

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION

Technical Assistance Paper

APPEAL OF BAYPOINT SCHOOLS, INC.
DENIAL OF AN APPLICATION FOR A SPECIALIZED
CHARTER MIDDLE-SENIOR SCHOOL

APPELLANT: BAYPOINT SCHOOLS, INC.

APPELLEE: THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

INTRODUCTION

On September 1, 2005, Baypoint Schools, Inc (hereinafter “Applicant”) submitted to the School Board of Miami-Dade County (hereinafter “School Board”) its initial application to open a charter middle-senior high specialized school for at risk boys (hereinafter “School”). [Initial application does not appear in record provided]

On September 23, 2005, School Board’s Technical Assistance Team (hereinafter “TAT”) reviewed the initial application, using Review Form Tally Sheet to determine ratings from excellent to unacceptable. Thirteen of twenty reviewers voted to reject the initial application on the basis that the educational and financial plans were “poor” or “unacceptable.” Of those supporting the proposal, four rated the education and financial portions “poor.” [See School Board’s Exhibit B for Tally Sheets and Review Forms, dated September 23, 2005]

On September 30, 2005, School Board staff and representatives of Baypoint met to discuss the findings of the TAT, summarized in a five page outline. Applicant was provided an opportunity to submit a revised application based on TAT’s findings and other information provided. [See School Board’s Exhibit C for TAT Summary of Findings. The summary states that TAT’s review meeting was September 14, not September 23, and no transcript or minutes of that session appears in the record provided.]

On October 5, 2005, Applicant submitted its second or revised application (hereinafter “Application” or “Revised Application”). [See Applicant’s Exhibit B] The TAT reviewed Application, finding that Application was improved, but still deficient in the areas of education and finance, as summarized in a Summary of Findings. [See School Board’s Exhibit D. No transcript or minutes of that session appears in the record provided.]

On November 30, 2005, as reported by School Board, School Board’s District Review Committee (hereinafter “DRC”) reviewed the TAT summaries and Revised Application, asked questions of Applicant’s representatives and found deficiencies in the education and financial portions of Application. [See pp. 5-6, Response to Notice of Appeal from Denial of Application, hereinafter “Appeal Response”] By a vote of 10-4, the DRC recommended to the Miami-Dade County School Superintendent (hereinafter “Superintendent”) denial of the Application. [See School Board’s Exhibit E for copies of the ballots of the individual DRE members, delineating their reasons for their individual votes. No transcript or minutes of that session appears in the record provided.]

At its regularly scheduled December 14, 2005 School Board meeting, Superintendent recommended to School Board that Application be denied. School Board voted to deny Application, based on identified deficiencies in curriculum, student assessment, and measurable goals and objectives and on the failure to provide a five year financial plan.

[See Applicant's Exhibit A, School Board's Exhibit F. No transcript or minutes of that session appear in the record provided.] Note: At some unidentified point in December prior to the December 14, 2005 School Board meeting, Applicant submitted a third application, which apparently became the focus of a "non-binding vote" on a date uncertain by "a School Board Committee" recommending the School Board defer action until the third application could be reviewed. Apparently action of deferral was not taken by School Board, on the basis of its rules and precedent. This serves as an additional basis for Applicant's appeal. [See p. 6, Appeal Response]

By letter dated December 27, 2005, School Board transmitted to Applicant its written notification to deny the second or Revised Application and reasons therefor (hereinafter "Notice of Denial"). [See Applicant's Exhibit A, School Board's Exhibit F]

On February 6, 2005, Applicant transmitted to School Board its Notice of Appeal of Denial of Charter Application and Request for Formal Administrative Hearing (hereinafter "Notice of Appeal"). Applicant appealed on all stated grounds for denial, as well as on due process grounds.

On March 7, 2005, School Board transmitted its Appeal Response to Applicant. School Board challenged Applicant on all issues raised in Applicant's appeal.

ISSUE ONE

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

- In its Notice of Denial, School Board finds that Application is specifically deficient in that it "lacked a mathematics and a science curriculum," as part of the statutory requirement that applicants provide a detailed curriculum plan showing how students are to be served to meet the Sunshine State Standards. [See p. 1, School Board's Exhibit F; p. 1, Applicant's Exhibit 1]
- In its Notice of Appeal, Applicant states that, generally, with regard to the first three bases for denial, School Board has misread Application and does not understand the nature of School, which is to provide a "home for adjudicated youth coming out of the juvenile justice system, not a suburban prep school." [See p. 4, Notice of Appeal] The focus of School is boys with criminal behavior and drug use, many of whom are illiterate and have dropped out or been expelled or suspended from school, requiring extensive counseling and educational remediation. Applicant believes Application "reflects this reality, and focused on the core approach to helping at-risk youth turn their lives around." [See p. 4, Notice of Appeal] Applicant points out that the average student spends only an average of nine months at the school, with only 5% graduating from School. [See p. 5, Notice of Appeal] Applicant asserts that instruction methods will vary in reflection of the special needs of its students, in a special setting, all in the context

of the Sunshine State Standards. [See pp. 15-16, Applicant’s Exhibit 2; p. 6, Notice of Appeal]

- In its Notice of Appeal, Applicant claims that Application specifically provides a “detailed and appropriate mathematics and science curriculum.” [See pp. 9-12, Applicant’s Exhibit 2] Further, Applicant states that Application clearly commits to adhere to the Sunshine State Standards for math and science and that School intends to “implement the course content identified with the SSS course numbers and their course descriptions for SSS Basic Education Grades 6-8 and SSS Basic Education Grades 9-12.” Applicant relates its intended math and science curriculum by course, and concludes that the courses are from the standard SSS curriculum used in Miami-Dade School District, which Application adopts by reference. [See pp. 5-6, Notice of Appeal]
- In its Appeal Response, School Board claims Applicant has an overall lack of “understanding of curriculum expectations and/or appropriate offerings.” [See p. 14, Appeal Response] School Board asserts School’s treatment of curriculum, specifically concerning mathematics and science, is deficient by pointing out that the initial application did not contain a math or science curriculum of any sort, and that curriculum for those subjects was provided only after counseling from School Board and submittal of Application. [No copy of the original application appears in the record provided] School Board asserts that the discussion of curriculum for math and science in Application was deficient in that it: 1. merely lists course titles; 2. should not restrict its course offerings by grade level; 3. does not “indicate how students’ diverse needs would be accommodated through pacing of subjects;” and, 4. only partially answers how School’s “pedagogy” enhances student learning. [See pp. 13-14, Appeal Response]
- 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.”

ISSUE TWO

WHETHER SCHOOL BOARD’S DENIAL OF APPLICATION FOR REASONS RELATED TO STUDENT ASSESSMENTS WAS BASED UPON GOOD CAUSE, AS REQUIRED BY FLORIDA STATUTE §1002.33(2)(b)(5).

- In its Notice of Denial, School Board finds that Applicant’s “assessment plan was insufficient,” in fulfilling one of the statutory purposes of a charter school, measuring the learning outcome. [See p. 1, School Board’s Exhibit F; p. 1, Applicant’s Exhibit 1]

- In its Notice of Appeal, Applicant states that Application provides its detailed assessment plan in Application, which was “tailored to the unique environment of School and the unique needs of its students.” [See p. 7, Notice of Appeal; pp. 24-27, Applicant’s Exhibit 2] Applicant points out that School Board merely describes Application’s assessment provisions as inadequate “without any elaboration” and that this part of Application survived “two levels of review” by the TAT without objection or concern. According to Applicant’s denial on the basis of assessment was raised only as a result of the School Board’s consideration of Application. Applicant asserts denial of its procedural due process rights [see below] and requests an evidentiary hearing to “demonstrate the arbitrary and capricious nature” of School Board’s decision. Applicant asserts a “predisposition” on the part of School Board to deny Application.
- In its Appeal Response, School Board asserts that Applicant’s assessment plan is deficient in: 1. not providing student assessment in all core academic areas; 2. not providing appropriate methods of measurement to assess annual baseline gains, failing to indicate assessment of social studies and science and course level SSS; 3. not indicating method of establishing baseline achievement levels and prior rates of progress; 4. using a method (MBA) not employed by School Board to compare rates of progress with comparable student populations, making such comparisons ineffectual; and, 5) using an improper test (SAT-10) to determine annual gains. [See pp. 11-12, Appeal Response]
- In its Appeal Response, School Board asserts it employed proper procedures to review and critique the initial application and Application, offered assistance to Applicant to foster improvement of Application through revision and that there is no support in the record to conclude that School Board was arbitrary or capricious in its denial on this or other grounds. [See pp. 8-9, Appeal Response]
- Florida Statute §1002.33(2) provides, in pertinent part:
“(b) Charter schools shall fulfill the following purposes: ...
“5. Require the measurement of learning outcomes.”

ISSUE THREE

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

- In its Notice of Denial, School Board finds that Application’s “measurable goals and objectives for improving student learning were insufficient,” as part of the statutory requirement that an application contain goals and objectives for improving learning and measuring improvement, including annual learning gains

and evaluation techniques. [See p. 1, School Board’s Exhibit F; p. 1, Applicant’s Exhibit 1]

- In its Notice of Appeal, Applicant asserts that Application contains detailed goals for student performance, including the need for “social counseling to turn their lives around” and remedial education. Applicant asserts Application provides “detailed curriculum for exceptional student education and basic literacy.” [See pp. 7-8, Notice of Appeal] Applicant also cites the method by which progress will be assessed and monitored, including on-going assessment, close attention to IEP’s and appropriate curriculum modification, and collaboration with Miami-Dade County School District. [See pp. 18-20, Applicant’s Exhibit 2]
- In its Notice of Appeal, Applicant also reasserts that Application provides detail on testing and other monitoring programs used by School, while explaining the appropriateness of such approaches “for a specialized school environment.” [See pp. 24-27, Applicant’s Exhibit 2]
- In its Appeal Response, School Board states that Applicant’s first application (submitted September 1, 2005) showed “limited familiarity with the assessment and evaluation procedures necessary to monitor the effectiveness of an educational program.” Advice from the TAT resulted in Applicant submitting “only two ‘Measurable Objectives’ that are still wholly insufficient,” according to School Board. [See pp. 14-15, Appeal Response] School Board states that the DRC found insufficiency, in that: 1. “content areas should be broken out and listed separately as four separate objectives, each to be addressed by the appropriate subtest of the...FCAT/SSS..;” and, 2. objectives should “address only the first year of the school’s operation.” [See p. 15, Appeal Response]
- 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 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 Notice of Denial, School Board finds that Application “did not include a financial plan, and the financial component did not reflect the initial length of the

charter (5 years),” as part of the statutory requirement that an application contain a financial plan for each requested year of operation, with annual projected revenues and expenditures. [See p. 2, School Board’s Exhibit F; p. 2, Applicant’s Exhibit 1]

- In its Notice of Appeal, Applicant states that it has provided a “detailed pro-forma budget that described the schools [sic] financial plans.” While Applicant contests School Board’s assertion in its Notice of Denial that the budget was not for a five year period, it does concede that it was “an annual budget” under which School would operate for each of the five years of the charter term. [See p. 8, Notice of Appeal] Applicant states that this annual budget, along with a “detailed start up budget,” accompanying narrative financial and marketing plan, constitutes its five year financial plan and indicates that School is financially sound.
- In its Appeal Response, School Board restates the statutory requirement of an “annual financial plan for each year requested” for charter operation, setting forth required elements of such plan. [See below]. School Board asserts that Applicant’s plan is for a “recurring annual budget,” which is, as stated, only for one year, and does not reflect any anticipated changes in revenue sources and fund balances. [See p. 15, Appeal Response.]
- Analysis: There is some confusion in the exhibits to which Applicant refers in its Notice of Appeal as its financial plan. Applicant refers to Exhibit 2.G as its “annual budget.” Exhibit 2.G is a one page document that provides revenue projections, including FTE calculations and “Catagoricals” [sic]. Applicant further refers to Exhibit 2. F as its “detailed start up budget.” Exhibit 2. F consists of a one page form listing five positions, salaries and fringe benefits. Not referred to in Notice of Appeal is “Exhibit 6,” also denoted in cursive as “Exhibit E,” which consists of a three page Budget Worksheet (Year 1), an FEFP Calculation Worksheet, and a second copy of the three page Budget Worksheet (Year 1).
- 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 THE REVIEW PROCESS EMPLOYED BY SCHOOL BOARD VIOLATED APPLICANT'S RIGHTS TO DUE PROCESS.

- In its Notice of Appeal, Applicant states that as a result of the review process, School Board let Applicant clarify and modify deficiencies in its initial application (submitted September 1, 2005) by granting Applicant the opportunity to submit a second or Revised Application on October 5, 2005. School Board reviewed the second or Revised Application, identifying deficiencies therein. Applicant then sought to submit a third application in December, to address the deficiencies identified by School Board during its process of reviewing the second Application. However, School Board did not approve submission of a third application. [The only reference to that decision appears in Notice of Appeal and Appeal Response.] Applicant was judged by School Board on its second or Revised Application, submitted on October 5, 2005.

Applicant claims that School Board's failure to allow consideration of the third application constitutes a denial of Applicant's rights to procedural due process. [See p. 4, Notice of Appeal] Applicant also claims that the basis for denial of the second or Revised Application are "post hoc justifications" and "not factually sound." Applicant requests a formal administrative hearing, including the opportunity to take discovery and to hear evidence, concerning: 1. the decision to deny Applicant the right to submit its third application; 2. the factual disputes raised by the denial of the second or Revised Application; and, 3. "whether external factors were improperly considered by the local school board." [See pp. 1 and 4, Notice of Appeal]

- In its Appeal Response, School Board asserts that no denial of Applicant's due process rights has occurred. First, School Board states that it followed its regular process for review of applications, as outlined in its own rules as well as in state statutes, treating Applicant consistently with other applicants. That process included reviews by the TAT and consultation with Applicant concerning problems uncovered as part of the review, the opportunity to revise the initial application, further review of and discussion on the Revised Application with Applicant, review by the DRC, a public hearing and final decision by the School Board. As a result of the process, the second or Revised Application was still found to be deficient, and Applicant can file again, next year.
- In its Appeal Response, School Board asserts that the second or Revised Application, submitted on October 5, was the appropriate document upon which to base its decision. School Board asserts it appropriately had not approved the submittal of a third application and that the third application only came before School Board as an attachment to Notice of Appeal. [See Applicant's Exhibit 3, denoted in cursive "Bradshaw's revisions" and redated "Dec 2005—rewrite."] Despite its assertion that the December revisions were not properly before the

School Board, staff did a “preliminary review and finds this revised [third] application to be deficient in the same basic areas.”

- In its Appeal Response, School Board asserts that the appeals process set out in statute does not provide for an evidentiary hearing as an alternative to that process. School Board points out that Applicant cites no authority to the contrary.
- Florida Statute §1002.33(6) provides, in pertinent part: ...
“(b) A district school board shall receive and review all applications for a charter school. 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, or to be opened at a time agreed to by the applicant and the district school board. A district school board may receive applications later than this date if it chooses.” [emphasis added]
- Florida Statute §1002.33(6)(c) sets forth the appeals process for Applicant’s whose applications have been denied or not considered:

“An applicant may appeal any denial of that applicant’s application or failure to act on an application to the State Board of Education no later than 30 calendar days after receipt of the district school board’s decision or failure to act and shall notify the district school board of its appeal....The decision of the State Board of Education is not subject to the provisions of the Administrative Procedure Act, chapter 120 [which includes challenges].”

Note: Miami- Dade County School Board Rule 6Gx13-6A-1.47, set forth in School Board’s Exhibit A, restates the above appeals procedure, including inapplicability of the State’s APA to the Charter review process.