resubmit applications, while the Appellant was not offered the same opportunity.
  - (2) In the Appeal Response, the School Board states that the Application does not fulfill the statutory requirements as stated in Florida Statute 1002.33(6). That determination alone would make denial proper and mandated and it is the only standard by which a charter application should be considered. If the conditional approvals of the other applications were based on factors outside of the statute, then the School Board may have applied factors outside of the law to its review.
- The pertinent Florida Statutes read as follows (emphasis added):
 

F.S. 1002.33(6)(b)3. ***A district school board shall by a majority vote approve or deny an application no later than 60 calendar days after the application is received, unless the district school board and the applicant mutually agree to temporarily postpone the vote to a specific date, at which time the district school board shall by a majority vote approve or deny the application.*** If the district school board fails to act on the application, an applicant may appeal to the State Board of Education as provided in paragraph (c). 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 SCHOOL BOARD'S DENIAL OF THE CHARTER APPLICATION WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002.33(6)(b)(3).**

- Appellant states that the deficiencies stated by the School District's Review Committee are either unfounded and/or are located within the Charter Application or are not consequential and/or required for the approval of the Charter Application (Appeal pages 1-9).
- School Board states that Applicant's other schools throughout the state of Florida and in Brevard County have had financial issues and/or have not done as well as other Brevard County Schools academically (Appeal Response Part B, pages 1-2).
- School Board states that the Application is "rife with errors", includes several incorrect citations to other page numbers within the Application and/or does not include the necessary detail on how the School will accomplish what it has set forth (Appeal Response Part B, page 1).
- School Board states that its review of the initial application submitted by the Applicant showed that the answers to 51 of the questions in the Application were deemed to be less than acceptable. School Board states that they provided this information to Applicant and allowed it the opportunity to resubmit the charter application. The re-submitted Application did not include any changes to 12 of the 51 responses which had previously been scored as unacceptable answers (Appeal Response Part B, page 1).
- In its Appeal Response, School Board argues that it had good cause to deny the Application based upon the results of its evaluation and a rubric scoring (Appeal Response Part B, pages 1-13).
- School Board states the following areas of the Charter Application were deemed to be unacceptable (Appeal Response Part B, Pages 3-13, Appeal Response Part C, Pages 3-28):
  - (1) Academic Design (Appeal Response Part C pages 3-12)
    - (a) Guiding Principles (Appeal Response Part C pages 3-8)
    - (b) Educational Program (Appeal Response Part C pages 8-11)
    - (c) Student Assessment (Appeal Response Part C pages 11-12)

- (2) Governance & Management (Appeal Response Part C pages 12-18)
  - (a) Profile of the Application Group and Management Team (Appeal Response Part C pages 12-14)
  - (b) School Governance (Appeal Response Part C pages 14-18)
- (3) Length of Charter and Implementation Timetable (Appeal Response Part C pages 19-20)
- (4) Recruiting and Marketing Plan (Appeal Response Part C pages 20)
- (5) Finance, Facilities & Risk Management (Appeal Response Part C pages 20-24)
  - (a) Finance (Appeal Response Part C page 22)
  - (b) Risk Management (Appeal Response Part C pages 23-24)
- (6) Operations (Appeal Response Part C pages 24-26)
  - (a) Admissions and Registration Plan (Appeal Response Part C pages 24-25)
  - (b) Student Code of Conduct, Discipline & Dismissal Procedures (Appeal Response Part C pages 25-26)
- (7) Human Resources (Appeal Response Part C pages 26-27)
- (8) Transportation (Appeal Response Part C pages 27-28)
- In the Appeal, Applicant has provided responses in a narrative format to the School Board's assertions in each of these areas (Appeal pages 2-8).
- In the Appeal Response the School Board has provided responses in a matrix format to the Appeal (Appeal Response Part C, pages 3-28).