

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION

Technical Assistance Paper

APPEAL OF OSCEOLA UNIVERSAL SCHOOLS
DENIAL OF CHARTER CONTRACT

APPELLANT: OSCEOLA UNIVERSAL SCHOOLS

SCHOOL BOARD: OF OSCEOLA COUNTY

INTRODUCTION & HISTORY

On September 1, 2006, Osceola Universal Schools (hereinafter the “Charter School Applicant”) submitted its charter application to the Osceola County School Board (hereinafter the “School Board”) for approval as a charter school. The application proposes to offer educational services to children in grades 6-12 living in St. Cloud and Kissimmee, beginning in August 2007. The Charter School Applicant’s mission is to provide a great learning environment by utilizing proven and innovative instructional techniques, with a special emphasis in Math, Science and Reading. The Charter School Applicant will use the School District of Osceola County’s curriculum as its base curriculum, and its plan will incorporate additional curricula and instructional programs that align the Sunshine State Standards and requirements of No Child Left Behind legislation to ensure that high standards of student achievement will be met.

On October 4, 2006, the Charter School Applicant received a letter stating, the School Board would conduct a comprehensive review of the application and complete a charter school application rating form (Universal Exhibit E). The form was provided to the Charter School Applicant for its review, and a charter application review meeting with School Board staff was scheduled to discuss the application.

Subsequent to the charter application review meeting, after review of the supplemental information submitted by the Charter School Applicant on October 9, 2006, and October 11, 2006, School Board staff issued a revised charter school application rating form which raised the Charter School Applicant’s score.

On October 17, 2006, the School Board discussed the Charter School Applicant’s application, but no action was taken. The Charter School Applicant was present at the meeting, as the purpose of the meeting was to distribute the charter application to the School Board and answer questions of School Board members.

On October 24, 2006, the School Board formally considered the application at a public meeting. The Charter School Applicant did not attend the meeting. At the conclusion of the School Board’s discussion, the School Board voted to accept the Superintendent’s recommendation and deny the Charter School Applicant’s application.

On October 26, 2006, the School Board notified the Charter School Applicant, by letter, its decision to deny the application. The reasons for denial consist of the bylaws of the organization did not comply with the Sunshine Laws with regard to meetings close to the public, the educational program (ESE Program) needs to be more specific as to services being offered at the school setting, and the application lacks proper student assessment, school governance, facilities and financial plan, admission and registration plan, and human resources plan.

On November 9, 2006, the Charter School Applicant, upon request, received the denial letter by facsimile.

On November 17, 2006, the Charter School Applicant received the original denial letter by mail.

On December 15, 2006, the Charter School Applicant submitted its Notice of Appeal to the State Board of Education and on December 18, 2006, the School Board was notified of the appeal.

ISSUE ONE

WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO DENY THE CHARTER SCHOOL'S APPLICATION BASED UPON:

A. Failure of the Charter School Applicant's bylaws to comply with Sunshine Law Requirements

- The Charter School Applicant states that its application includes a copy of its bylaws, which expressly require: an affidavit in compliance with the Open Meeting Act to be executed following any closed meeting of the Board and filed with the meeting's official minutes; all Board meetings to be open to the public, including the news media, except when permitted or required by law to be closed; proper notice to be given to the public regarding all Board meetings; the Board to make available to the public, within 2 days, a summary of all subjects acted upon at any Board meeting, the Board to keep and safeguard all official records; and public records made available to the public for inspection as required by law. (Exhibit A 123-32; Exhibit C 23-24). Additionally, the Charter School Applicant stated it would comply with F.S. 119.011(2) and F.S. 286.011, relating to public records and meetings, to include informing the public of meetings and activities, providing summaries of meetings within two business days following the meeting, encouraging citizens to attend meetings, and safeguarding all public records. (Exhibit A 69-70). (Appeal page 10).
- The School Board argues that the by-laws of the Charter School Applicant's application and the supplemental information violate the requirements of F.S. 286.011, commonly referred as the Florida Sunshine Law. Pursuant to F.S. 1002.33 (16) (b) 1, charter schools are required to comply with F.S. 286.011. The Florida Sunshine Law, which is strictly construed by the courts, only allows a public board to meet in private to discuss pending litigation to which the entity is presently a party, and only the entity's attorney may request such a meeting. The supplemental information to the charter application submitted demonstrates that charter applicant will have closed meeting for a variety of reasons upon a majority vote of the board. This clearly demonstrates a lack of understanding of legal requirements and a violation of statutory requirements. Despite being advised of this statutory violation, the Charter School Applicant failed to correct this serious issue. (Response page 5 and page 6).

B. Educational Programs: Lack of Specific Details Regarding Implementation of the ESE Program and Failure to Identify the Specific Services to be Provided to Disabled Students

- The Charter School Applicant states that its application provides a comprehensive outline of its program for ESE and disabled students. Even more, after receiving the School Board's comments, the Charter School Applicant completely revised its section outlining ESE services described, for example, the continuum of services the Charter Applicant would provide; the specific conditions under which a student would be referred to Osceola County Schools and the ESE department; the personnel hired or contracted with to teach its students; and the curriculum modification for, graduation of, and testing of these students. The Charter School Applicant also noted that any students requiring programs that are too expensive for the school to offer would be placed elsewhere, with the help of the School Board. (Appeal page 11).
- The School Board states that its ESE Department reviewed the original charter application and the revised application submitted by the Charter School Applicant. Furthermore, the Charter School Applicant repeatedly verbally stated the school would only utilize the inclusion model for serving its ESE population and any student which could not be served in an inclusion model

would be referred. However, the revised application provides that the school will offer “consultative, itinerant, or resource delivery models” or a special class or residential placement for its ESE population, despite the applicant’s assertions that it would not provide that range of service. Also, the application indicates it will provide “full continuum of services” in a long list of areas, also in direct conflict with the verbally stated range of services to be offered. The Charter School Applicant’s appeal at page v. and 11, it states that “any student requiring programs that are too expensive for the Charter School Applicant to offer will be placed elsewhere with the help of the School Board. This further demonstrates a lack of understanding of ESE requirements. A charter school does not exclude a student simply because the required services are “too expensive”. Rather, the charter school should be evaluating the services needed by a student and making a determination of whether the services can be offered by the staff at the school or by retained consultants in compliance with the range of services set out in the charter application. (Response page 6).

C. Lacks Proper Student Assessment

- The Charter School Applicant argues that its application includes a comprehensive explanation of its assessment goals and methods, including teacher-constructed tests, completed assignments, observations and ratings of performance, portfolios of student work, text-based assessments, computer-assessment, quarterly comprehensive check-up assignments, quarterly reports cards, parent meetings, the School Board’s own policies regarding grade point average and graduation, and, of course, FCAT testings in reading, mathematics, writing assessment, and science. The Charter School Applicant also explained its use of a test coordinator liaison, and most provided eighty pages of specific benchmarks and goals in mathematics and reading. Nevertheless as to student data, the Charter School Applicant will visually represent such data through the school’s web portal and with the help of student data software will also provide student enrollment data and the specific assessments to be used in each core subject area in chart form. Moreover, as noted in the Statement of Facts in the Appeal (page xi) the Charter School Applicant describes its student attendance policy, Code of Student Conduct, and use of behavioral records, such as Intervention and Office Referral Forms. (Appeal page 11 and page 12).

- The School Board argues states that if found the application deficient in this area. The application provided very limited detail of student achievement needs. The application failed to provide any specific student achievement data for Osceola County students which the proposed charter school would serve. (This summary test data is available for free of charge on the Florida Department of Education website). It also failed to identify any specific curriculum needs that such data supports, or provide remediation or remedial assessments for the students which the Charter School Applicant would serve. The application also failed to identify a specific baseline in the student achievement data from which specific student proficiency targets may be set in order to comply with Florida’s definition of Adequate Yearly Progress pursuant to the No Child Left Behind Act. While the charter application references the use of non-standardized student assessments and other specialized measurements, the charter applicant failed to provide any description of the non-standardized assessments the teacher might use, provide any examples or samples of such assessments, or list any non-standardized assessments to be used at the charter school. The application also indicates that it will utilize behavioral records and attendance rates as part of its baseline data for student academic achievement. While behavior measures can and should be tracked, such data should be accounted for separately from measures of student academic achievement. Moreover, despite being provided with information in this regard, the Charter School Applicant failed to correct its application to address these critical issues. (Response page 7 and page 8).

D. Lacks Proper School Governance

- The Charter School Applicant argues that the application describes in detail the relevant experience of its board members (including resumes), advisory council, as well as its intent to hire a highly qualified principal. Although no board member has opened a charter school in the state of Florida, establishing such requirements unreasonable, not required by Florida Statutes, and would be almost impossible for any applicant to satisfy. Moreover despite the fact that a School Board staff member stated in an email (October 18- Exhibit H) to the Charter School Applicant that such a concern would be alleviated with the hiring of a principal, the Charter School Applicant had planned to do as such. Yet, it would be completely irresponsible for the Charter School Applicant to enter into an employment agreement with a principal before having the application approved. Furthermore, as to the issue of proper legal representation, the Charter School Applicant states that this issue is unrelated to any statutory requirements. Yet the issue is fully addressed in the application and more fully described in the Statement of Facts at page ix. The school has budgeted approximately \$43,000.00 over the course of five years for legal representation. The application also states that the Charter School Applicant will promote enhanced student success by aligning responsibility with accountability by incorporating required data or indicators into the annual school progress plan. Such indicators will include: grades; drop-out rates; FCAT performances; annual gains in performance; safe school environment- according to students, teachers and parents; student, parent, and teacher satisfaction; and annual financial CPA audit reports. (Appeal page 13 and page 14).

- The School Board states that the application and supplemental information clearly shows that The Charter School Applicant's Board of Directors have no 6-12 school management or governance training or experience. This lack of experience is compounded by the statement in the charter application that there is no need to retain consultants or professionals as the governing board has the necessary experience to manage the school. Board members have a variety of experience; however, none is in 6-12 school management. Moreover, the supplemental information provided failed to identify any consultants or other professionals with the necessary experience upon whom the Board would rely. Further, while the Charter School Applicant's supplemental information indicates legal representation is available, it either did not consult with its legal advisor or consult with someone with knowledge of Florida law. As addressed, the charter application and supplemental information indicate it will violate the clear requirements of F.S. 286.011. (Response page 8).

E. Inadequate Funding For Facilities

- The Charter School Applicant states although this factor may relate to the requirement of having "an annual financial plan" the evidence does not support the School Board's decision to deny the application. The Charter School Applicant will negotiate the "full service" lease of a facility at \$17.00/ square foot, and it will pay for that cost with the start-up grant, or alternatively, its line of credit. The fliers indicating the availability of such facilities were included with the Charter School Applicant's supplemental information. In addition a member of the school's Board of Directors attended a training session on Charter School Grants sponsored by the Department of Education in October 2006 to ensure that the school's budget accurately accounts for start-up and maintenance costs. (Appeal page 14).

- The School Board Charter School argues that the proposed lease agreement for the school facility presented in the Charter School Applicant's budget does not reflect typical lease terms. Full service lease in the charter budget appear to escalate each year at the same percentage as UFTE

increases. The first year budget reflects an enrollment of 176 UFTE, eventually reaching 564 UFTE in the fifth year of operation. In a typical lease, rent expenses will remain fixed year-to-year with built in increases for inflationary adjustments. The charter applicant was unable to provide any commitment or other supporting documentation with regard to the proposed lease agreement. If the Charter School Applicant is unable to secure a lease in which rent increases are tied to UFTE, it will experience greater financial losses than currently reflected in the budget. (Response page 10).

F. Inadequate Financial Experience (For Charter Schools) and No Profit Realization (Until The Fourth Year) If The Start-Up Grant Is Not Awarded

- The Charter School Applicant states that the evidence shows that its Board Members are quite capable of operating the charter school. In addition, the board will hire professional accountants when the school starts operation for audits and required financial reports. Moreover, if the board hires qualified people to perform and manage fiscal functions, the need for board members to have such prior experience is not necessary, not to mention irrelevant to statutory requirements under F.S. 1002.33(6) (a). Moreover, the Charter School Applicant will spend every effort to obtain a start-up grant. If this does occur, then the Charter School Applicant will incur a loss its first year, however the loss will be nearly \$70,0000.00 less than what the School Board indicates on its comment sheet—showing yet another example of the School Board’s failure to consider supplemental information submitted by the Charter School Applicant. (Appeal page 14 and page 15).
- The School Board that the no one currently involved in the proposed charter school has any prior charter school experience or public school fiscal management experience. The supplemental information provided by the charter applicant indicates it will rely upon a bookkeeper for its fiscal management. Experience with other schools in Osceola County has shown that relying solely upon a school level bookkeeper to handle the fiscal management needed for a charter school is not appropriate, given the complex nature of government finance issues. Despite sharing these experiences, the Charter School Applicant has refused to appropriately staff the important area of school fiscal management. Further, the school is relying on the competitive Startup Grant to cover all of its startup costs. In the event the grant is not awarded, the Charter School Applicant will experience a \$104,000.00 operating loss in its first year of operation. In Osceola County for the 2006-2007 fiscal year, three charter schools applied for the grant but did not receive it, ultimately resulting in the closing of two of those charter schools. Accordingly relying upon a competitive Startup Grant to fund 100% of the startup costs is neither reasonable nor appropriate. (Response page 9).

G. Failure to Provide Registration Requirements

- The Charter School Applicant states as set forth in the Statement of Facts on page xi, its goal is to educate all citizens. Moreover, every resident of Osceola County will be given the opportunity to attend the school, in accordance with F.S. 1002.33(10) (e) and 1002.33(15) (c), through a random lottery, and with limited preference given. When the School Board indicated in its October 4, 2006, letter that a copy of the student registration form would be extremely useful, the Charter School Applicant provided such a copy, although that was never accounted for in the revised evaluation. (Appeal page 15).

- The School Board argues that while the charter application contained a proposed student enrollment form, the form was deficient in that it failed to address several critical issues. The student enrollment form did not ask for appropriate information with regard to ESE services and accommodations needed for enrolling students. The proposed student enrollment plan did not address any juvenile justice issues of enrolling students, nor did it address any healthcare issues or accommodations needed. The failure to include this critical student information in the admission and registration plan resulted in a low score in this area. (Response page 10).

H. Inadequate Human Resource Plan

- The Charter School Applicant states the School Board's speculation as to the school's ability to hire teachers is pure conjecture. As described in the application's Statement of Facts on page xii, it accounts for training of administrators and teachers, teacher compensation packages, and working conditions. It is the Charter School Applicant's opinion that teachers will prefer to work at the school than at any other school in Osceola County, based on salary and benefits package and work environment. (Appeal page 16).
- The School Board argues that the Charter School Applicant's application failed to provide any information regarding working conditions or compensation packages for its employees. Further, no information was provided with regard to professional development and training the charter school would offer its employees. The charter application does not indicate that it will provide contracts to its employees that are essentially "at will" with a thirty (30) day termination notice. Further, the charter application provided no plan for professional development which is necessary to maintain quality staffing with continuing learning opportunities. (Response page 11).
- Moreover the School Board states that based upon the totality of the above deficiencies in the charter application, it has determined that it had good cause to deny the Charter School Applicant's application and did do at a public meeting. (Response page 11).