

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEAL COMMISSION

Technical Assistance Paper

APPEAL OF IMAGINE CHARTER SCHOOL AT INDIAN RIVER
(PROJECT CHILD)
CHARTER APPLICATION DENIAL

APPELLANT: IMAGINE – INDIAN RIVER COUNTY, LLC

SCHOOL BOARD: THE SCHOOL BOARD OF INDIAN RIVER COUNTY, FLORIDA

DISCLAIMER: This TAP is intended to provide a brief summary of the school district's reasons for denying the charter school application and the parties' positions regarding such reasons. This TAP does not replace or supersede the record on appeal. To the extent inconsistent, the record on appeal shall govern. Interested persons should read the full record on appeal.

INTRODUCTION & HISTORY

On September 1, 2006 Imagine-Indian River County, LLC (hereinafter, "Applicant" or "Appellant") submitted an application (hereinafter, "Application") to open a charter school named Imagine Charter School at Indian River (hereinafter, "Charter School") to the School Board of Indian River County, Florida (hereinafter, "School Board").

On September 28, 2006 and on October 4, 2006 the School Board's Charter School Application Review Committee (hereinafter, "Review Committee") met to review the Application.

On October 9, 2006 the Applicant was informed by letter that the Review Committee was recommending to the School Board that the Application be denied and that the Application would be placed on the agenda for the School Board meeting on October 24, 2006. Attached to the letter was a copy of the Review Committee's completed Charter School Application Review Form (Exhibit 5 of the Appeal Response).

On October 24, 2006 the School Board met and after discussion voted to delay a decision on the Application until such time as a workshop could be held where the Applicant would be given a chance to make a presentation about the proposed Charter School. It appears from the transcript of the October 24, 2006 meeting that both parties agreed to waive the statutory requirement that the Application be voted on within 60 days of submission.

On December 4, 2006 a School Board workshop was held where the Applicant presented further information on the Charter School and answered questions by the School Board.

On December 12, 2006 the School Board met and voted again to delay a decision on the Application until after a future workshop could be held. Again both parties agreed to an extension of the time by which the School Board was statutorily required to vote on the Application.

Sometime after the December 4, 2006 School Board workshop and before January 5, 2007, the Applicant provided additional information to the School Board in the form of a 13-page response to the Review Committee's comments on the Application (hereinafter, "Application Review Response") (Exhibit 13 of the Appeal Response).

On January 5, 2007 a School Board workshop was held where further discussion between the Applicant and the School Board took place.

On January 9, 2007 the School Board voted four (4) to one (1) to deny the Application.

On January 17, 2007 the School Board sent a letter informing the Applicant that its Application had been denied (hereinafter, "Denial Letter") (Exhibit 21 of the Appeal Response).

On February 17, 2007 the Applicant filed a thirty (30) page "Notice of Appeal of Denial of Charter School Applications for Project CHILD and MicroSociety Charter Schools" (hereinafter, "Appeal") with the Florida Department of Education (hereinafter, "FLDOE").

On March 22, 2007 the School Board filed a forty-one (41) page "Answer to Appeal from Denial of Charter School Applications" with the FLDOE.

NOTE: While Appellant filed two separate applications for charter schools on September 1, 2006 the School Board sent a single Denial Letter for both applications. A single appeal and appeal response were also both filed encompassing both applications.

There are seven issues in dispute. Based upon the available evidence presented by the parties, the following is a summary of the research findings in relation to the issues raised.

ISSUE ONE:

WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO DENY THE CHARTER SCHOOL APPLICATION BASED UPON: “STUDENT LEARNING AND ACADEMIC PROGRESS.”

- School Board states that the Imagine Schools Grade Report ranks below the School Board’s performance rating. The School Board argues that the School Board must be permitted to consider the success or failure of the Applicant’s other charter schools, particularly where there is a substantial track record to review (Denial Letter Page One and Appeal Response Pages 24-25).
- The Appellant states that the School Board’s reliance on the Imagine Schools Grade Report is not a valid statutory basis for denial; in addition the Imagine Schools Grade Report on which the School Board relied is incorrect information (Appeal Pages 9-10).
- School Board states the Application failed to provide well-conceived and developed reading plans, and the reading plans were disjointed, vague and lacked any kind of implementation detail. The School Board states that the Appellant’s intent to develop the proper reading plans when students were enrolled is contrary to the dictates of the charter school statute (Appeal Response Page 25).
- The Appellant states that the Application demonstrates expertise in providing a reading program that meets the Sunshine State Standards and establishes that teachers would utilize a state-adopted reading curriculum. The Appellant argues that at the January 5, 2007 School Board meeting it indicated that it would choose a specific reading program based on the particular demographics of students actually registered (Appeal Pages 10-11).
- School Board states that the design of the instructional day was vague. The School Board argues that the schedule for the instructional day was submitted four months after the final Application was filed (Denial Letter Page Two and Appeal Response Page 26).
- The Appellant states that the instructional day was discussed in the Application and at length at both the December 4, 2006 and January 5, 2007 School Board workshops, and the Appellant asserts that the description of the instructional day is reasonably clear (Appeal Page 11).
- The pertinent Florida Statutes on this issue read as follows:

F.S. §1002.33(2) GUIDING PRINCIPLES; PURPOSE.--

(b) Charter schools shall fulfill the following purposes:

1. Improve student learning and academic achievement.

ISSUE TWO:

WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO DENY THE CHARTER SCHOOL APPLICATION BASED UPON: “LEARNING OPPORTUNITIES FOR ALL STUDENTS, WITH SPECIAL EMPHASIS ON LOW-PERFORMING STUDENTS AND READING.”

- School Board states that the Application did not follow the guidelines from Just Read Florida to meet the needs of struggling readers and failed to outline how the school intended to serve challenged readers. As written, the programs for intervention and supplemental reading were the same, which violates guidelines from Just Read Florida (Denial Letter Page Two and Appeal Response Page 27).
- Appellant argues that the Project CHILD program specifically delivers a method of instruction in which teachers use varied strategies and differentiation to meet the needs of every student in their classroom, whether or not each student has special learning needs. (Appeal Page 12).
- School Board states that the Applicant’s description of testing timeframes for ESOL students was out of compliance with the META Consent Decree, the ESOL program was vague and lacked detail and the projections for the anticipated numbers of ESOL students were unrealistic (Denial Letter Page Two and Appeal Response Pages 33-34).
- Appellant states that all students would be tested in kindergarten for the ESOL program as required by the META Consent Decree, and some students entering after kindergarten may not have been tested. For this reason, those students would be tested for the ESOL program at a later grade, which clearly complies with the META Consent Decree (Appeal Page 13).
- Appellant states the projection of its ESOL student population is budgeted at 6%; the School Board’s ESOL population is 12%. In addition, the School Board Interim Superintendent alluded to an increasing number of ESOL Students at the January 5, 2007 School Board workshop; therefore, the projection is not too high (Appeal pages 13-14).
- School Board states the Application’s ESE discussion was insufficient; for example it lacked an ESE curriculum, there was no indication as to how the goals and objectives on students’ IEP’s would be addressed, there was no indication that an ESE certified instructor would be hired per the budget, and there was no indication how the Appellant would meet IDEA mandates (Denial Letter Page Two and Appeal Response Page 34).
- Appellant states that its strategy with regard to an ESE specific curriculum is to streamline ESE students as much as possible by teaching them a curriculum that follows the Sunshine State Standards; instead of creating a modified ESE curriculum, the Applicant accommodates the individual needs of ESE students based on their IEP’s. Appellant argues the Project CHILD school would be uniquely positioned to meet the needs of ESE students. In addition, Appellant states the budget includes a certified ESE instructor under “Specialty Teachers” (Appeal Page 15).
- The pertinent Florida Statutes on this issue read as follows:

F.S. §1002.33(2) GUIDING PRINCIPLES; PURPOSE.--

(b) Charter schools shall fulfill the following purposes:

2. Increase learning opportunities for all students, with special emphasis on low-performing students and reading.

ISSUE THREE:

WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO DENY THE CHARTER SCHOOL APPLICATION BASED UPON: “THE USE OF INNOVATIVE LEARNING METHODS.”

- School Board states the Project CHILD program was briefly described but not fully developed. In addition, School Board states that Project CHILD is not innovative to their schools since eight of the eleven non-magnet schools provide instruction through Project CHILD (Denial Letter Page Three).
- Applicant states the Project CHILD program was discussed at length in the Application, in the Review Response, and at the School Board workshops. Appellant states that the School Board admitted at the January 5, 2007 workshop that there are no schools in Indian River County where Project CHILD is used through the school. The fact that a certain technique is used in some parts of a school district does not render that technique non-innovative. (Appeal Pages 16-18).
- School Board states the budget did not reflect any costs associated with Project CHILD (Denial Letter Page Three).
- Applicant states the budget attached as Exhibit C to the Application reflected the Project CHILD program; in addition, Appellant’s staff presented this clarification at School Board workshops (Appeal Page 18).
- The pertinent Florida Statutes on this issue read as follows:

F.S. §1002.33(2) GUIDING PRINCIPLES; PURPOSE.--

(b) Charter schools shall fulfill the following purposes:

3. Encourage the use of innovative learning methods.

ISSUE FOUR:

WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO DENY THE CHARTER SCHOOL APPLICATION BASED UPON: “MEASUREMENT OF LEARNING OUTCOMES.”

- School Board states the Application used comparative norm-referenced test (“NRT”) results to measure progress rather than emphasizing accountability through the Florida A+ Plan and FCAT Sunshine State Standards accountability measures. In addition, no budgetary line item was provided for the NRT (Denial Letter Page Three and Appeal Response Pages 27-28).
- Appellant states that, as provided in the Application, the Florida A+ Plan and FCAT Sunshine State Standards would be used to measure student and school progress; the Appellant also utilizes NRT results. The Appellant argues there is no statutory prohibition against utilizing

other progress assessments in addition to the Florida A+ Plan and FCAT. In addition, the Appellant states that the cost for the NRT was reflected in the instructional resources line item in the budget (Appeal Pages 19-20).

- School Board states that there was no specific plan for addressing NCLB requirements (Denial Letter Page Three and Appeal Response Page 28).
- Appellant states that the Application addressed NCLB requirements and that this issue was addressed at length by a representative of Appellant at the January 5, 2007 School Board workshop (Appeal Page 20).
- School Board states that the Appellant referenced “national progress rates” as indicators of the school’s progress but failed to explain the significance, nor was the comprehensive assessment plan explained in any detail (Denial Letter Page Three and Appeal Response Page 28).
- Appellant states that its representative addressed all these issues at the January 5, 2007 School Board workshop (Appeal Page 21).
- School Board states the Applicant did not address the lowest quartile in math when discussing goals and objectives for student learning, and the Application used inconsistent or confusing references for some assessment instruments (Denial Letter Page Four).
- Appellant states that the Application addressed this by providing that at least 50% of students scoring in the lowest quartile in math from the annual administration of the SAT-10 would demonstrate at least one year growth by the end of the academic year. Appellant states that the references it used for assessments were taken from the School Board’s own instructional materials. The references are inconsistent and confusing only when they are taken out of context (Appeal Pages 21-22).
- The pertinent Florida Statutes on this issue read as follows:

F.S. §1002.33(2) GUIDING PRINCIPLES; PURPOSE.--

(b) Charter schools shall fulfill the following purposes:

4. Require the measurement of learning outcomes.

ISSUE FIVE:

WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO DENY THE CHARTER SCHOOL APPLICATION BASED UPON: “FINANCES.”

- School Board states the Application contained unrealistic enrollment projections. Specifically, the FTE growth rates were not reasonable and there was not plan if the FTE projections were not made. The first year estimates almost equaled the total enrollment in all charter schools in all grades operating in Indian River County (Denial Letter Page Four and Appeal Response Page 16).

- The Appellant states that its projections were consistent with the growth experienced in other newly-opened Imagine Schools in Florida. In addition, the growth projections were reasonable in light of the School Board's own five-year plan, with includes the addition of two new elementary schools for a total of 1,100 students (Appeal Page 23).
- School Board states the Applicant's revenue projections were vague and non-descriptive. School Board argues the Applicant failed to provide any detail or support for its "alleged pre-k program" and failed to estimate transportation costs for these students (Denial Letter Page Five and Appeal Response Page 19).
- Appellant states that the Application included a fee-based pre-k program and revenue from the fee-based pre-k was shown on the supplemental revenue line (Appeal Page 25).
- School Board states the Application did not meet the Class Size Amendment requirements, and questions whether the school will be able to sustain the requirements if it does not meet FTE projections (Denial Letter Page Five and Appeal Response Page 22).
- Appellant argues that new public (including charter) schools do not have to meet the Class Size Amendment requirements until the 2010-2011 school year. If FTE projections are not met, the Charter School will adjust its budget the meeting the requirements, just like any other public school would be required to do (Appeal Page 26).
- School Board states the Charter School's proposed 12% management fee to Imagine Schools, Inc. would further drain essential resources and makes the financial plan even more precarious (Appeal Response Page 23).
- Appellant states that Imagine Schools' average management fee is 12%, but the fee is reduced during the first three years to assist the start-up of schools. In addition, the School Board has no statutory authority to determine the reasonableness of a management fee unless the School Board could show the management fee would cause the Charter School to be insolvent (Appeal Page 27).
- The pertinent Florida Statutes on this issue reads as follows:

F.S. §1002.33(6) APPLICATION PROCESS AND REVIEW.--Beginning September 1, 2003, applications are subject to the following requirements:

(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, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends.

F.S. §1002.33(6)(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.

ISSUE SIX:

WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO DENY THE CHARTER SCHOOL APPLICATION BASED UPON: “COMMUNITY SUPPORT.”

- School Board states the Application did not show a governance board reflective of the community. The proposed board only had three members, two from Indian River County and one from Kissimmee with two seats unfilled (Denial Letter Page Five and Appeal Response Page 32).
- Appellant disputes that it lacks community-based governance and support in Indian River County, and states that lack of community-based governance or support is not a valid statutory basis for denial of the Application (Appeal Page 28).

ISSUE SEVEN:

WHETHER THE APPLICANT WAS DENIED DUE PROCESS IN THE EVALUATION OF THE APPLICATION.

- Appellant argues that the School Board’s denial of the Application based solely on the Application itself without regard to competent and substantial evidence presented at two School Board workshops was improper. Appellant argues that it was fundamentally unfair and contrary to the spirit and intent of Florida law for the School Board to ignore additional and clarifying evidence presented to it after submission of the Application (Appeal Page 8).
- Appellant argues that the School Board specifically requested that these workshops be held in order for the Appellant to present additional evidence. The Appellant states that it relied on this stated purpose when it waived its right to obtain a decision from the School Board within sixty days (Appeal Page 8).
- School Board states the Appellant was never offered an opportunity to amend or supplement its Application after the September 1, 2006 deadline. Instead, it was offered opportunities to present its Application to the School Board (at five School Board meetings and/or workshops at which the Application was addressed) and respond to issues raised (Appeal Response Page 13).
- School Board states the Applicant could have taken advantage of School Board resources for the development of the Application prior to September 1, 2006 but chose not to (Appeal Response Page 13).