

THE FLORIDA DEPARTMENT OF EDUCATION  
CHARTER SCHOOL APPEAL COMMISSION

# Technical Assistance Paper

---

APPEAL OF ACADEMIES OF EXCELLENCE, INC. d/b/a OSPREY ELEMENTARY  
TERMINATION OF CHARTER

APPELLANT: ACADEMIES OF EXCELLENCE, INC. d/b/a OSPREY ELEMENTARY

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 OR TERMINATING A CHARTER AND THE PARTIES’ POSITIONS. TO THE EXTENT INCONSISTENT, THE RECORD ON APPEAL SHALL GOVERN. INTERESTED PERSONS SHOULD READ THE FULL RECORD ON APPEAL.**

## HISTORY:

On March 12, 2007, the School Board advised Osprey in writing that the Superintendent will recommend to the School Board that Osprey's charter be terminated if adequate answers are not provided concerning the financial solvency of Osprey.

On April 17, 2007, the School Board requested a formal meeting with representatives of Osprey.

On April 24, 2006, the Director of ESE Services for the School Board visited an ESE classroom at Osprey and requested documentation and procedural information.

On April 26, 2007, representatives of the School Board and Osprey met to discuss an internal financial audit of Osprey. The School Board announced that Osprey's ESE services were insufficient.

On May 1, 2007, the School Board requested additional information, which Osprey provided on May 10, 2007.

On May 23, 2007, the School Board advised Osprey that it began the process of terminating Osprey's charter on May 22, 2007.

On June 18, 2007, the School Board sent a letter to Osprey indicating that the school's FTE had been adjusted because the school was unable to provide appropriate and sufficient information to verify services provided exceptional education students.

On June 29, 2007, Osprey and the School Board met to discuss problems associated with the exceptional education documents supplied to the School Board by Osprey.

On August 2, 2007, an informal hearing was held and Osprey was instructed to submit specific documents to the School Board by August 9, 2007.

On August 9, 2007, Osprey provided the School Board responses to the request made by the School Board on August 2, 2007.

On August 22, 2007, Osprey received a document in which the Superintendent recommended the termination of the Osprey charter.

On August 28, 2007, the School Board voted to terminate the charter of Osprey.

As of August 28, 2007, Osprey Academy was open and had enrolled students for the 2007-2008 school year.

On August 29, 2007, the School Board closed Osprey.

On September 7, 2007, Osprey received notice of the School Board's termination of the school's charter.

On October 8, 2007, Osprey filed a 15-page appeal (excluding exhibits) with the Florida State Board of Education and the School Board.

On November 26, 2007, the School Board filed a answer to the Appeal with the Florida State Board of Education and the Appellant.

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

## ISSUE ONE

### **WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO TERMINATE THE CHARTER SCHOOL CHARTER BASED UPON: “FAILURE TO MEET THE REQUIREMENTS FOR STUDENT PERFORMANCE AS STATED IN THE CHARTER.”**

- The School Board states in its letter of denial that pursuant to §1002.33(7)(a)(3), Florida Statutes, the charter contract must contain information regarding current incoming baseline standards of student academic achievement, the outcomes to be achieved, and the methods of measurement that will be used. Academies of Excellence states in the documentation provided on August 9, 2007, that measurable goals outlined in Section 4.3 of the charter contract are to be used only as measurable outcomes and not as requirements. In accordance with §1002.33(9)(1), Florida Statutes, Osprey must report its progress annually to the Commissioner of Education and the Sponsor regarding student achievement performance. The measurable goals are the criteria to determine if students are making adequate academic progress. It is important to note that Academies of Excellence reported in its 2005-06 Annual Report to the Department of Education that Osprey attained 100% of its goals. Osprey falsified the information in the 2005-06 Annual Report since the School did not obtain any of its academic performance goals.
- Academies of Excellence states in their appeal that Osprey Charter contains goals for student performance and aspirational language regarding student achievement that are not the same as criteria to be used to terminate the contract, especially on a one-year basis. The charter provides that termination will occur if the school receives two F grades in successive years. Osprey’s grade in 2005-06 was a B and in 2006-07 was a D. While not desirable, these grades are not grounds for termination and are comparable to Brevard District non-charter schools.

The pertinent Florida Statutes on this issue read as follows:

F.S. § (7) CHARTER.--The major issues involving the operation of a charter school shall be considered in advance and written into the charter. The charter shall be signed by the governing body of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address, and criteria for approval of the charter shall be based on:

3. The current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used. The criteria listed in this subparagraph shall include a detailed description for each of the following:

- a. How the baseline student academic achievement levels and prior rates of academic progress will be established.
- b. How these baseline rates will be compared to rates of academic progress achieved by these same students while attending the charter school.
- c. To the extent possible, how these rates of progress will be evaluated and compared with rates of progress of other closely comparable student populations.

## ISSUE TWO:

### **WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO TERMINATE THE CHARTER SCHOOL CHARTER BASED UPON: "FAILURE TO MEET GENERALLY ACCEPTED STANDARDS OF FISCAL MANAGEMENT."**

- The School District states that an audit done by McDermit Davis showed that Osprey Elementary ended the 2006-2007 school year with a \$110,646 negative fund balance.  
The School District hired an independent firm, RSM McGladrey, to conduct an additional audit on March 5, 2007. The firm found several high risk areas including the following:
  - Financial Stability - As a follow up to the March 5, 2007, audit the documentation submitted by Academies of Excellence did not validate the financial solvency of the school. RSM McGladrey was asked by the School District to do a follow up review, and the school was notified via fax and certified mail. When the audit team arrived at the school, they were turned away by School Officials.
  - Related Party Transactions – According to the School District letter of denial, Academies of Excellence had board members who were also on the board of School Security Solutions, Inc. d/b/a School Management Solutions and C2T2 Educational Systems, Inc. d/b/a Educational Research Foundation. Both of these foundations were paid by Academies of Excellence for services rendered for curriculum development, accounting services and other types of services with no written contracts documented detailing what services would be rendered and the basis for these charges to be paid.
- Academies of Excellence states in its appeal that on Thursday, August 9, 2007, Osprey received another request for an audit team to review all financial documents on Monday, August 13, 2007. Since this was the first day of school for all employees, and due to very limited staff, Osprey requested that it be scheduled any day after August 13, 2007. The District's internal auditors, RSM McGladrey, stated that would not be a

problem. Despite the conversation, on August 13, 2007, a team composed of RSM McGladrey personnel and Brevard County personnel arrived at the school office to conduct the audit. After numerous phone calls and emails between RMS McGladrey, Osprey, Osprey's attorney, and Judy Preston, Assistant Superintendent of Finance for Brevard County Public Schools, Osprey agreed to give full access to records in spite of limited personnel. Even though only 1.5 hours transpired, Ms. Preston instructed the team to discontinue all dialogue with the school and cancel the audit. In the meantime, Osprey faxed and emailed copies of all checks and records to both auditors and the Sponsor. Still, Ms. Preston called the local press that day and announced that Osprey had refused access to these very documents.

- The School states that on August 9, 2007, Osprey submitted a financial statement and other information regarding the financial health of the school. But for funds unlawfully withheld by the District for Exceptional Student Education reimbursement and FEFP payments, Osprey would be fiscally sound. All matters raised in the March 5, 2007, audit would have been adequately addressed by Osprey. There was no “commingling” of funds and the debt for modular buildings could have been handled in due course. All paperwork required by the school's grant has been submitted.
- Financial Recovery Plan – The School District states in its letter of denial that because Osprey Elementary had a deficit fund balance, it met the criteria for being in a state of emergency. The District sent a letter to Academies of Excellence dated February 22, 2007, requesting a detailed financial plan within 30 days pursuant to §218.503, Florida Statutes. The Brevard County Office of School Choice made this request on three more separate occasions along with a copy of The Department of Education's Technical Assistance Paper. The financial recovery plan was received three months from the original date of the request. According to the Brevard County School District the Financial Recovery Plan did contain all the segments that are required by Statute but did not contain substantial content as prescribed in the law. Academies of Excellence's Financial Recovery Plan states they will not have a negative fund balance by the end of the fiscal year 2010.
- Academies of Excellence states that the District asked the school to submit a financial emergency recovery plan, and that the September 7, 2007, termination letter ultimately concluded that Osprey's financial plan “contains all of the sections required by DOE” but was not good enough apparently for “insufficient substance,” and such insufficiency was never explained.
- Commingling of Funds – The School District states on February 22, 2007, Academies of Excellence sent a letter in response to the financial audit

that the practice of commingling of funds had ceased. On June 30, 2006, McDermit Davis warned that the use of schools funds for purposes other than that of the intended purposes is in violation of grant requirements. The company strongly suggested that funds from one school should not be used for another school. RSM McGladrey stated in a follow up report on June 22, 2007, that quarterly statements show that there is commingling of funds again.

- Debt for Modular Buildings – The School District states when RSM McGladrey completed its initial audit, it showed that Academies of Excellence owed Mobile Modular Management Corporation (MMMC) approximately \$200,000. The School District states that when the Academies of Excellence combined the school with Sawgrass Academy it did not budget the necessary funds for the lease payment.
- Failure to submit the FA-399 Form – The School District states in its letter of denial that Osprey Elementary is in receipt of a \$300,000 initial start up grant, and was required to notify DOE regarding how the funds were spent. Academies of Excellence turned in a FA-399 on August 9, 2007, after several requests from the district. The report showed grant expenditures exceeding the DOE approved budget by line item without prior approval from the Florida Department of Education. The FA-399 form shows a budget of \$300,000 and although it shows all monies have been expended, it also shows a balance of \$66,899.66, still remaining to be spent.
- Academies of Excellence states in its appeal that Osprey submitted additional documentation on financial issues, including updated financial statements. Immediately thereafter, the Superintendent demanded to be shown updated financial statements and shown all backup documents to those statements. Although Osprey delivered those documents to the auditors and made their records otherwise completely available to the auditors, the Superintendent issued an edict that such documents were late and could not be considered by RSM McGladrey. As a result, the Superintendent's position on Osprey's financial condition is based solely on what the District had in its possession prior to the informal hearing on August 2, 2007.

The pertinent Florida Statutes on this issue read as follows:

F.S. § (7) CHARTER.--The major issues involving the operation of a charter school shall be considered in advance and written into the charter. The charter shall be signed by the governing body of the charter school and the sponsor, following a public hearing to ensure community input.

(a) The charter shall address, and criteria for approval of the charter shall be based on:

9. The financial and administrative management of the school, including a reasonable demonstration of the professional experience or competence of those individuals or organizations applying to operate the charter school or those hired or retained to perform such professional services and the description of clearly delineated responsibilities and the policies and practices needed to effectively manage the charter school. A description of internal audit procedures and establishment of controls to ensure that financial resources are properly managed must be included. Both public sector and private sector professional experience shall be equally valid in such a consideration.

10. The asset and liability projections required in the application which are incorporated into the charter and which shall be compared with information provided in the annual report of the charter school. The charter shall ensure that, if a charter school internal audit or annual financial audit reveals a state of financial emergency as defined in s. [218.503](#) or deficit financial position, the auditors are required to notify the charter school governing board, the sponsor, and the Department of Education. The internal auditor shall report such findings in the form of an exit interview to the principal or the principal administrator of the charter school and the chair of the governing board within 7 working days after finding the state of financial emergency or deficit position. A final report shall be provided to the entire governing board, the sponsor, and the Department of Education within 14 working days after the exit interview. When a charter school is in a state of financial emergency, the charter school shall file a detailed financial recovery plan with the sponsor. The department, with the involvement of both sponsors and charter schools, shall establish guidelines for developing such plans.

ISSUE THREE:

**WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO TERMINATE THE CHARTER SCHOOL CHARTER BASED UPON: “VIOLATION OF THE LAW.”**

- The School District states in its letter of denial that Exceptional Student Education (ESE) students have not been provided special education services according to their IEPs, the lack of which has caused them not to receive a Free Appropriate Public Education (FAPE). Many IEPs called for more time in ESE programs than what was provided. Special education was provided Monday through Thursday only. This is in direct violation of IDEA since many student IEPs called for daily services.

- Academies of Excellence states in its appeal that the Department of Education never mandated anything about ESE services at Osprey Elementary. It was absolutely inappropriate for the charter to be terminated for any such “violation.” There are no documents from DOE that even suggest that ESE services provided to students were deficient in any way. In fact, DOE wrote a letter to District staff demanding documentation to support the District’s allegations on this subject, and no responsive document was ever produced.

The pertinent Florida Statutes on this issue read as follows:

**F.S. § (8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.--**

(a) The sponsor may choose not to renew or may terminate the charter for any of the following grounds:

1. Failure to participate in the state's education accountability system created in s. [1008.31](#), as required in this section, or failure to meet the requirements for student performance stated in the charter.
2. Failure to meet generally accepted standards of fiscal management.
3. Violation of law.
4. Other good cause shown.

**ISSUE FOUR:**

**WHETHER THE SCHOOL BOARD HAD GOOD CAUSE TO TERMINATE THE CHARTER SCHOOL CHARTER BASED UPON: “OTHER GOOD CAUSE SHOWN.”**

- The School District’s Letter of Denial lists Quarterly Financial Reports, School Governance, Board Composition, Board Meetings and Other Issues as causes for termination of the charter.
  - Section 5.9 of the Osprey Contract states that the school shall provide quarterly financial reports to the Sponsor, to be delivered no later than thirty days following the quarter (October 31, January 31, April 30, and July 30). Osprey has repeatedly failed to submit contractual quarterly financial reports as required.
  - Osprey does not have a local Governing Board representing the students and parents of Brevard County as required by the charter school contract. Instead, Academies of Excellence, Inc. meets as a Corporate Board representing several charter schools. The Corporate Board consists of members of the initial/founding

board for Osprey Charter School and there has been no effort to transition to a local Governing Board as required in the charter contract. Furthermore, the Corporate Board conducts its meetings outside of Brevard County, making it impossible for parents to be actively involved.

- Section 7.5.1 of the charter contract states that the School anticipates that the Board will consist of 7 to 13 members with representatives from the field of education, business professionals, community leaders and active, involved parent/guardians. The current Governing Board structure is an egregious violation of the Public Charter School Planning, Program Design, and Initial Implementation grant.
  - The lack of local governance and Board meetings conducted outside of the Brevard County did not permit Osprey parents the opportunity to participate in the education of their children. Section 7.6 of the charter contract states that the Governing Board of the school shall meet no less than eight (8) to ten (10) times a year. Academies of Excellence provided Board meeting minutes to meet this criterion; however, the District has reservations regarding the documentation submitted.
  - The School has had tremendous administration and staff turnover during its two-year tenure. Specifically Osprey has had five administrators since the School's conception in 2005, largely contributing to its inefficient daily operation. Furthermore, the number of students continued to decline for the 2006-07 school year, negating any attempt by Academies of Excellence to increase FTE revenue.
- Academies of Excellence states that all Osprey financial reports are current. No law or contract requires school governance as set forth in the termination letter. Parents of children were actively involved in the school. Turnover in staff is never optimal, but it is no reason to terminate the charter. Osprey was fully and appropriately staffed. Negative publicity generated by the Superintendent's press release and other public pronouncements did cause a drop in enrollment.

The pertinent Florida Statutes on this issue read as follows:

**F.S. § (8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.--**

(a) The sponsor may choose not to renew or may terminate the charter for any of the following grounds:

4. Other good cause shown.

ISSUE FIVE:

**WHETHER THE CHARTER SCHOOL WAS DENIED DUE PROCESS IN THE TERMINATION OF ITS CHARTER.**

- Academies of Excellence states in its appeal that with respect to the process of termination, Osprey was not afforded due process. These due process violations were numerous, prejudicial, and warrant reinstatement of Osprey's charter. The violations were not simply glitches but were intentional deprivations of Osprey's fundamental right to maintain its charter.
- Academies of Excellence states that on May 22, 2007, the Superintendent recommended that the School Board vote to begin the termination process of Osprey's charter without supplying any written basis or opportunity for input by Osprey. On May 23, 2007, the Superintendent wrote a two-page letter that listed four conclusory "grounds" for termination. Osprey asked for an informal hearing before the sponsor, the School Board. Such hearing was set for August 2, 2007. At the outset of that hearing, the Superintendent delivered Osprey a six-page letter that greatly increased the grounds for termination, and then gave Osprey no chance to present documents or evidence at the hearing to refute any alleged grounds. Further, over objection of Osprey, the Superintendent stated that there would be no opportunity for Osprey to present information to the School Board other than as a member of the public at a Board meeting and that the Board would act solely based upon the Superintendent's recommendation. The Superintendent also refused to mediate this matter. Although the mediation offer was made to the School Board through the School Board's counsel, before the Board met, counsel stated the Board would not mediate. There were only 26 days of notice on the grounds of termination; there was no informal hearing before the sponsor.
- The School Board of Brevard County states that it took appropriate and timely actions to terminate Osprey Elementary charter contract. Pursuant to §1002.33(8)(b), Florida Statutes, the School Board voted unanimously on May 22, 2007, to give Osprey Elementary ninety (90) days notice of its intent to terminate the charter contract. The Superintendent sent a letter dated May 23, 2007, via U.S. certified mail and fax to Mr. Doug Jackson, President of Academies of Excellence, regarding the Board's actions. In accordance with §1002.33(8)(b), Florida Statutes, the letter stated in reasonable detail the grounds for the proposed action and stipulated that Osprey Elementary's Governing Board may, within fourteen (14) calendar days after receiving the notice, request an informal hearing. In conclusion, §1002.33(8), Florida Statutes, gives the School Board of Brevard County the authority to terminate the charter contract for the

identified statutory reasons. The record shows that the District followed the statutory provisions in every step of the termination process.

The pertinent Florida Statutes on this issue read as follows:

F.S. § (8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.--

(a) The sponsor may choose not to renew or may terminate the charter for any of the following grounds:

1. Failure to participate in the state's education accountability system created in s. [1008.31](#), as required in this section, or failure to meet the requirements for student performance stated in the charter.
2. Failure to meet generally accepted standards of fiscal management.
3. Violation of law.
4. Other good cause shown.

(b) At least 90 days prior to renewing or terminating a charter, the sponsor shall notify the governing body of the school of the proposed action in writing. The notice shall state in reasonable detail the grounds for the proposed action and stipulate that the school's governing body may, within 14 calendar days after receiving the notice, request an informal hearing before the sponsor. The sponsor shall conduct the informal hearing within 30 calendar days after receiving a written request.

(c) If a charter is not renewed or is terminated pursuant to paragraph (b), the sponsor shall, within 10 calendar days, articulate in writing the specific reasons for its nonrenewal or termination of the charter and must provide the letter of nonrenewal or termination and documentation supporting the reasons to the charter school governing body, the charter school principal, and the Department of Education. The charter school's governing body may, within 30 calendar days after receiving the sponsor's final written decision to refuse to renew or to terminate the charter, appeal the decision pursuant to the procedure established in subsection (6).