

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION

Technical Assistance Paper

APPEAL OF SUMMIT ACADEMY MANAGEMENT
DENIAL OF AN APPLICATION FOR A CHARTER K-8 SCHOOL

APPELLANT: SUMMIT ACADEMY MANAGEMENT

APPELLEE: THE SCHOOL BOARD OF SARASOTA COUNTY, FLORIDA

INTRODUCTION

On or about September 1, 2005, Summit Academy Management (hereinafter “Applicant”) submitted to the School Board of Sarasota County (hereinafter “School Board”) an application (hereinafter “Application”) to open a charter K-8 school, Summit Academy School (hereinafter “School”). [See Applicant’s Exhibit A]

On September 1, 8, 15, 22 and 29 and October 13, 2005, School Board’s Charter School Review Committee (hereinafter “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 9 of the 15 areas of review as “inadequate.” That recommendation was transmitted to School Board, School Board’s Superintendent and Applicant with an overall rating of “inadequate.” No transcripts of these meetings exist, although meeting notes were provided. [See Applicant’s Exhibit F]

On September 20, 2005, School Board held a workshop to allow for a presentation by Applicant and for questions and answers on Application. No transcript of the meeting exists, although minutes of the meeting were provided. [See Applicant’s Exhibit D] Applicant was given the opportunity to provide additional comments on areas of concern.

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

Following Applicant’s September 27, 2005, submittal, Applicant’s comments were considered by Review Committee, resulting in changing 3 of the “inadequate” ratings to “satisfactory,” with 6 ratings remaining “inadequate.”

At its October 18, 2005 meeting, School Board voted 5-0 to deny Application. No transcripts of meeting proceedings related to denial exist, although there is an electronic copy of the School Board agenda recording the action. [See Exhibit E, pp. 18 and 19]

Dated October 21, 2005, School Board’s Letter of Denial (hereinafter “Letter of Denial”) set forth several reasons for denial. [See Exhibit C]

On December 15, 2005, Applicant filed its Notice of Appeal from Denial of Charter Application (hereinafter “Notice of Appeal”), following an extension granted by School Board for a corrected filing.

On or before January 12, 2006, School Board filed its undated Response to Notice of Appeal (hereinafter “Appeal Response”).

ISSUE ONE

WHETHER SCHOOL BOARD'S DENIAL OF APPLICATION FOR REASONS RELATED TO SCHOOL'S ABILITY TO PROVIDE APROPRIATELY CERTIFIED TEACHERS 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 gravest concern is related to how School will meet the “Highly Qualified Provision” of the No Child Left Behind Act. Applicant proposes to “mix” ESE and non-ESE students in “multi-grade classrooms.” School Board states that this will require at least two certifications for elementary level and more for core academic classes at middle school level. School Board finds that Application does not address recruitment and certification adequately.
- In its Notice of Appeal, Applicant contests that it will take teachers with more than two certifications in any grade level, explaining the use of dually certified teachers or an inclusion model for elementary level and hiring one highly qualified teacher for each core area, with the use of teaming and an inclusion model for middle level. [pp. 4 and 5] Applicant claims thorough knowledge of Florida certification and reciprocity requirements, and significant experience with its operations in Ohio in recruitment of highly qualified teachers. [See Exhibit A, starting at p. 51] Applicant may be able to recruit some of its highly qualified teachers to relocate from Ohio.
- In its Appeal Response, School Board states that Applicant does not have a plan for certification or recruitment of highly qualified teachers, and does not demonstrate how it intends to “replicate” its Ohio design by providing “adequately certified” teachers or how it will meet its needs for ESE teachers in Sarasota County when School Board cannot even fill all its ESE needs. School Board states that changes in Florida requirements will not guarantee full, unlimited reciprocity. [p. 9]

ISSUE TWO

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

- In its Letter of Denial, School Board finds that the overall school design is “*Inadequate* in establishing a completely functional school design. School Board then sets forth several “significant concerns” related to “student accountability and performance.” [p. 2] Those concerns follow as Subissues One through Seven. Three other areas of concern set out originally in Letter of Denial are resolved, as stated in the Appeal Response herein.

- In its Notice of Appeal, Applicant responds as set out in each Subissue below.
- In its Appeal Response, School Board admits that, by virtue of Applicant’s further explanations, it is now satisfied with three areas of school design that were cited “inadequate,” as issues of concern, in Letter of Denial. Those are: 1) method of choosing School’s local board; 2) application of discipline/dismissal procedures; and 3) adherence to IDEA requirements related to discipline of students with disabilities. To the remaining seven concerns, School Board responds as set out in each Subissue below.

SUBISSUE ONE: WAS THERE COMPETENT SUBSTANTIAL EVIDENCE THAT APPLICATION DOES NOT ADEQUATELY ADDRESS STUDENT PERFORMANCE TO JUSTIFY DENIAL?

- In its Letter of Denial, School Board states that Applicant has not specifically addressed student progress in a number of ways. School Board has concern for how the school design affects FCAT preparation and that there are no “measurable goals or objectives.” [p. 2] Performance indicators suggest students performing below grade level will continue to do so.
- In its Notice of Appeal, Applicant combines Subissues One through Three into one response. Applicant states that School Board’s findings related to student performance, proficiency and overall outcomes are not substantiated. Citing the original Addendum [See Exhibit B, p. 9], Applicant restates the initial projected percentage objectives for achievement on FCAT, as well as its projected annual percentage increase for AYP purposes. [p. 6] Applicant claims these numbers come from the Florida Department of Education’s Fact Sheet and website. Applicant states it will abide by each year’s Fact Sheet, until 2014.
- In its Notice of Appeal, Applicant states that actual growth rate and performance depend on the individual needs of student who enroll; the numbers of Asperger’s and ADHD children in a classroom have impact on how many in a class read at grade level, as can economics and academic preparation of enrollees. Through the IEP process, levels, approaches and protocols—and need for accommodations—will be determined for each student. Applicant expects enrollees to be below grade level on tests, for various reasons. Applicant’s program is geared to help students grow academically and progress to the best of their ability on work and tests. Applicant claims experience in 27 schools. [p. 7]
- In its Appeal Response, School Board states that the percentage objectives quoted by Applicant are “incorrect and below the state requirements.” Further, Applicant fails to indicate what percentage of student’s will meet the performance indicator of one year’s growth and in which content areas, or how that growth will be calculated. [p. 9] By stating that growth rate is dependent on individual student needs and that requiring further specificity in meeting this requirement is not

“possible” or “practical” [See Notice of Appeal, p. 6], School Board thinks Applicant diminishes the importance of FCAT or AYP. [p. 10]

SUBISSUE TWO: WAS THERE COMPETENT SUBSTANTIAL EVIDENCE THAT APPLICATION DOES NOT ADEQUATELY ADDRESS STUDENT PROFICIENCY TO JUSTIFY DENIAL?

- In its Letter of Denial, School Board states that the percentage of students proficient in reading and math in School’s first year is below “Florida NCLB AYP Benchmarks, with “no annual expectation” for improvement. [p. 2]

See Notice of Appeal under Subissue One above for consolidated response by Applicant.

See Appeal Response under Subissue One above for consolidated response by School Board.

SUBISSUE THREE: WAS THERE COMPETENT SUBSTANTIAL EVIDENCE THAT APPLICATION DOES NOT ADEQUATELY ADDRESS PERFORMANCE OUTCOMES TO JUSTIFY DENIAL?

- In its Letter of Denial, School Board states that performance outcomes are “vaguely defined and lack specificity.” [p. 2]

See Notice of Appeal under Subissue One above for consolidated response by Applicant.

See Appeal Response under Subissue One above for consolidated response by School Board.

SUBISSUE FOUR: WAS THERE COMPETENT SUBSTANTIAL EVIDENCE OF LACK OF FISCAL ACCOUNTABILITY AND LOW STUDENT ACHIEVEMENT IN APPLICANT’S OPERATIONS IN OHIO TO JUSTIFY DENIAL?

- In its Letter of Denial, School Board states its concerns about Applicant’s ability to operate in Sarasota County based on newspaper reports of its operations in Ohio in 2002 concerning “fiscal accountability and low student achievement.” [p. 2]
- In its Notice of Appeal, Applicant states that Ohio Department of Education (hereinafter “ODE”) completed, in September 2002, an investigation of local school district allegations concerning Applicant’s schools in Ohio, finding the allegations could not be clearly substantiated. ODE’s Center for Finance and School Accountability found no misallocation of funds; an ODE official lauds Applicant’s “special education identification process” as a model; county officials indicate Applicant has “exceptional ability to develop, implement and operate schools” for students below grade. [pp. 8 and 9]

- In its Appeal Response, School Board admits it knows ODE found, in September 2002, that “none of the allegations could be clearly substantiated,” but School Board “members are not completely able to dispel concerns” about Applicant’s ability to operate because of a “cloud of distrust” surrounding the allegations. School Board claims this is a “vicarious liability” it does not want to inherit. [pp. 9 and 10]
- Analysis: There is nothing in the record to suggest further allegations of any kind against Applicant since 2002, when ODE found no clear substantiation of any impropriety on Applicant’s part.

SUBISSUE FIVE: WAS THERE COMPETENT SUBSTANTIAL EVIDENCE OF LACK OF LOCAL COMMUNITY SUPPORT TO JUSTIFY DENIAL?

- In its Letter of Denial, School Board states there is no evidence of local support from the community or local stakeholders. [p. 2]
- In its Notice of Appeal, Applicant states it provided evidence of local support at the September 20 Workshop and in Application [See Exhibit A, pp. 39 and 40] School Board has been apprised of community informational meetings as well as interest and support from local health care professionals, a local hospital and a local museum and a parent support group (which Applicant considered sufficient indicators of support). Some of these will be stakeholders. As for parents, Applicant’s experience is to proceed cautiously with getting parents of special needs school “too invested during the developmental stages.” Applicant claims no problem in reaching target populations in opening 27 schools. [pp. 10 and 11]
- In its Appeal Response, School Board states that identifying potential partners and board members is insufficient evidence of local support, especially with the focus on children with special needs proposed by Applicant. School Board states that a needs survey to identify underserved populations and interest by parents in an expansion of service currently provided by special programs in the County. School Board states that Applicant’s approach may be successful in Ohio, but it “disregards the community based input of existing ESE Parent Advisory Committees in Sarasota County.” [p. 12] Along with not understanding County demographics and service needs, School Board questions whether School constitutes a Least Restrictive Environment under federal law, claiming a “special day school is considered one of the most restrictive school placements in the Federal continuum of services, and would not typically be considered the LRE for Asperger’s and ADHD students.” [p. 12]
- Analysis: Generally, there are no transcripts of proceedings and no explanation of how the Review Form, with some marginal notes adhered thereto, was used in the decision-making process. Specifically, as to the reference to meeting the LRE requirement of federal law, the only notation found in the record appears on Bill

Storm's Review Form, [p. 20] which is a blank sheet with a list of names on one side and a note in a hand-drawn box, saying "Least Restrictive Environment" with no other notation. [See Exhibit F]

SUBISSUE SIX: WAS THERE COMPETENT SUBSTANTIAL EVIDENCE OF BUDGET ERRORS TO JUSTIFY DENIAL?

- In its Letter of Denial, School Board finds that ESE revenue calculations are incorrect, "all budget revenues are over projected," and costs of facility leasing are under projected. [p. 2]
- In its Notice of Appeal, Applicant states that the Revenue Estimate Worksheets, including the ESE calculations, were prepared with the advice of a Florida DOE official, which advice Applicant followed. [pp. 11 and 12] Applicant has since rerun the Worksheet and included it as part of Notice of Appeal [pp. 12-14] Applicant has found through its experience that its cost estimates are more exact the closer it gets to opening a school. [p. 11] With regard to facility leasing, Applicant states that a benefactor is offering a promising facility, which could result in substantial savings; Applicant does not propose revising its budget accordingly until final decisions are made. [p. 12]
- In Appeal Response, School Board restates its concern that revenues are overstated, even with the revised budget submitted in Applicant's Notice of Appeal. School Board observes that not all ADHD students are eligible for ESE funding. While all Asperger's students are ESE eligible, each such student would not necessarily generate the highest level of ESE funding. School Board estimates Applicant's revised budget should show thirty-five percent less revenue—and even less if more regularly funded ADHD students enrolled [p. 13]
- Analysis: School Board does not pursue its initially stated concern about the cost of facility leasing. School Board also reinforces Applicant's point that revenue projections based on enrollments of ESE eligible students at this point are difficult at best.

SUBISSUE SEVEN: WAS THERE COMPETENT SUBSTANTIAL EVIDENCE OF LACK OF RESOURCES IMPACTING STATE ACCOUNTABILITY TO JUSTIFY DENIAL?

- In its Letter of Denial, School Board finds that "the complete application" does not provide sufficient "evidences" that School "will have the resources to sufficiently prepare the students to meet the State's accountability expectations." [p. 2]
- In its Notice of Appeal, Applicant states it has 7 years experience "developing, implementing, opening and operating 27 schools designed to meet the needs of Asperger's Disorder and ADHD children" as evidence of ability to operate

successfully. Each opened school provides experience for the next; experience and infrastructure allow replication of success “without encountering unmanageable developmental costs” and enabling an “economy of scale.” [p. 16]

- In its Appeal Response, School Board accepts the fact that Applicant has operated 27 schools in Ohio for Asperger’s and ADHD, but contests that that experience is an indicator of ability to operate successfully in Florida. School Board equates replication of school design elsewhere to Florida with “hundreds of business relocations to Florida” that fail annually. [p. 15] School will be the first of its kind in Florida. School Board states: ODE “School Accountability Reports place seven of eight schools on Academic Emergency (F) and one school on Academic Watch (D).” [p. 15]
- Analysis: It is unclear from School Board’s statement on ODE’s Reports whether the schools referred to were all Applicant’s schools and what the impact is, particularly in light of Applicant’s assertion that “charter schools can only open in Ohio districts that are reported as being in Academic Watch or Academic Emergency.” [See Notice of Appeal, p. 8]

ISSUE THREE

WHETHER SCHOOL BOARD’S DENIAL OF APPLICATION BECAUSE SCHOOL BOARD DOES NOT PERCEIVE A DIFFERENCE WITH LAST YEAR’S APPLICATION IN BENEFITS 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, Applicant failed to respond adequately to a School Board member’s question as to how Application differed from Applicant’s previous application, and, further, that it failed to “lead the Board members to a level of understanding that” School “would be able to effectively serve the students of Sarasota County.” [p. 2]
- In its Notice of Appeal, Applicant states it was neither asked any questions at the October 18 meeting nor given the opportunity to comment, and that School Board was in error as to who represented Applicant at that meeting. However, Applicant admits that the question of differences between Application and School’s previous application did arise at the September 20 Workshop. At that time, Applicant states it responded on how it gained from the previous process and that it had added “significant detail” to Application for this review. [p. 17] In response to its ability to serve Sarasota students, Applicant provides testimonials from students served in its other operations and statistics to show previous success. Applicant claims that School Board members reviewed Applicant’s progress through the Ohio DOE website and “received positive feedback” about its operations from Ohio education officials. [pp. 17-19] Applicant suggests that

School Board members, in asking the question of how the applications differed, were either unprepared or predisposed to turning Applicant down. [p. 17]

- In its Appeal Response, School Board admits to error in citing the October meeting instead of the September 20 Workshop. School Board states that its review process this year and its finding of need for improvement in Applicant's school design submitted last year are geared to advising Applicant of School Board's expectations. Applicant's response to how Applicant had improved its proposed school design from last year's (adding "significant detail" and learning "a great deal by going through the process before") did not explain *how* School's design was improved and did not instill sufficient confidence in School Board *that* the design had improved or that students would be better served. [p. 16] School Board rejects Applicant's comment on preparation and predisposition, stating that board members had all the information they needed to make decisions. [p. 16]
- Analysis: No transcripts of the proceedings related to any phase of consideration of Application are provided for review.