

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION

Technical Assistance Paper

APPEAL OF CHALLENGE FOUNDATION
DENIAL OF AN APPLICATION FOR A CHARTER ELEMENTARY SCHOOL

APPELLANT: CHALLENGE FOUNDATION

APPELLEE: THE SCHOOL BOARD OF SARASOTA COUNTY, FLORIDA

INTRODUCTION

On September 1, 2005, the Challenge Foundation (hereinafter “Applicant”) submitted to the School Board of Sarasota County (hereinafter “School Board”) an application (hereinafter “Application”) to open a charter elementary school, Charter Foundation Academy (hereinafter “School”). [See Applicant’s Exhibit A] As well on that date, Applicant made a presentation to and participated in a discussion with School Board’s Charter Review Committee (hereinafter “Review Committee”).

On September 8 and 15, 2005, Review Committee met alone to evaluate and score Application, using School Board’s approved rubric. The end result of this review was the Preliminary Report, designating 11 of the 15 areas of review as “satisfactory,” which was transmitted to School Board, the School Board Superintendent and Applicant with an overall rating as “inadequate.” [See Applicant’s Exhibit B]

On September 20, 2005, School Board held a workshop to discuss Application, provide Applicant feedback on the review and request supplemental information on the standards rated as “inadequate” in the Preliminary Report. [See Applicant’s Exhibit C for transcript of proceedings]

On September 27, 2005, Applicant submitted to School Board and Review Committee additional information to address Review Committee’s concerns. [See Applicant’s Exhibit D]

On September 29, October 6 and 13, 2005, Review Committee met to develop its Final Report, which was transmitted to School Board and Applicant. As a result of this review and subsequent action, all ratings of “inadequate” were changed to “satisfactory,” and the Review Committee concluded that “all of the Standards have been Fully Addressed after revision,” and that Application was “Satisfactory in establishing a complete school design.” [See Applicant’s Exhibit E]

At its October 18, 2005 meeting, School Board, by a vote of 1-4, failed to approve Application, then immediately voted 4-1 to deny Application. At the meeting, Applicant was not asked to respond to School Board concerns. [See Applicant’s Exhibit J for Agenda and F for transcript of proceedings]

On October 27, 2005, Applicant received School Board’s Letter of Denial, dated October 21, 2005 (hereinafter “Letter of Denial”), setting forth four reasons for denial. [See Applicant’s Exhibit G]

On November 22, 2005, Applicant filed its Notice of Appeal from Denial of Charter Application (hereinafter “Notice of Appeal”).

On or before December 20, 2005, School Board filed its Response to Notice of Appeal (hereinafter “Appeal Response”).

ISSUE ONE

WHETHER SCHOOL BOARD’S DENIAL OF APPLICATION FOR ITS INABILITY TO DIFFERENTIATE BETWEEN SCHOOL AND ANOTHER CHARTER SCHOOL IN SARASOTA COUNTY WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002.33(6)(b)(3).

- In its Letter of Denial, School Board states that its greatest concern is that School shares resources and services with an existing charter middle school (hereinafter “Academy”) that has incurred substantial start up challenges, resulting in under enrollment and financial deficits. School Board finds that there is insufficient differentiation between both schools, because Applicant proposes shared board members, facilities, mission and administrators with Academy. School Board finds that Academy itself could extend those educational services proposed by Applicant, thus avoiding an additional charter at the same facility. School Board determines that the cooperative arrangement with the schools is purely financial, with no assurance of performance outcomes.
- In its Notice of Appeal, Applicant argues generally that it has achieved satisfactory ratings from Review Committee on all 15 standards for review, that School Board points to no flaws in the design for School, and that Application should be approved. Applicant states that Application should be reviewed on its own merits and not judged on the perceived concerns about Academy, with whom School will share “a *de minimus* number of resources.” [pp. 18 and 19] Applicant further states that, in disregard of satisfactory ratings, School Board has provided “four overlapping grounds for denial...neither supported by competent evidence nor legally sufficient bases for denial.” [p. 11]
- In its Notice of Appeal, specifically with regard to shared resources, Applicant states there are “very limited connections” between School and Academy, primarily shared facilities (for which rent is paid), one common Board member, part time use of Academy’s principal during start up, and Academy’s interest in the possibility of adopting a Core Knowledge curriculum (proposed curriculum for School) for its own potential future uses at Academy. [pp. 13 and 14] Applicant claims no evidence of other shared functions or services beyond that, and no evidence that the schools will not otherwise be separate entities, one an elementary school, the other a middle school. According to Applicant, the two schools are not one and the same, as implied by School Board; rather, School is a stand alone entity, employing cost savings methods of a few shared resources. Applicant contends that problems with one school (Academy’s) cannot be the basis for denial of another’s application (School’s) where there are only minimal

contacts or unsubstantiated concerns because of proximity to an existing charter.
[p. 22]

- In its Appeal Response, School Board argues generally that, by voting to deny Application, it did dispute the “statutory viability of the application,” and that Applicant was unable to “dispel concerns caused by minimal and inadequate explanations.” [p. 4] Review Committee’s process was advisory in nature, slated for review and official action by School Board.
- In its Appeal Response, specifically with regard to shared resources, School Board states that joint use of facilities, a board member and administrator and Academy’s interest in Core Knowledge curriculum is confirmation that Application is nothing more than an extension of the curriculum and program that Academy could provide either through its own charter or under contract with Applicant Challenge Foundation, without having to employ another charter. [p. 4] School Board states its concern about the “cohabitation” of the two schools because of Academy’s financial problems in its start up year, further citing an audit on Academy. [pp. 4 and 5] A note to that audit suggests a stronger affiliation between Academy and School than admitted by Applicant, further evidence that Application should be denied until financial issues are resolved. School Board refers to School as an “expansion” at Academy, not a stand alone entity. [p.5] School Board expresses concern about the impact of “financial collapse of Academy” on students and families, presumably of both schools. [p. 5]
- Analysis: In Letter of Denial [p.1 and 2], School Board sets forth four separate “specific and good cause reasons for denial.” In Notice of Appeal, Applicant depicts School Board’s reasons as “four overlapping grounds for denial that are neither supported by competent and substantial evidence nor legally sufficient bases for denial,” [p. 11] but then responds to each of the four bases separately, addressing evidentiary sufficiency and “good cause.” In Appeal Response, School Board responds to the appeal by discussing the reasons for denial collectively in terms of sufficiency of evidence and good cause to support the bases, while addressing separately only the question of sharing of resources and facilities as a basis for denial (Issue One).
- F.S. §1002.33(6) provides, in pertinent part:
“(b)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...A district school board may receive applications later than this date if it chooses.”

- F.S. §1002.33(6)(b) states, in pertinent part:
 “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.” [emphasis added]

ISSUE TWO

WHETHER SCHOOL BOARD’S DENIAL OF APPLICATION FOR ITS INABILITY TO IDENTIFY A COMMUNITY NEED WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002.33(6)(b)(3).

- In its Letter of Denial, School Board summarily states that Review Committee was unable to “identify a community based need” for School to “augment the academic approach” of Academy.
- In its Notice of Appeal, Applicant states that there is insufficient evidence to support denial on the issue of community need. School Board continues to assert that Academy can currently, or could if it wanted to, provide the services proposed by Applicant, requiring at least a charter amendment. Applicant raises the same response as in Issue One, since the reasons for denial are, to Applicant, overlapping and subsets of the same argument. Specifically, Applicant proposes an elementary school; Academy’s operation is limited to a middle school and does not provide service directly to elementary students. [pp. 15 and 16] Applicant’s overall mission differs from Academy’s. Applicant proposes to use Core Knowledge curriculum for elementary students, a curriculum that is acknowledged by School Board as successful, has been “tested and successful nationwide” and is not offered by any other elementary schools to elementary students in Sarasota County. [p. 16] Evidence does not support School Board’s contention that needs to be met by School are already being met. [p. 17]
- In its Appeal Response, School Board does not address this basis for denial separately from its initial response set forth above. School Board’s argument is, generally, that there is sufficient evidence to support denial for good cause bases set out in its Appeal Response [pp. 4 and 5] and that good cause is supported by the financial statements provided as part of Academy’s independent audits. [p. 5]
- F.S. §1002.33(6) provides, in pertinent part:
 “(a) A person or entity wishing to open a charter school shall prepare an application that:

 “2. Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.”

ISSUE THREE

WHETHER SCHOOL BOARD'S DENIAL OF APPLICATION FOR INABILITY TO CONVINCe SCHOOL BOARD THAT APPLICATION PRESENTED A SUFFICIENTLY DIFFERENT FORMAT FOR STUDENT ACHIEVEMENT WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002.33(6)(b)(3).

- In its Letter of Denial, School Board finds that, at the September 20, 2005 Workshop, Applicant was “unable to lead the Board members to a level of understanding that” School “would be able to serve students in a format not currently achievable by” Academy.
- In its Notice of Appeal, Applicant points out that most of School Board’s discussion during consideration of Application was “spent expressing and discussing concerns over” Academy’s status, which are “misplaced when discussing” School. [p. 17] Both schools are “distinctly separate,” as stated above, hence School’s separate application to operate an elementary school, albeit with a potential “symbiotic relationship” hoped for in the future. Applicant repeats that no evidence supports a conclusion that these schools are one and the same and that concerns about Academy cannot be a basis for denying Application. Applicant finds it ironic that in all the concern about Academy’s success (and using that as a basis for denial of Application) School Board overlooked that fact that approval of Application could provide a school with a “stabilizing influence” that could enhance enrollment at Academy, especially if Academy eventually adopted a Core Knowledge curriculum for middle school students.
- In its Appeal Response, School Board does not provide a separate response to this third specific basis for denial set out in Letter of Denial. [See above and pp. 4 and 5]

ISSUE FOUR

WHETHER SCHOOL BOARD'S DENIAL OF APPLICATION BECAUSE SCHOOL BOARD DOES NOT PERCEIVE A DISTINCT BENEFIT TO STUDENTS WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002.33(6)(b)(3).

- In its Letter of Denial, School Board finds that, at the October 18, 2005 School Board meeting, it was unable to “quantify any differences that would require a ‘new Application’ to augment services already provided” by Academy. Further, Application was unable to “identify any elements of this new design which would facilitate the Board Members [sic] understanding of how the application would

benefit” Sarasota County students. Application does not contain adequate “assurances of success.”

- In its Notice of Appeal, Applicant argues that this fourth basis for denial is “redundant of the first and second reasons and fails for the same reason they do.” [p. 18] Review Committee found the Core Knowledge curriculum proposed for Applicant’s elementary school to be satisfactory; School Board did not dispute the value of such curriculum. Again, that curriculum is not offered in any other Sarasota County elementary school, providing a unique and distinguishable benefit to the community of elementary school students in the County. According to Applicant, “this variation of the Board’s denial based on a perceived overlap” of School and Academy is “also not supported by substantial competent evidence.” [p. 18]
- In its Appeal Response, School Board does not provide a separate response to this fourth basis for denial set forth in Letter of Denial. [See above and pp. 4 and 5]

ISSUE FIVE

WHETHER SCHOOL BOARD VIOLATED ITS OWN RULES CONCERNING OBTAINING A RECOMMENDATION FROM THE SUPERINTENDENT CONCERNING APPLICATION.

- In its Notice of Appeal, Applicant refers to School Board’s Rules 3.90, which says, in part:
“The Superintendent shall review and recommend to the School Board all charter/conversion application and contracts called charters....” [p. 23 refers to Exhibit J for copy of the Rule, which appears to be omitted]

Applicant alleges that School Board’s process violated that rule, in that Superintendent neither made a recommendation at the September 20 Workshop or the October 18 Board Meeting nor spoke to the Board concerning Application. Applicant cites case law in support of its position that agencies must follow their own lawfully promulgated rules, even in the case of discretionary action. According to cited cases, if violations of its rules by an agency result in prejudice, action taken by that agency cannot stand. In this case, Applicant alleges that Superintendent’s recommendations or observations could have made a difference to the Board [pp. 23 and 24] Prejudice occurred and denial of Application cannot stand, according to Applicant.

- In its Appeal Response, School Board argues that the Superintendent did make a recommendation to the School Board (in accordance with the dictionary definition of “recommend” as “to present as worthy” or “to entrust, commit”) at the October 18 School Board Meeting under the appropriate action item as part of the official agenda of that Meeting. [See Exhibit J, Item 41] That Item also included a

“Recommended Motion.” School Board further argues that it had before it and had reviewed thoroughly all information made part of the record, supplanting “the need for any further comment by the Superintendent” unless requested. [p. 6] Hence, School Board complied with its own procedural rule. In any case, School Board argues that it has the statutory duty to approve or deny charter applications, not Superintendent. School Board does not comment on whether it would have been made any difference if it obtained further input from Superintendent.