

THE FLORIDA DEPARTMENT OF EDUCATION  
CHARTER SCHOOL APPEAL COMMISSION

# Technical Assistance Paper

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APPEAL OF: EXCEL ACADEMY INC., TERMINATION

APPELLANT: EXCEL ACADEMY INC., ON BEHALF OF EXCEL ACADEMY CHARTER SCHOOL  
AND EXCEL ACADEMY MIDDLE CHARTER SCHOOL.

SCHOOL BOARD: THE SCHOOL BOARD OF MIAMI-DADE 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.**

## History – Excel

November 10, 2008 – Letter from School Board to Excel advising that schools would be terminated immediately for good cause

November 13, 2008 – Second letter from School Board to Excel advising that immediate termination would be recommended at the November 18, 2008, School Board meeting

November 18, 2008 – School Board meeting at which the Board voted to immediately terminate the contracts with Excel

November 26, 2008 – School Board letters to each school advising of the vote to terminate immediately and advising of appeal rights

December 23, 2008 – Excel filed a petition requesting a hearing before DOAH pursuant to Chapter 120, F.S.

December 23, 2008 – Excel filed a Motion to Dismiss or Strike the notices of the School Board as insufficient

December 29, 2008 - Appeal filed with the State Board of Education (Appeal, motion to Abate and Motion to Dismiss)

January 14, 2009 – School Board dismissed Excel's requests for administrative hearings and denied the motions to dismiss

February 13, 2009 – School Board filed Motion for 90-day extension of time

March 12, 2009 – School Board filed Response to Excel's Motion to Abate and Motion to Dismiss

March 12, 2009 – School Board filed Revised Response to Excel's Motion to Abate and Motion to Dismiss

**1. Whether the District provided the charter school with due process pursuant to Section 1002.33(8)(d), Florida Statutes.**

**The Charter School states:**

- At the time of the November 18, 2008, School Board meeting, Excel was afforded only two minutes to present its case against the termination of its Middle School Charter. At this time it was denied the opportunity to meaningfully argue and document its case or to cross-examine or challenge the numerous factual allegations contained in the Notice of Termination Letter. Accordingly, Excel maintains that it was denied administrative fairness and Due process of Law under the 14<sup>th</sup> Amendment of the United States Constitution by the limited and abbreviated nature of the Board's review process.

**The School District states:**

- Prior to the termination of Excel, on October 29, 2008, school district staff met with representatives of the school's management company and governing board to inform them of the Superintendent's intention to recommend termination of the contract at the November 18, 2008, School Board meeting. The School Board's Superintendent sent Excel letters detailing fourteen financial and academic good cause reasons for the termination and providing information on the procedures for speaking at the meeting. The letters included a sign-up sheet to speak. Excel claims that it was only afforded two minutes to speak, the School Board held a full public hearing at which at least ten people spoke. After hearing all of the speakers and the advice and recommendation of the School Board staff, the School Board voted 7 to 1 to terminate the contract.

The pertinent Florida Statutes on this issue read as follows:

Section 1002.33(8)(d), Florida Statutes

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

(d) A charter may be terminated immediately if the sponsor determines that good cause has been shown or if the health, safety, or welfare of the students is threatened. The sponsor shall notify in writing the charter school's governing body, the charter school principal, and the department if a charter is immediately terminated. The sponsor shall clearly identify the specific issues that resulted in the immediate termination and provide evidence of prior notification of issues resulting in the immediate termination when appropriate. The school district in which the charter school is located shall assume operation of the school under these circumstances. The charter school's governing board may, within 30 days after receiving the sponsor's decision to terminate the charter, appeal the decision pursuant to the procedure established in subsection (6).

**The letter of termination provided to Excel Academy Inc., charter middle school from the School District of Miami-Dade County indicated that the charter was terminated for:**

**2. Poor Academic Performance –**

**For the 2006-2007 school year, Excel Academy Charter was ineligible to be graded under Florida's System of School Improvement and Accountability as it did not meet the threshold of serving at least 30 students with valid FCAT scores in reading and math in both the current year and the previous school years, pursuant to State Board of Education Rule 6A-1.0998. However, for the 2007-2008 school year, Excel Academy received a grade of "F" under the Florida's System of School Improvement and Accountability and did not meet AYP.**

**For the 2007-2008 school year, Excel Middle received a grade letter of "F" under Florida's System of School Improvement and Accountability and did not meet AYP. The School has undergone two site visits by staff from the Florida Department of Education and the District: an overview of Florida's Differentiated Accountability (DA) requirements was provided on September 22, 2008, and an Instructional Review was conducted on October 30, 2008. In addition, District staff met with the School's governing board chairperson and principal on October 17, 2008, to acquaint the school's governance with the School's DA obligations. The instructional review indicated that Excel Middle has not made any significant progress in implementing the prescribed interventions or in meeting any of the applicable additional requirements.**

**The Charter School states:**

- It is Excel's intention to fully and completely develop all of the issues presented in the Board's Notice of Termination of Charter School Contract Letter. This process will necessarily include full and complete participation by the Board in a fairly adjudicated procedure in the Division of Administrative Hearings.

**The School District States:**

- In 2006-2007, Excel Academy Charter did not receive a grade under the state's accountability system since there were not enough students tested. However, in 2007-2008 only 28% of the Excel students tested in FCAT reading scored at or above grade level, 53% tested at Level 1, and 24% at Level 2. On the mathematics FCAT, only 13% of students scored at or above grade level, 59% tested at Level 1, and 27% tested at Level 2. Because so many students failed the tests, the school was graded an "F" by the state and its required to participate in the state's Differentiated Accountability (DA) program for failing schools. Additionally, 2007-2008 school year, Excel failed to make Adequate Yearly Progress (AYP) under the federal No Child Left Behind Act (NCLB) because it needed improvement in reading and mathematics. Furthermore, the AYP

Subgroup “Economically Disadvantaged” failed to meet NCLB criteria in both reading and mathematics.

In October, 2008, the students’ scores were even lower than the 2006-2007. Although the scores are not final, the interim assessment showed that 19% of third graders, 54% of fourth graders and 31% of fifth graders, no fourth graders and a mere 9% of fifth graders scored at the mastery level of reading. The math scores are even more abysmal. Only 18% of third graders, 33% of fourth graders, and 7% of fifth graders were making satisfactory progress in mathematics. No third graders, 7% of fourth graders and no fifth graders scored at the mastery level. The science scores show no progress.

In 2007-2008, only 15% of the Excel Middle School sixth grade students tested in FCAT reading scored at or above grade level, 63% tested at Level 1, and 22% at Level 2. Of the seventh grade students, just 24% scored at or above grade level on the FCAT reading test, 60% scored a Level 1 and 22% scored a Level 2. On the mathematics FCAT, only 11% of Excel sixth grade students scored at or above grade level, 85% tested at Level 1, and 4% tested at Level 2. Of the seventh grade students, only 12% scored at or above grade level on the FCAT mathematics test, 80% scored at Level 1, and 8% scored at Level 2. Because so many students failed the tests, the school was graded an “F” by the state and is required to participate in the state’s Differentiated Accountability (DA) program for failing schools. Additionally, for the 2007-2008 school year, Excel failed to make Adequate Yearly Progress (AYP) under the federal No Child Left Behind Act (NCLB) because it needed improvement in all grades in reading and mathematics.

The school repeatedly failed to implement any of the frequent recommendations made by the reading coach assigned to the school or those of the state and district instructional review teams. A compliance review conducted on October 9, 2008, by school district staff and representatives of the Florida Department of Education (DOE) found numerous significant deficiencies in the state DA requirements for “F” schools, including failure to review school performance data and determine cause for low performance, failure to form a school leadership team, failure to train staff on performance appraisal instruments, failure to ensure that performance appraisals included student achievement goals, failure to ensure that the performance appraisal process is implemented with fidelity, failure to conduct school performance appraisal at the school, and failure to provide incentives and funding for the implementation of evidence-based curriculum programs. Most of these deficiencies were required to be addressed by October 30, 2008, and identified the personnel at the school and/or on the governing board who should be tasked with addressing each deficiency.

The school has not only failed to address any of the previously identified deficiencies, but it was not providing even the most basic, minimally adequate education.

Excel never submitted to the School Board the contractually required annual School Improvement Plan (SIP) for the 2007-2008 school year. Excel also failed to submit its SIP in a timely manner for the 2008-2009 school year.

In short, little or no learning has taken place at Excel since it opened and neither the school nor its management company has been able to provide an effective academic program or hire qualified staff. The School Board clearly had an overwhelming amount of evidence to support its decision to terminate this school on the basis of failure to meet minimal academic standards.

The pertinent Florida Statutes on this issue read as follows:

Section 1002.33(8)(a)1., Florida Statutes

(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.

**3. Poor Financial Performance –**

**At the conclusion of the 2007 fiscal year, the Excel Academy Charter School's audited financial statements revealed a net asset fund balance deficit of \$8,925 and unpaid payroll tax of \$20,786. Furthermore, the following concerns were noted in the financial statements: the Management Company paid for expenditures that were not recorded or were misclassified; there were no bank reconciliations performed during the entire year; and there existed a lack of internal controls over payment of invoices.**

**At the conclusion of the 2007 fiscal year, Excel Middle failed to submit audited financial statements until October 24, 2008; the deadline was September 1, 2008. A preliminary staff review of the audited financial statements for 2008 revealed that the statements were not in accordance with Generally Accepted Accounting Principles (GAAP). Without proper and accurate financial statements, specifics as to current financial position cannot be determined.**

**The Charter School states:**

- It is Excel's intention to fully and completely develop all of the issues presented in the Board's Notice of Termination of Charter School Contract Letter. This process will necessarily include full and complete participation by the Board in a fairly adjudicated procedure in the Division of Administrative Hearings.

## **The School District States:**

- Excel Academy Charter has repeatedly failed to meet scheduled statutory and contractual financial benchmarks. In 2006-2007, Excel failed to submit all four quarterly unaudited financial statements by the due dates, and when they were finally submitted, they were inaccurate, incomplete or improperly prepared. Several weeks after the due date specified in the contract, Excel submitted its required unaudited financial statements that were completely unacceptable and did not even balance.

Excel's audited financial statements for the year ended June 30, 2007, showed that the school had a deficit of \$8,925 and that it failed to pay \$20,800 in payroll taxes to the Internal Revenue Service (IRS). These facts placed Excel in a state of financial emergency.

Beginning the very first year of operation, Excel Middle has repeatedly failed to meet scheduled statutory and contractual financial benchmarks. Statements were due on October 31, 2007. Excel did not submit them until May 13, 2008. The statements improperly showed that the elementary school and middle school were a single school. The statements were completely unacceptable and did not balance.

In 2008, the unaudited financial statements were submitted late and contained numerous inaccuracies. After these inaccuracies were identified for the school, it continued to submit inaccurate and inappropriate statements.

September 2008, Excel staff reported to school district staff that the school had not paid them in 60 days, that their pay checks were "bouncing" and that the health insurance company had cancelled their health benefits even though money was being deducted by the school from their paychecks to pay for health insurance. By October 2008 the school's bus transportation vendor had either not been paid for services rendered or had been paid with a check that was returned for insufficient funds.

Audited financial statements for the year ending June 30, 2008, which were due on September 1, 2008, were finally submitted by Excel to the School Board on October 24, 2008. The statements contained numerous inaccuracies and other problems and were not prepared according to generally accepted accounting principles. The statements revealed an unrestricted fund balance deficit of \$2,221 and that payroll taxes in the amount of \$37,360 had not been paid to the IRS. The auditor noted several concerns: there were no bank reconciliations performed the entire year, there were missing invoices for several disbursements, and there were poor financial controls. The school was declared to be in a state of financial emergency.

The pertinent Florida Statutes on this issue read as follows:

Section 1002.33(8)(a)2., Florida Statutes

(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:

2. Failure to meet generally accepted standards of fiscal management.