

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION

Technical Assistance Paper

APPEAL OF ACADEMIES OF EXCELLENCE, INC.
DENIAL OF AN APPLICATION FOR A CHARTER MIDDLE SCHOOL

APPELLANT: ACADEMIES OF EXCELLENCE

APPELLEE: THE SCHOOL BOARD OF GADSDEN COUNTY, FLORIDA

INTRODUCTION

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

On October 11, 2005, School Board held a workshop to discuss a “public school” in the City of Midway. [See Exhibit 2 for agenda] Representatives of Applicant were in attendance.

On October 25, 2005, Applicant attended School Board meeting, at which meeting Applicant was prepared to speak in support of Application. However, Application was not considered at that time.

On October 31, 2005, School Board voted 4-1 to deny Application following public discussion. [See Exhibit 3 for minutes and transcript of proceedings]

On November 10, 2005, School Board transmitted to Applicant its “Order of Denial of Charter Application” [hereinafter “Order of Denial”] [See Exhibit 5] Order of Denial purports to deny the Gadsden Elementary School. [p. 1] Applicant acknowledges receipt of Order of Denial on November 14, 2005.

On December 13, 2005, Applicant transmitted to School Board its Notice of Appeal from Denial of Application for Charter Elementary School (hereinafter “Notice of Appeal”).

On January 17, 2006, School Board filed its Response to Notice of Appeal from Denial of Application (hereinafter “Appeal Response”).

ISSUE ONE

WHETHER SCHOOL BOARD’S WRITTEN DENIAL OF APPLICATION WAS SO VAGUE AND CONFUSING AS TO NOT PROVIDE SUFFICIENT SPECIFIC REASONS BASED ON GOOD CAUSE FOR SUCH DENIAL, AS REQUIRED BY FLORIDA STATUTE §1002.33(6)(b)(3).

- In its Order of Denial, School Board provides 14 pages of “benchmarks” or questions related to specific sections of Application, which benchmarks are apparently intended to track the Guidelines and the Florida Charter Schools Standard Application Format. [See Exhibit 7] Following each benchmark or question in each section, School Board makes findings about the adequacy of the relevant portion of Application.

- In its Notice of Appeal, Applicant asserts that the written denial is “vague, confusing and consequently does not provide...specific good cause for denial.” [p. 2] Without such clear articulation of the reasons for denial, Applicant claims it is forced to guess at the reasons for rejection. Applicant is uncertain about the Order of Denial, questioning whether the attached comments and questions related to benchmarks are mere reviewer’s observations or the actual basis for the denial. Applicant asserts that some review guidelines have no comment, others are unclearly identified, others do not clearly specify whether the benchmarks are adequately addressed. [pp. 2 and 3] This conclusion leads Applicant to conclude that it need not respond to comments under the heading “Governance and Management” because the section “School Governance” contains a statement that all benchmarks are satisfied. [pp. 2 and 3] The Order of Denial specifies the “Gadsden Elementary School” on its first page, and refers to both Applicant’s elementary school and middle school within the document [Recruiting section, p. 5, “elementary;” Finance section, p. 6, “K-5;” Educational Program, p. 9, “middle school.”] With this mixture of references to different schools, what can Applicant assume about the applicability of each finding? Applicant states that all of this together constitutes insufficient notice of grounds for denial, and requests approval of Application on that basis, “without further analysis as to the merit of the alleged criticisms.” [p. 3]
- In its Appeal Response, School Board denies Order is either vague or confusing. The Order of Denial clearly spells out the action of denial by School Board, and states that the reasons follow [See Order, p. 1] in twelve attached pages, broken out into sections related to Application, with observations and findings following most numbered questions thereunder. School Board specifically states that the Governance and Management section is set out in subparts that follow the Guidelines. School Board admits that “font and underlining” of the School Governance part is the same as that of the Governance and Management section, but does not constitute “utter confusion” denying clear notice. [p. 4] Failure to comment after certain benchmarks was not confusing, but merely indicates “no concern” on the part of School Board. School Board concludes the Order is not a “model of clarity,” but sufficient to provide notice of the reasons for denial.
- Analysis: All that appears in the record concerning specific findings by School Board as a result of its review is the Order of Denial. There is no other communication which summarizes the Board’s findings and conclusions or details their decision making process. There is no transcript of proceedings provided to indicate how the School Board Review Committee conducted its review and how it drew its conclusions, nor is there anything in the transcript of the School Board’s October 31, 2005 Meeting to indicate a section by section review by School Board. [See Exhibit 3, wherein there is a general discussion of the community interest in and need for a school in Midway]

NOTE: The relevant portion of the October 31, 2005 School Board Minutes is headed “...Elementary and Middle School and refers to both within the body [See

Exhibit 3, pp. 2 and 3] The Chairman says “[w]e are voting on the application tonight for an elementary and a middle school..” [See Exhibit 3, p. 20]

- 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 it denial of the charter application.”

ISSUE TWO

WHETHER SCHOOL BOARD’S DENIAL OF APPLICATION FOR REASONS RELATED TO GOVERNANCE AND MANAGEMENT WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002. 33(6)(b)(3).

- In its Order of Denial, School Board finds that Application is deficient in a number of areas related to Governance and Management, as follows:
 1. The founding group and the management team are not representative of the community and Application provides no information on some members of the Governing Board. [pp. 2 and 3]
 2. The names of all Governing Board members are not provided. [p. 3]
 3. Resumes/releases were not provided for all key management personnel. [pp. 3 and 4]
 4. Financial standing of founding group was not provided. [p. 4]
- In its Notice of Appeal, Applicant did not address any of the above. Citing the statement in the Order of Denial that “[a]ll school governance decision benchmarks were adequately addressed,” [See Order of Denial, p. 4] Applicant used this section as an example to support its argument in Issue 1, above, stating that it can only assume School Board approved the Governance and Management section and that no further response is necessary. [p. 2]
- In its Appeal Response, School Board claims its Order of Denial follows the Guidelines and the Standard Application Format benchmarks, and that it is apparent that the Governance and Management section and the School Governance sections are separate and distinct. Citing the Guidelines [p. 4], School Board asserts that because Applicant failed to address this reason for denial, the State School Board should uphold the denial of Application. [p. 5]

ISSUE THREE

WHETHER SCHOOL BOARD'S DENIAL OF APPLICATION FOR REASONS RELATED TO LENGTH OF CHARTER AND IMPLEMENTATION TIME TABLE WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002.33(6)(b)(3).

- In its Order of Denial, School Board finds that Applicant needs to clarify the submission of Certificates of Occupancy and Insurance, mentions “Four Towns Middle School as unknown to School Board and fails to establish emergency procedures until August, 2006, which School Board considers “inconsistent with the guidelines.” [p. 4]
- In its Notice of Appeal, Applicant does not respond to the mention of Four Towns. With regard to the submission of Certificates, Applicant states it will submit those prior to opening. Applicant states it complies with the guidelines by providing a comprehensive implementation checklist with completion dates for each item, including emergency procedures. [See Exhibit 1, pp. 68-72] Applicant also refers to items to be included in such procedures, including adoption of School Board’s “safety and certification process,” and discussion of safety routes for specific catastrophes. [See Exhibit 1, p. 72] Applicant has used this checklist successfully, elsewhere. [p. 5]
- In its Appeal Response, School Board reasserts that emergency plans must be provided now; that inclusion of reference and completion date as part of an implementation timetable, with summary of plan contents in Application, is not adequate. [p. 6]

ISSUE FOUR

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

- In its Order of Denial, School Board finds that the financial plan is inadequate for the following reasons:
 1. Applicant provides no figures for where students would come from, either in housing starts, home schooled students or those leaving the County for elsewhere... [pp. 5 and 6]
 3. There is no contingency for school financing if enrollment does not materialize. [p. 6]
- In its Notice of Appeal, Applicant asserts it complies with requirements by providing a comprehensive financial plan showing positive incomes in each year of operation. [See Exhibit 1, p. 76] [p. 6]. Specifically:

1. Applicant refers to its explanations to Issue 3 to explain from where students would come... [p. 6]
 3. Applicant asserts contingency budgets are not required, but that Applicant is prepared through monitoring and budget amendments to deal with contingencies. [p. 6]
- In its Appeal Response, School Board asserts:
 1. Its answer in Issue 3 pertains here. Further, the fact that Gadsden and Flagler Counties have similar number of school age children does not guarantee similar enrollments in Applicant's schools... [pp. 8 and 9]
 3. It is not asking for a contingency budget. Applicant's submission concerning contingencies is too general. Finally, "a charter school faced with lower than projected enrollment will have less than projected revenue." School might have to close. [pp. 9 and 10]
 - Analysis: There is no discussion of whether lower enrollment would trigger lower expenditures.
 - Florida Statute §1002.33(6) provides, in pertinent part:
 - “(a) A person or entity wishing to open 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 and expenses, and a description of controls that will safeguard finances and projected enrollment trends.”

ISSUE FIVE

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

- In its Order of Denial, School Board finds that Applicant fails to provide an adequate academic design in each of its review aspects. [pp. 6 and 7]
Specifically, School Board finds Applicant fails to provide:
 1. How each aspect of the core philosophy will impact learning/achievement.
 2. How it will ensure diversity.
 3. Who will be served.
 4. How equal access to technology can be assured in a poor county.
 5. What technology will be used and how it supports curriculum.
 6. How innovation will improve curriculum or outcomes.
- In its Notice of Appeal, Applicant asserts Application provides detailed descriptions of guiding principles, core philosophy, research based instructional

strategies, how School will meet the prescribed purposes, in accordance with the state guidelines for charter approval. [See Exhibit 7] Specifically, Applicant asserts:

1. Its core philosophy is based on such factors as research based reading and research driven best practices, standards based curriculum, small school-small classroom configuration, as set out in Application. [See Exhibit 1, p. 1 et seq.]
 2. Application spells out target population, which is expected to comport with County demographics, meeting diversity concerns. [See Exhibit 1, p. 7]
 3. Its target population is whom it will serve, as in 2 above.
 4. To assure equal access for technology, labs will be open late and arrangements will be sought with technology providers. [Exhibit 1, p. 4, f-4]
 5. Application provides technology plan. [See Exhibit 1, pp. 15 and 16; Exhibit 1, Appendix F]
 6. Innovations include small classroom, technology focus, research based strategies—all set out in Application. [See Exhibit 1, pp. 4-6] [pp. 8 and 10]
- In its Appeal Response, School Board questions Applicant’s expectation that its enrollment will reflect the demographics of the County. School Board asserts that Midway, locus of School, is a developing community not reflective of the whole County, and that determining ten miles as a reasonable distance for transportation further discourages diversity akin to the County’s. Applicant fails to provide sufficient detail on who will be served by School and what innovations it will use, even if it identifies its target populations and innovations generally. Finally, School Board claims Applicant’s identified “innovations” are not innovative but are similar to School Board’s. [pp. 10 and 11]

ISSUE SIX

WHETHER SCHOOL BOARD’S DENIAL OF APPLICATION FOR REASONS RELATED TO EDUCATIONAL PROGRAM WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002.33(6)(b)(3).

- In its Order of Denial, School Board finds that Applicant fails to provide an adequate educational program because Applicant does not:
 1. Provide “innovative or original instructional strategies” different from the County’s.
 2. Address the “consistency between mission, curriculum and student population.”
 3. Specify instructional goals and objectives.
 4. Adequate details of a middle school curriculum, including art, music, Life Skills and foreign language.... [pp. 8 and 9]

- In its Notice of Appeal, Applicant asserts it has provided a detailed curriculum and goals and objectives geared to the Sunshine State Standards in an application that meets the provisions of the Standard Application Format. [See Exhibit 1, p. 7 et seq.] Specifically:
 1. An example of innovative approaches is Applicant’s use of technology “as an essential tool to enhance learning in all academic areas.”[p. 10]
 2. Mission, curriculum and population are clearly and consistently connected.
 3. Goals and objectives are tied directly to State Standards. [See Exhibit 1, pp. 20, 119] All teachers will be highly qualified and certified in their fields, able to “deliver effective teaching strategies. [p. 10]
 4. Applicant’s middle school curriculum, as spelled out in Application, includes art, music, life skills and foreign language. [See Exhibit 1, pp. 12-14] Applicant’s Staff Development Plan considers instructing teachers on integrating these into content areas. [Exhibit 1, Appendix E], according to Applicant. [p. 11]

- In its Appeal Response, School Board asserts:
 1. It integrates technology, as well; hence Applicant is not innovative with technology in a way different from School Board. [pp. 13 and 14]
 2. School’s population will not reflect the County’s diversity because it limits its reasonable distance for transportation to ten miles; hence, mission to educate all students regardless of background is inconsistent with actual student population served. [p. 15]
 3. Applicant “still has not provided to what extent its writing program will focus on the expository, narrative and persuasive writing format.” Applicant’s commitment to meeting State Standards and highly qualified teachers are not sufficient explanation. [p. 16]
 4. Applicant’s response on how it will include and integrate art, music, life skills and language is too general to be considered a “detailed description.” [p. 16]

- Florida Statute §1002.33(2) provides, in pertinent part:

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

 - “1. Improve student learning and academic achievement.
 - “2. Increase learning opportunities for all students....
 - “4. Encourage use of innovative learning methods.”

- Florida Statute §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.
 - “3. Contains goals and objectives for improving student learning...
 - “4. Describes the reading curriculum and differentiated strategies....”

- Florida Statute §1002.33(5)(a) provides, in pertinent part:
 “5. The sponsor shall ensure that the charter is innovative and consistent with the state education goals established by §1000.03(5).”

ISSUE SEVEN

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

- In its Order of Denial, School Board found that the Student Assessment section was inadequate, in that Applicant provided insufficient detail on the type of assessments to be conducted and by whom, what standardized tests would be used and how the A+ Plan will influence curriculum. [pp. 9 and 10]
- In its Notice of Appeal, Applicant asserts it adequately addresses student assessment. [See Exhibit 1, pp. 29-37] Specifically, Applicant refers to Scantron Performance Series for diagnostics, and sets forth examples of formative and summative assessments. Assessments will be conducted by classroom and ESE instructors, with assessments given to ESE students based on their IEP’s. [See Exhibit 1, pp. 23-25] Applicant intends to use FCAT for learning gains, assessment and obtain school grades based on annual learning gains. School success is determined by the A+ Plan, impacting all phases of school, including curriculum. [p.12]
- In its Appeal Response, School Board reasserts that Applicant’s discussion of assessments is too general for a determination that they are “well-developed” and “varied,” as specified in the Guidelines, and that Applicant does not detail as to “how” assessments would be carried out. School Board restates that Applicant’s response on the impact of the A+ Plan on School’s curriculum is too vague. [p. 17]
- Florida Statute §1002.33(6) provides, in pertinent part:
 “(a) A person or entity wishing to open a charter school shall prepare an application that...:
 “(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.”

ISSUE EIGHT

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

- In its Order of Denial, School Board finds that Applicant has not provided adequately for the transportation of School's students, in that:
 1. Applicant has failed to provide an adequate plan for the transport of students.
 2. Applicant's "implied" intention to target only students within a ten mile area will discriminate against other County students outside that area.
 3. Applicant's intention not to transport students within two miles of School will discriminate against students within that radius.
 4. Application provides a transportation plan that will not provide equal access. Specialized transportation is needed for handicapped students.
 5. Applicant provides no budget for transportation. [pp. 10 and 11]

- In its Notice of Appeal, Applicant states that its transportation plan is sufficient. [See Exhibit 1, pp. 120] Specifically:
 1. Concerning its plan, Applicant will either contract for services with School Board or purchase busses, as part of the charter process.
 2. Applicant intends to declare the area within two to ten miles its "reasonable distance" to provide transportation. Service within a reasonable distance is required of School.
 3. Applicant asserts there is no discrimination, as well, in that the School Board does not transport within two miles, either.
 4. Applicant has already agreed to provide specialized service. [See Exhibit 1, 121]
 5. Applicant believes transportation can be provided as a "break even item," and does not need to show break even items in the budget. [pp. 13 and 14]

- In its Appeal Response, School Board asserts:
 1. Applicant's intention to contract with the School Board or purchase busses is not a "plan" and cannot be deferred to charter negotiations.
 2. Applicant's decision of ten miles as its "reasonable distance" determination means poorer students outside the reasonable distance will not be able to attend School. The area within reasonable distance will not reflect the diversity of the rest of the County, thus precluding equal access.
 3. Nothing further about its original concern of discrimination within two miles.
 4. Nothing further about its original concern about specialized service.
 5. State requirements for "full accounting of costs of operation" include items that breakeven, such as Applicant claims for transportation. With no budget provisions for transportation, School Board cannot assess that aspect of School's operation. [pp. 17-19]

- Florida Statute §1002.33(6)(b) provides, in pertinent part:
“2. ...an application...shall include a full accounting of expected assets, a projection of expected sources and amounts of income...and an expense projection that includes full accounting of the costs of operation....”
- Florida Statute §1002.33(20) provides, in pertinent part:
“(c) Transportation of charter school students shall be provided by the charter school consistent with the requirements of subpart I.E. of chapter 1006 and §1012.45. The governing body of the charter school may provide transportation through an agreement or contract with the district school board, a private provider, or parents. The charter school and the sponsor shall cooperate in making arrangements that ensure that transportation is not a barrier to equal access for all students residing within a reasonable distance of the charter school as determined in its charter.”

ISSUE NINE

WHETHER SCHOOL BOARD’S DENIAL OF APPLICATION FOR REASONS RELATED TO ADMISSIONS AND REGISTRATION PLAN WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002.33(6)(b)(3).

- In its Order of Denial, School Board finds that the “admissions policy does not adhere to ‘choice’ or ‘flexibility to choose’” because Application states [See Exhibit 1, p. 116 and 117] students will be chosen on the basis of “a lottery first-come...with the” exception of priorities for City of Midway students, children of faculty members and siblings of attending students. [p. 12]
- In its Notice of Appeal, Applicant asserts that Application [See Exhibit 1, pp. 116 and 117] provides details of its admissions policy that comports with state admission requirements. [p. 15] Applicant states that Midway was originally to apply for this charter. Instead, Applicant did, and the originally proposed preference for City of Midway students is no longer appropriate; that the preference was not deleted was clerical error. [p. 15]
- In its Appeal Response, School Board’s only comment is that reference to Midway students, even if it appeared in error, is not a permissible preference, serving as a good cause basis for denial. [pp. 19 and 20]
- Florida Statute §1002.33(10) provides, in pertinent part:
“(a) A charter school shall be open to any student ...residing in the school district in which the charter school is located....
“(b) The charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In such case, all applicants shall

have an equal chance of being admitted through a random selection process.”

ISSUE TEN

WHETHER SCHOOL BOARD’S DENIAL OF APPLICATION FOR REASONS RELATED TO HUMAN RESOURCES WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002.33(6)(b)(3).

- In its Order of Denial, School Board finds that Applicant has failed to describe adequately professional development opportunities and to articulate clearly a professional development strategy fully aligned with the curriculum. [pp. 12 and 13]
- In its Notice of Appeal, Applicant asserts it has met the state’s review criteria [See Exhibit 7, p. 7] through adequate discussion of required standards and presentation of its professional development plan, and sample professional development activities, in Application. [See Exhibit 1, p. 4, p. 151, E-1] [pp. 15 and 16]
- In its Appeal Response, School Board provides no comment on human resources.
- Florida Statute §1002.33(2) provides, in pertinent part:
 - “(b) Charter schools shall fulfill the following purposes: ...
 - “(3) Create new professional opportunities for teachers, including ownership of the learning program at the school site.”
- Florida Statute §1002.33(6) provides, in pertinent part:
 - “(a) A person or entity wishing to open a charter school shall prepare an application that:
 - “(1) Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.”
- Florida Statute §1002.33 provides, in pertinent part:
 - “(7) The major issues involving the operation of a charter school shall be considered in advance....
 - ...
 - “(14) The qualifications to be required of the teachers and the potential strategies use to recruit, hire, train, and retain qualified staff to achieve best value.”

ISSUE ELEVEN

WHETHER SCHOOL BOARD'S DENIAL OF APPLICATION FOR REASONS OF GENERAL CONCERN WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002.33(6)(b)(3).

- In its Order of Denial, School Board cites concerns that there is no provision for background checks on student service employees in contact with students and that there is an unexplained reference to Four Towns Middle School. [p. 13]
- In its Notice of Appeal, Applicant cites Application [See Exhibit 1, H-12] to explain that background checks and other security measures will be required of employees and vendors, in accordance with state law. [See Exhibit 1, p. 147] With regard to the reference to Four Towns, Applicant admits to a clerical error. [p. 16]
- In its Appeal Response, School Board restates that Applicant inadequately addresses the broad mandate of state screening requirements of “vendor, individual, or entity under contract,” because Applicant only states its screening requirement will apply to “employees and vendors.” [p. 20]
- Florida Statute §1012.465 provides, in pertinent part:
“(1) Non-instructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control school funds must meet level 2 screening requirements...Contractual personnel shall include any vendor, individual, or entity under contract with the school board.”
- Analysis: There appears to be little doubt that this provision would apply to Applicant under the “safety and welfare of students” exemption of F.S. §1002.33(16)(a)(5).
School Board is silent on Applicant’s commitment to meeting the requirements of state law. [See Notice of Appeal, p. 16]