

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION

Technical Assistance Paper

APPEAL OF ACADEMIES OF EXCELLENCE
DENIAL OF AN APPLICATION FOR A CHARTER ELEMENTARY SCHOOL

APPELLANT: ACADEMIES OF EXCELLENCE

APPELLEE: THE SCHOOL BOARD OF VOLUSIA COUNTY, FLORIDA

INTRODUCTION

On or before September 1, 2005, the Academies of Excellence (hereinafter “Applicant”) submitted to the School Board of Volusia County (hereinafter “School Board”) an application (hereinafter “Application”) to open a charter elementary school (hereinafter “School”). [See Applicant’s Exhibit 1]

For its October 11, 2005, School Board meeting, School Board offered Applicant the opportunity to make a presentation on Application and/or answer any questions the Board might have. Applicant “chose not to proceed at that time as is very much...their prerogative.” [See Applicant’s Exhibit 2, p. 21]

On October 21, 2005, School Board staff transmitted its Charter School Application Review Form (hereinafter “Review Form”) to School Board and Applicant, along with an explanation of the rubric employed in the review of the Application, recognition of an opportunity for Applicant’s response to questions, and notification of School Board action on the Application. [See School Board’s Appendix, first entry]

At its October 25, 2005 hearing, School Board staff presented a detailed review of application and its Review Form, followed by substantial discussion with Applicant’s representative. School Board voted unanimously to deny Application. [See School Board’s Appendix, second entry, Transcript of Proceedings]

In a letter dated October 28, 2005 (hereinafter “Letter of Denial”), School Board advised Applicant of the action taken to deny Application at its October 25, 2005 Board meeting. School Board’s letter delineates the same reasons for denial related to Student Assessment/Accountability Design and Finance/Class Size Amendment as set forth in its October 21, 2005 transmittal. [See Applicant’s Exhibit 3]

On November 25, 2005, Applicant filed its Notice of Appeal from Denial of Charter Application (hereinafter “Notice of Appeal”).

On December 23, 2005, School Board filed its Response to Notice of Appeal (hereinafter “Appeal Response”).

ISSUE ONE

WHETHER SCHOOL BOARD'S DENIAL OF APPLICATION FOR REASONS RELATED TO STUDENT ASSESSMENT/ACCOUNTABILITY DESIGN WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002.33(6)(b)(3).

- In its Letter of Denial, School Board explains its process for review of Application, which consists of the use of a state approved rubric employing the criteria appearing in the Florida Charter Schools Standard Application Format, revised for 2006. [See Applicant's Exhibits 3 and 4] The rubric is used to score the Application in 21 areas, rating each area on a scale of 1 to 4 (ratings of 3 and 4 are recommended for approval; a rating of 2 is recommended for provisional approval, to be resolved at the charter level; a rating of one means the area does not meet minimum standards for approval). [See Applicant's Exhibit 2, p. 20]
- In its Letter of Denial, School Board finds that Application fails to meet the Standards for Minimal Acceptance in the area of Student Assessment/Accountability Design as good cause basis for denial of Application. Specifically, School Board finds two failing criteria as the basis for denial:
 1. There are no measurable academic performance goals related to the school's performance. Applicant states it will be held accountable under the A+ Accountability Plan and that it will participate in FCAT. Applicant fails to set a standard for school performance; it agrees to the "measurement instrument" (FCAT) but not to the "standard under which that instrument will be measured" (school grade).
 2. Applicant proposes to use the 25th percentile on a norm reference test to demonstrate acceptable student performance. This measure of student performance "is low and does not equate with grade level proficiency by FCAT."
- In its Notice of Appeal, Applicant argues that School Board's denial was not based on good cause. Applicant states that Application meets or exceeds the requirements set forth in charter law and the state approved format. Applicant provides a useful side-by-side comparison, in matrix form, setting forth School Board comment and Applicant response for each of the items found deficient within the "failing area" of Student Assessment /Accountability Design. [See Notice of Appeal, pp. 3 and 4] Specifically, Applicant:
 1. Refers to sections of Application related to student assessment and accountability, and claims that student learning gains are the basis for a school's grade under the A+ Accountability Plan. Applicant also cites other measures such as student satisfaction surveys, periodic reports and other methods of informing parents of student progress.
 2. States that its acceptable levels of student performance are based on State Standards, and that reference to the 25th percentile for learning gains was

an inadvertent error. This should have read “at or above the 51st percentile.”

- In its Appeal Response, School Board argues that it had good cause to deny Application based upon the results of an informed evaluation, supported by the state approved rubric scoring and by explanations and reviews by professionals in the area of accountability, to which a rating of 1 had been ascribed. Specifically, School Board states that:
 1. Applicant confuses school performance with student performance. School Board is concerned with Applicant’s failure to establish an acceptable standard for school performance, such as the school grade level to be achieved by Applicant. [p. 9]
 2. Use of the 25th percentile is an unacceptable measure of student performance. Applicant’s admission of inadvertent error supports denial of Application. Further, School Board states that it “can only make its decision based on” Application as submitted by September 1, 2005, and on “testimony and evidence presented at the hearing.” School Board states there is no provision for amending charter applications after September 1 of each year. [pp. 9 and 10]

- F.S. §1002.33(2) provides, in pertinent part:

“(a) Charter schools in Florida shall be guided by the following principles:

 1. Meet high standards of student achievement while providing parents flexibility to choose....within the state’s public school system.
 2. Promote enhanced academic success and financial efficiency by aligning responsibility with accountability.”

...

“(b) Charter schools shall fulfill the following purposes:

 1. Improve student learning and academic achievement.
 -
 5. Require the measurement of learning outcomes.”

- F.S. §1002.33(5) provides, in pertinent part:

“(b) *Sponsor duties.*—

...

“5. The sponsor shall ensure that the charter school participates in the state’s education accountability system.”

- 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:

 1. Demonstrate how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.”
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 3. Contains goals and objectives for improving student learning and measuring that improvement. These goals and objectives must

indicate how much academic improvement students are expected to show each year, how success will be evaluated, and the specific results to be attained through instruction.

....”

“(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.”

....

“(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 REASONS RELATED TO FINANCE/CLASS SIZE WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002.33(6)(b)(3).

- In its Letter of Denial, School Board finds that Applicant has failed to meet the Standards for Minimal Acceptance in the area of Finances/Class Size Requirements as good cause basis for denial of Application. Specifically, School Board finds the following “failing” criteria:
 1. No demonstration of “sufficient resources to operate the school.” Application “does not support an assertion of sound financial planning.” Generally, School Board finds that the budgets and financial information contain “errors, inconsistencies and unrealistic assumptions.” These include unsupportable enrollment figures and revenue projections and overstated capital revenues. [p. 2]
 2. No demonstration of short-term or long-term viability of the School, based on financial statements provided by Applicant and its limited experience with its other school operations in other counties. [p. 2]
 3. School has experienced financial losses and enrollment declines where it operates in other counties. “The financial results and declines in enrollments raise the question” of Applicant’s ability to operate existing schools, let alone new ones. [pp. 2 and 3]
 4. Discrepancies in projected enrollment figures in Application and in the budget, raising questions of accuracy of information provided and lack of care in preparing Application. [p. 3]
 5. Using the wrong data on the revenue worksheet, resulting in incorrect revenue in the budget. [p. 3]

6. Not including revenues and expenditures for transportation and food service, resulting in overstatement of budget reserves. [p. 3]
 7. Including capital outlay revenue in budget for which Applicant is ineligible, resulting in overstatement of revenues. [p. 3]
 8. Inconsistencies in number of staff listed and health insurance calculations, resulting in budget understatement. [p. 3]
 9. Miscalculation of FICA for all years, resulting in budget understatement.
 10. Double-reporting of custodial services. [p. 4]
 11. Mathematical error in expenditures for Facilities and Capital. [p. 4]
 12. Underestimating construction costs, number of classrooms needed, need for office space, resulting in substantial understatement of facility expenses. [p. 4]
 13. Inflation of first year enrollment projections, resulting in substantial overstatement of revenues. [p. 4]
 14. Understating cost of debt, resulting in understated expenditures. [p. 4]
 15. Failing to provide for increases in cost of insurance. [p. 5]
 16. Failing to provide for increases in cost of workers comp, unemployment insurance and “other payroll costs.” [p. 5]
 17. Understating costs of land and site preparation. [p. 5]
 18. Substantially understating costs for Computers/Network. [p. 5]
- In its Notice of Appeal, Applicant contends, in general, that it presents in Application a sound financial plan, based on justifiable enrollment, revenue and cost assumptions and improved as a result of the process reviewing its third application from the previous year. Specifically, Applicant presents, in side-by-side format, specific responses to School Board’s findings of deficiencies, with regard to Finances/Class Size Requirements, including:
 1. Enrollment figures are reasonable, based on growth projections and “high student populations” in Volusia. Populations in other counties are other districts are not relevant, but, if they were, Applicant exceeded initial projections there. [p. 6]
 2. Applicant has experienced higher first year costs in other schools, but nothing unusual for first year start-ups. All in all, Applicant has had operational successes, exhibiting fiscally sound methods. [p. 7]
 3. Enrollments in other counties are not indicative of what Applicant will experience in Volusia. Applicant has had success despite delays in opening and difficulties at other sites. [pp. 7 and 8]
 4. Discrepancies in enrollment figures between Application and budget are due to clerical error. [p. 8]
 5. Use of wrong data on Revenue Estimate Worksheet was result of correct form not being available. Result was more conservative budget estimates, to Applicant’s credit. [pp. 8 and 9]
 6. Applicant believes food and transportation can be provided on a breakeven basis or at state-reimbursed cost, with a “zero effect on budget.” [p. 9]
 7. Applicant believes it *is eligible* for capital outlay revenue, but, if not, that only has impact in final two years of five year budget. [p. 9]

8. Estimated insurance expenditures are reasonable because not all employees will be eligible or will subscribe. [p. 9]
 9. Miscalculation of FICA was based on clerical errors. [p. 9]
 10. Custodial services are only accounted for *once*. [p. 10]
 11. Mathematical error in Facilities and Capital was due to clerical error, now corrected; no real affect on spreadsheet occurred anyway. [p. 10]
 12. Estimates for facilities needs and costs are only School Board's opinion; projected costs parallel Applicant's experience elsewhere, plus Applicant claims it will have costs savings through management practices. [p. 10]
 13. Enrollment projections are reasonable based on Applicant's experiences in other counties. [pp. 10 and 11]
 14. Applicant has financial backing through partnerships, enabling favorable capital costs. [p. 11]
 15. Applicant claims it pays "flat rate fee per employee not a percentage of premium, hence projected insurance costs are reasonable, also given employee eligibility and interest. [p. 11]
 16. "Other" benefits discussed in benefits are only for discretionary bonuses, and are reasonable. [p. 11]
 17. Land costs projected in budget actually exceed Applicant's experience and are reasonable. [p. 12]
 18. Applicant keeps computer costs lower through use of auctions and refurbished machines, for example. [p. 12]
- In its Appeal Response, School Board contends that Applicant "cannot submit a poorly constructed budget and application, absent information to support their projections, and then provide the missing or clarifying information on appeal in support of the argument that the School Board's denial was not based on good cause." School Board reiterates that Applicant has overlooked the reality of costs of transportation, construction, site preparation, computers, staff benefits, insurance, debt service and has overestimated its enrollment projections. School Board cites negative findings in audit reports from other schools operated by Applicant as proper for consideration in determining Applicant's ability to operate in Volusia County in a financial sound manner. [pp. 10-14]
 - F.S. §1002.33(5)(b)(2) " The sponsor shall monitor the revenues and expenditures of the charter school."
 - F.S. §1002.33(6) provides in pertinent part:
 "(a) A person or entity wishing to pen a charter school shall prepare an application that:
 5. Contains an annual financial plan for each year requested by the charter for operation of the school for 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.”