

THE FLORIDA DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEAL COMMISSION

Technical Assistance Paper

APPEAL OF PALM BAY MIDDLE CHARTER SCHOOL
CHARTER APPLICATION DENIAL

APPELLANT: CITY OF PALM BAY

SCHOOL BOARD: THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

DISCLAIMER: THIS TECHNICAL ASSISTANCE PAPER (“TAP”) IS INTENDED TO PROVIDE A BRIEF SUMMARY OF THE SCHOOL DISTRICT’S REASONS FOR DENYING THE CHARTER SCHOOL APPLICATION AND THE PARTIES’ POSITIONS. TO THE EXTENT INCONSISTENT, THE RECORD ON APPEAL SHALL GOVERN. INTERESTED PERSONS SHOULD READ THE FULL RECORD ON APPEAL.

INTRODUCTION & HISTORY

On September 1, 2005 the City of Palm Bay (“Appellant”) submitted an application (“Application”) to open the Palm Bay Middle Charter School (“Charter School”) to The School Board of Brevard County (“School Board”). (Appeal Page 4).

On September 15, 2005 Appellant met with representatives from the School Board's Charter School Review Board for (“Review Committee”) to discuss the Application. (Appeal Page 5).

On September 23, 2005 Appellant submitted a modified Application to the School Board. (Appeal Page 5 and Appeal Exhibit B).

On September 30, 2005 the Review Committee met to discuss their comments on the Application. (Appeal Page 5).

On October 11, 2005 the School Board met and as one of the scheduled agenda items heard the Superintendent discuss his recommendation for qualified approval of the Application. (Appeal Page 6).

On October 14, 2005 the Appellant received a letter dated October 10, 2005 stating that the Superintendent for the Brevard County School District (“Superintendent”) was going to recommend that the School Board approve the Application provided the Appellant met certain conditions. (Appeal Page 5).

On October 25, 2005 the School Board met and in a three to two (3-2) vote approved the Application provided the Appellant met certain conditions. (Appeal Page 6).

On October 31, 2005 the Appellant received a letter dated October 27, 2005 containing notice of the School Board's conditional approval of the Application and a deadline of March 31, 2006 to meet the conditions and resubmit the Application. (Appeal Page 6).

On March 14, 2006 the Appellant requested an extension of the deadline for resubmission of the Application until August of 2006. (Appeal Response Exhibit 23).

On March 17, 2006 the School Board sent a letter to Appellant stating that it would be unable to grant an extension for submittal of the revised Application. (Appeal Response Exhibit 23 and Appeal Response Exhibit 17).

On March 31, 2006 the Appellant resubmitted the Application to the School Board for review. (Appeal Response Exhibit 23).

On December 4, 2006 the School Board sent a letter to the Appellant stating that it had reviewed the Application and, based on a finding that the requested modifications had not been made, the Superintendent would not recommend to the School Board that it grant final approval to the Application. The Appellant was given until 4:00 p.m. on January 26, 2007 to resubmit an acceptable Application. (Appeal Exhibit F).

On February 15, 2007 the Appellant and the Review Committee met to discuss the Application. (Appeal Exhibit G).

On March 30, 2007 the Appellant resubmitted the Application to the School Board.¹ (Appeal Response Exhibit 23).

¹ It appears that at least two extensions of the original deadline of January 26, 2007 were granted. The first deadline extension appears to have been until February 28, 2007 based on Exhibit 23 of the Appeal Response.

On May 30, 2007 the Appellant received a letter dated May 25, 2007 stating that the Superintendent and the Review Committee had found the Application to be unacceptable and that a recommendation of denial would be made to the School Board. (Appeal Exhibit I).

On June 11, 2007 the Appellant sent a letter to the Superintendent requesting he delay his recommendation to the School Board and meet with the Appellant to discuss the points of disagreement in the Application. (Appeal Exhibit J).

On June 29, 2007 the Appellant received a letter dated June 25, 2007 from the Superintendent stating the reasons for his recommendation to deny approval of the Application and unwillingness to delay doing so. He offered to accept a new application from the Appellant by August 1, 2007 for the next charter school application cycle. (Appeal Exhibit K).

On July 9, 2007 the Appellant sent a letter to the Superintendent again requesting he delay his recommendation to the School Board and meet with the Appellant to discuss the points of disagreement in the Application. (Appeal Exhibit L).

On July 17, 2007 the School Board met and, after discussion, voted unanimously to deny the Application. (Appeal Exhibit U).

On July 27, 2007 the Appellant received notice of the School Board's denial of the Application. The notice included specific reasons for the denial as well as notification of the Appellant's right to appeal. (Appeal Exhibit M).

On August 27, 2007 the Appellant filed a 32-page appeal (excluding exhibits) with the Florida State Board of Education and the School Board. ("Appeal").

On September 27, 2007 the School Board filed a 34-page answer to the Appeal with the Florida State Board of Education and the Appellant ("Appeal Response").

There are four 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: “CURRICULUM PLAN.”

- School Board states that the Appellant did not provide a detailed plan that illustrates how students will be provided services to attain the Sunshine State Standards. (Appellant Exhibit M - Denial Letter Page 1 and Appeal Response Page 20).
- The Appellant states that a cursory review of the detailed information relating to all aspects of the Charter School’s curriculum reveals an intent and ability to meet the Sunshine State Standards. Appellant states that there is nothing in Florida law that requires the Appellant to explain how its curriculum meets the Sunshine State Standards – only that it “illustrate” that it does. (Appeal Pages 16-17).
- School Board states the Appellant failed to provide course codes to be utilized at the Charter School. The purpose of the request was to determine what types of courses the Charter School would offer to ensure that differentiated instruction would be provided to those students needing advanced course and for those in need of remedial coursework. The fact that the Appellant was unwilling to provide an example of the courses gives testimony to the fact that it did not give merit to the development of the overall curriculum for the Charter School. (Appellant Exhibit M – Denial Letter Page 2 and Appeal Response Page 21).
- The Appellant states that there is no requirement that a charter application includes either the sequence of subject areas or course code information. Appellant states it informed the School Board that it uses the same course codes as those used by the State. The repeated requests for course codes reflects an unstated assumption on the part of the School Board that the Appellant was required to provide a schedule of every course, in every grade, at every time during the day, and Florida law includes no such requirement. (Appeal Pages 17-18).
- School Board states that the Application included a Personalized Middle School Success Plan but the plan was not consistently implemented within the Application. A 90-minute reading block was not included in the general bell schedule and a .05 guidance counselor was listed to be hired in year two. (Denial Letter Page 2).
- The Appellant states that the 90-minute reading block is an additional course that will be provided to students on an as-needed basis and is not a part of the general education schedule. The listed guidance counselor scheduled for hire in year two will be working for both the elementary and middle school. The decimal was to indicate how that guidance counselor would split his or her time [Note: It appears the Application should have listed the guidance counselor as being .5 (50%) and not .05]. (Appeal Pages 18-19).
- The pertinent Florida Statutes on this issue read as follows:

F.S. §1002.33(6) APPLICATION PROCESS AND REVIEW. Charter school applications are subject to the following requirements:

- (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 THE SCHOOL BOARD HAD GOOD CAUSE TO DENY THE CHARTER SCHOOL APPLICATION BASED UPON: “READING CURRICULUM.”

- School Board states that the Application does not provide detailed information regarding the reading curriculum. The School Board also states that the Charter School's reading program is almost verbatim to the reading program described in the Appellant's simultaneously submitted charter application for an elementary school. (Appellant Exhibit M – Denial Letter Page 2 and Appeal Response Page 22).
- Appellant argues that the Application includes a detailed description of the reading program, and the statute does not require the Application to include minute detail about its reading program. (Appeal Page 20).
- School Board states that the Application fails to provide information regarding differentiated instruction for students reading below and above grade level. The School Board is unable to find information regarding adjustments or instructional strategies, especially for those students performing above grade level. (Appellant Exhibit M – Denial Letter Page 2 and Appeal Response Page 24).
- Appellant states that students who are identified as reading below grade level will be placed in an intensive reading class and for students who read above grade level the Guaranteed and Viable Curriculum Program will be utilized with adjustments in the implementation of research-based instructional strategies. (Appeal Pages 20).
- The pertinent Florida Statutes on this issue read as follows:

F.S. §1002.33(6) APPLICATION PROCESS AND REVIEW. Charter school applications are subject to the following requirements:

(a) A person or entity wishing to open a charter school shall prepare an application that:

4. Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher and a separate curriculum and strategies for students who are reading below grade level. A sponsor shall deny a charter if the school does not propose a reading curriculum that is consistent with effective teaching strategies that are grounded in scientifically based reading research.

ISSUE THREE:

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

- School Board states that projections are not included for operating funds and the revenues for the Start-Up Grant, Before/After Care and Capital Outlay were overstated for year one. (Appellant Exhibit M - Denial Letter Page 2 and Appeal Response Page 25-26).
- Appellant states that Appendix H to the Application clearly reflects estimated revenue sources and amounts in both the summary and detailed income statements. The Appellant states that the budget reflects Capital Outlay in the fourth year of operation, not year one. Additionally, Before/After Care and Start-Up Grant estimates are conservative and based on the experience of Charter Schools USA, Inc. (“CSUSA”) in starting charter schools. (Appeal Page 21).
- School Board states the Application contains conflicting information regarding the ownership and funding of the school facility. The Appellant provides that the lease payments are not to repay the loan for the building; therefore, the School Board does not have an understanding as to what constitutes long-term debt. (Appellant Exhibit M – Denial Letter Page 2 and Appeal Response Pages 26).
- Appellant states that bonds will be issued to pay for construction of the facility on land owned by the Appellant and leased to the Charter School for an extended period. The lease payments appear in the budget under rent expenses. Appellant argues this is stated in the Application and was previously explained to the School Board, Superintendent and the Review Committee. (Appeal Page 22).
- School Board states the Application shows a \$0.00 fund balance with no reserve, the budget contains conflicting information regarding the staffing plan, and the Application does not include internal accounting procedures. (Appellant Exhibit M – Denial Letter Pages 2).
- Appellant states the Application shows a reserve for all years after the first one and it is reasonable and responsible to project significant start-up costs that could result in a \$0.00 fund balance at the end of the first year. Appellant states the School Board has provided no explanation as to the criticism of its staffing plan, and the information contained in the Application is entirely consistent. Appellant states that the Application (in Exhibit H) contains internal accounting procedures. Appellant operates another charter school in Brevard County and uses the same internal accounting procedures proposed here without issue. (Appeal Pages 23-24).
- The pertinent Florida Statutes on this issue read as follows:

F.S. §1002.33(6) APPLICATION PROCESS AND REVIEW. Charter school 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.

ISSUE FOUR:

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

- Appellant states that the School Board was almost two years late in their vote and attempted to improperly condition the approval of the Application. The Appellant was denied the opportunity to present its position to the School Board because it was limited to three minute intervals of public comment. The Appellant was denied the opportunity to be heard by the School Board and not permitted to present evidence to the School Board in accordance with all normal due process rights. (Appeal Pages 30-31).

- School Board states the Appellant is almost two years late in appealing the decision set forth by the School Board on October 25, 2005. The Appellant was provided the opportunity to participate in an interview with the Review Committee and participated in a technical assistance meeting with staff from the School Board's Office of School Choice and the Chief Finance Officer. School Board states a representative of the Appellant was called to the podium by the School Board at the October 25, 2005 meeting to answer questions. The Appellant was afforded opportunities beyond those required by statute to submit a charter application. (Appeal Response Pages 31-33).