

**STATE BOARD OF EDUCATION**

**Action Item**

March 26, 2010

**SUBJECT:** Charter School Appeal Commission Recommendation RE: Imagine South Vero Middle School vs. Indian River County School Board

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**PROPOSED BOARD ACTION**

Accept Recommendation

**AUTHORITY FOR STATE BOARD ACTION**

Section 1002.33, Florida Statutes

**EXECUTIVE SUMMARY**

The Charter School Appeal Commission was created pursuant to Section 1002.33(6), Florida Statutes, to assist the Commissioner and the State Board of Education with a fair and impartial review of appeals by applicants whose charters have been denied or whose charter contracts have not been renewed or have been terminated by their sponsors.

The Commission is responsible for providing a written recommendation to the Commissioner of Education stating whether the appeal should be upheld or denied and includes the reasons for the recommendation being offered. The State Board must consider the Commission's recommendation, but is not bound by the recommendation.

**Charter School Appeal Commission Recommends Upholding the Decision of the Indian River County School Board by Denying the Appeal of Imagine South Vero Middle School.** (Final Commission vote: 8:0)

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**Supporting Documentation Included:** Charter School Appeal Commission Recommendation and Technical Assistance Paper

**Facilitator/Presenter:** Lois S. Tepper, Esq., Commissioner's Designee as Chair, Charter School Appeal Commission

**CHARTER SCHOOL APPEAL COMMISSION**  
**Recommendation to State Board of Education, January 19, 2010**

IMAGINE SOUTH VERO  
MIDDLE SCHOOL

v.

SCHOOL BOARD OF  
INDIAN RIVER COUNTY

DOE Case No.2009-1955

RECOMMENDATION

On September 22, 2009, the School Board of Indian River County (School Board) voted to deny the charter application of Imagine South Vero Middle School (Charter School). The School Board's letter of denial was dated October 1, 2009. The Charter applicant filed this appeal on October 30, 2009. On December 9, 2009, the Charter School Appeal Commission heard the appeal of this matter. **Thereafter, the Commission voted 8 to 0 to recommend that the State Board of Education deny the appeal of the Charter School.** The Commission's justifications for its recommendation were as follows:

1. The Commission voted 8 to 0 that the School Board did have competent, substantial evidence to support its finding that the charter application was deficient for failure to demonstrate that the Governing Board exercises sufficient control over the operations of the school.
2. The Commission voted 8 to 0 that the finding that the charter application was deficient for failure to demonstrate that the Governing Board exercises sufficient control over the operations of the school was statutory good cause for denial.
3. The Commission voted 8 to 0 that the School Board did have competent, substantial evidence to support its finding that the application failed to demonstrate sound financial practices.
4. The Commission voted 8 to 0 that the finding that the charter application failed to demonstrate sound financial practices was statutory good cause for denial.

5. The Commission voted 8 to 0 that the School Board did not have competent, substantial evidence to support its finding that the charter application was deficient for failure to identify and failure to adequately demonstrate that a facility will be ready in time, properly zoned and permitted.
6. The Commission voted 8 to 0 that the School Board did not have competent, substantial evidence to support its finding that the charter application was deficient for failure to demonstrate how it will achieve the required racial and ethnic diversity reflective of the community served by the school.
7. The Commission voted 5 to 4 that the School Board did not violate the Charter School's due process rights.

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Lois Tepper, Commissioner's Designee  
Charter School Appeal Commission

FILED with the Agency Clerk of the Department of Education this \_\_\_\_\_ day of January, 2010.

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AGENCY CLERK

THE FLORIDA DEPARTMENT OF EDUCATION  
CHARTER SCHOOL APPEAL COMMISSION

# Technical Assistance Paper

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APPEAL OF: IMAGINE SOUTH VERO MIDDLE SCHOOL.

APPELLANT: IMAGINE SOUTH VERO MIDDLE SCHOOL

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.**

## History – Imagine South Vero

June 11, 2009 – School filed notice of intent to submit a charter application for a middle school

June 23, 2009 – School submitted a draft of the application

July 9 and 27, 2009 – School met with district staff to discuss comments on the draft application

August 3, 2009 – School submitted the Middle School Application

September 22, 2009 – School Board voted to deny the application

October 1, 2009 – School received the notice of denial from the district

October 30, 2009 – Charter School filed appeal with State Board of Education

December 1, 2009 – District filed response to appeal

**The letter of denial provided to Imagine South Vero from the School District of Indian River County indicated that the application was denied based on:**

- 1. Whether the Application was deficient for failure to demonstrate sufficient controls by which the governing body of the Charter School has the ability to replace Imagine Schools Not for Profit, Inc., without inappropriate influence by Imagine, and whether the governance model is in violation of the charter school statute.**

**The Charter School states:**

The School did not identify an ESP because it does not have an ESP. The School is a limited liability company whose sole member is Imagine Schools Non-Profit, Inc. (ISNP). An LLC cannot separate from its member, and therefore, ISNP is clearly not an ESP as set forth in the Application Form. By statute, the interests of ISNP and the School are aligned, so there is no need for the “internal controls” or “financial safeguards” to govern the close relationship between the two companies as with an ESP. Florida Statute Sections 608.4225(1) & 608.4226(1) (2009). This issue has been raised with respect to other Imagine Schools in Florida whose organizational structures, and relation to ISNP, are nearly identical to the School’s, and the State Board of Education has ruled that the relationship and structure is appropriate and that ISNP is not an ESP. Imagine – Palm Beach County, LLC v. School Board of Palm Beach County, DOE Case No. 2007-1475 FOI (Final Order – 7/16/08); Imagine – Sarasota, LLC v. School Board of Sarasota County, DOE Case No. 2007-1460 FOI (Final Order – 2/29/08).

The School is an LLC which is organized under the laws of this State, (Exh.E:63), and therefore, it is an appropriate legal entity to file a charter application. Issues regarding the amount of management fees and the viability of an ISNP were raised by the school District when the school’s K-5 Application was originally submitted, and on appeal, the State Board of Education did not uphold the School Board’s decision.

There is absolutely no evidence presented of financial impropriety or charges in the record against the School, ISNP, ISNP’s founder Dennis Baake, or any other affiliated company.

As late as April of 2009, the School Board approved the governance structure of the School by agreeing to amend the Charter Contract while leaving intact the governance provision of the original charter. The School’s governance structure remains unchanged from its initial K-5 Application. In addition, while the School Board initially raised concerns regarding the nonprofit status of the School during negotiations of the Charter Contract, the School Board’s attorney and Superintendent specifically accepted the nonprofit status of the School, allowing the School to open in August 2008.

## **The School District States:**

The charter application raises but fails to adequately address the following important issues:

- The business structure allowing management fees and compensation funded with public money to flow from the charter school to ISNP and to Imagine Schools for Profit.
- The extent to which the lease of facilities funded with public education dollars benefit or profits the owners and affiliates of the various Imagine entities, including Schoolhouse Finance.
- The interrelated financial web between the Imagine entities routinely used for the development of Imagine schools.

Imagine Schools at South Indian River County, LLC, is a limited liability company that proposes to hold the charter for Imagine Schools at South Vero Middle School. The charter applicant is not a non-profit corporation as is required by the Department of Education Model Form for a charter school application. Imagine Schools Not For Profit, Inc. (ISNP), a Virginia corporation, is the sole member of the charter applicant. ISNP provides administrative oversight for curriculum design, hiring facility, financing, school operations, and other functions. In return for these services, ISNP receives a 12 percent management fee. ISNP appoints the members of the Governing Board and has the power to remove them at any time with or without cause. The Governing Board cannot even elect its own officers without approval of ISNP.

Imagine's management philosophy, based on published e-mail and quotations from its representative, appears to be that governing boards do not operate charter schools, but exist to support the actions of Imagine's for-profit company. This view of charter schools is contrary to the charter school statute and accepted model of charter schools as having independent and local control over their operation.

The District raised an issue of legitimate concern that involves that involves large expenditures of tax dollars. Imagine has failed to provide any explanation of how these entities operate within its business structure, other than to say that Imagine's practices should not be questioned because it has operated this way in the past. Instead of helping the School District clarify these issues, Imagine is summoning its resources to try and stop the School Board from presenting evidence of business practices that provide good cause for denying the charter application.

Florida law requires "a charter school to be" organized as, or be operated by, a nonprofit organization." §1002.33(7)(a)8, Florida Statutes. ISNP is not acting as a non-profit organization.

The applicant attempts to justify these practices by pointing out that the School Board currently has a contract with Imagine for the elementary school in South Vero Beach. The existing elementary school has a similar lease arrangement. However, the School Board denied the initial charter application for the elementary school based on a determination that the charter would result in a

wrongful and irresponsible use of public money. The State Board of Education directed the School Board to approve the charter and the School Board elected not to challenge that order in court at the time. The decision not to appeal was due to the reluctance of the School Board to allocate scarce education resources for a costly lawsuit. The decision not to appeal, however, does not preclude the School Board from determining at this time that Imagine's business structure involves the inappropriate use of public funds.

The charter application fails to demonstrate that the Governing Board has sufficient control over the operation of the school. Rather, it appears that ISNP is driving the application for financial reasons. The applicant's Statement of Assurances is signed by Ms. Fornes, of Imagine Schools, who also is the contact person for the charter. (Cover Sheet and p. 82, Charter Application, Imagine Ex. "F"). The purpose of a charter school is not achieved by allowing a for-profit business to create entities stocked with hand-picked board members for financial gain. The School Board is not impugning the motives of the Governing Board or criticizing their service. Rather, its purpose is to prohibit ISNP and its affiliates, including Imagine Schools For Profit, from using the Governing Board and its appointed entities for financial gain.

Imagine has failed to show that the Governing Board exercises sufficient controls over the Educational Service Provider ("ESP"). Although Imagine asserts otherwise, ISNP is for all practical purposes, the ESP. The School Board has no problem with a non-profit charter school hiring an ESP or a consultant. However, there must be standards that allow the Governing Board to terminate the ESP or consultant if it determines that services are unsatisfactory or that it would be in the best interest of the charter school to obtain services from another ESP. Such standards are lacking in this application. In this case, Imagine's charter school has no real independent judgment or control over this charter. The application fails to demonstrate sufficient controls that would allow the Governing Board to replace ISNP in a commercially reasonable manner, through the exercise of independent business judgment, without appropriate influence by Imagine.

The charter applicant is required to clearly delineate the roles and responsibilities of the governing board and the ESP. Imagine makes it clear that it relies extensively on the management, expertise, staffing and resources of ISNP, but it fails to sufficiently disclose the relationship between ISNP, Imagine School's for Profit, and the applicant.

A charter school applicant must demonstrate proper legal structure for the governing board, and show that board members will contribute to the wide range of knowledge and skill needed to oversee a charter school. None of the five members of the Governing Board signed this charter application.

The applicant also must show a clear delineation of the roles of the board and the management structure of the ESP or consultant. §1002.33(7)(a)9, Florida Statutes. Imagine's internal structure lacks a clear delineation of the role of the Board and the ISNP. Imagine has failed to demonstrate that the business model

of its Governing Board and Imagine's related entities does not allow a private business to profit from the use of public funds.

**The pertinent Florida Statutes on this issue read as follows:**

§1002.33(7)(a)8 and 9., Florida Statutes

(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:

8. The ways by which the school will achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.

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.

**2. Whether the application was deficient regarding fiscal responsibility including fund balance projections that are inconsistent with good accounting practices for the operation of a non-profit entity, the use of the Federal Startup Grant as an included source of revenue, and insufficient detail regarding specific procedures to be used for audit and fiscal management.**

**The Charter School states:**

As to the federal grant funding, School District staff failed to remove the corresponding costs which would be associated with the federal grant funds. In other words, if the School does not receive the federal grant funds, as clearly stated in the Application, it will purchase supplies in smaller quantities, as needed, and finance any larger purchases in financially feasible increments. The Middle School will be a feeder pattern School for the existing School, so it will be eligible for capital outlay at the same time as the existing School. District staff's projection of deficits for the School are incorrect and do not constitute competent and substantial evidence to support the school Board's decision.

The School's predictions of positive fund balances are not a valid statutory basis for denial.

### **The School District States:**

The applicant has failed to demonstrate sufficient financial responsibility for the charter school. Information provided by Imagine shows that there will be a budget deficit of \$390,664 in the first year of operation, and a deficit of \$436,225 in the second year. The projected deficits are inconsistent with sound accounting practices required by the charter statute.

Imagine's budget projections include a Federal Start-Up Grant. The grant is competitive and not guaranteed. However, even if the start-up grant were obtained, there would be a deficit in the amount of \$140,664 the first year, and \$147,695 the second year of operation.

The budget also fails to provide sufficient funds for the staff required for the proposed middle school. The budget includes 15 teachers only in core academic subjects and does not include full-time ESE and PE teachers.

The salaries and benefits of two ESE teachers and a physical education teacher will require an additional \$165,000 that is not included in the budget. These oversights will create serious budget deficits in the first year of operation.

The financial picture is further muddled by the fact that substantial liens have been filed by contractors and subcontractors for work on the unfinished middle school. The lienors claim they have not been paid in full for their services. Imagine refused to answer any questions about the liens posed by the District's Charter Review Committee. Imagine official Christian Cascone refused to discuss the reasons why construction of the middle school facility was stopped or why the liens were filed. Imagine's leaders also provided no explanation as to how this affects Imagine's ability to finance the school. The unpaid bills show a lack of fiscal responsibility required of charter schools.

Additional budget problems include the \$576,000 per year for renting the school building, which is excessive. Imagine officials were unable to explain the basis for that projection. The application does not set out in sufficient detail the terms and conditions of the facility lease. Analyzing the cost per students station and the reasonable commercial rent rates in the county, the amount projected by Imagine for a facility is not reasonable or prudent expenditure of scarce education dollars. This is particularly true given the current economic climate and the difficulties facing public education.

The application does not provide a fiscal management system that follows generally accepted accounting principals and safely protects assets. The application must contain a five-year financial plan with 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. §1002.33(6)(a)5., Florida Statutes. Imagine's five-year forecast contains an insufficient fund balance and lacks documentation required for internal fiscal controls.

**The pertinent Florida Statutes on this issue read as follows:**

§1002.33(6)(a)5., Florida Statutes

(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 and submit an application on a model application form prepared by the Department of Education which:

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.

- 3. Whether the application was deficient for failure to identify a facility and failure to adequately demonstrate that a facility will be ready in time, properly zoned and permitted.**

**The Charter School states:**

The Application clearly states that the School will be located at the existing School facility. This existing facility could accommodate grades K-8, and has all the requisite zoning, traffic, site plan and other approvals to do so. There is also an addition that is being constructed which will allow for more students to be housed on the existing campus. All development approvals have been obtained except for a Certificate of Occupancy. The School's facility was clearly identified as required by the Charter statute, exists presently and is approved for serving up to 8<sup>th</sup> grade.

If the School's onsite addition is not complete by school opening in 2010, and there are more students registered than could be accommodated at the existing School site, the Application clearly states that a temporary facility would be used. The School has an existing lease with a nearby church which it is currently using for temporary space. This temporary location has the requisite local government approvals for use as a school site, and is currently being used for such purpose. Moreover, the School has not received any notices of any unaddressed concerns from District staff associated with its current or past use of this facility as a temporary site.

**The School District States:**

The application is deficient because it fails to identify a facility that would meet a timetable for accomplishing all conditions required to open the charter school for the 2010-2011 school year. Imagine's timetable does not provide a time frame for obtaining approval from local governments on zoning, planning, building inspection or other matters required for a certificate of occupancy.

A charter school may be approved without indentifying a facility site if the applicant indicates that such approval is necessary "to raise working funds." §1002.33(5)(b)1.c., Florida Statutes. This provision does not require, but merely allows a sponsor, in its discretion, to approve a charter under the specified conditions. At no time did Imagine state that it needed approval of its application in order to obtain working funds.

The application fails to identify a realistic timetable for completion of the middle school. In January 2009, Christian Cascone of Imagine told the Governing Board that construction would be completed by the summer of 2009. That did not occur. In March of 2009, Cascone told the Board construction would be completed within the next few months. That was not done. Principal Mills told the Fire Inspector in a letter dated November 10, 2009 that the project would be completed by February 1, 2010. Without specific information about the facility, the School Board cannot determine whether these timetables are realistic, and therefore, whether the safety and welfare of students will be adversely affected.

**The pertinent Florida Statutes on this issue read as follows:**

§1002.33(5)(b)1.c., Florida Statutes

(5) SPONSOR; DUTIES.--

(b) *Sponsor duties.*—

1.c. The sponsor may approve a charter for a charter school before the applicant has identified space, equipment, or personnel, if the applicant indicates approval is necessary for it to raise working funds.

**4. Whether the application was deficient for failure to demonstrate how it will achieve the required racial and ethnic diversity reflective of the community served by the school.**

**The Charter School states:**

The ways in which a charter will achieve required achieve a racial/ethnic balance reflective of the community it serves is a matter to be established in the charter contract. §1002.33(7)(a)8, Florida Statutes. The School Board also approved this approach as part of the School's 6<sup>th</sup> Grade Amendment.

The School submitted its Desegregation Action Plan for the existing School and included a weighted lottery provision in the Application which was specifically coordinated with School District staff. The weighted lottery provision is patterned after the School District's Magnet Program lottery and is consistent with Federal Charter School Program Grant Guidelines. Moreover, the School and the School District had already started to implement portions of the Desegregation Action Plan.

**The School District States:**

The application fails to show how Imagine will achieve the required racial and ethnic diversity reflective of the community served by the school, as required by §1002.33(7)(a)8, Florida Statutes.

Imagine's proposed desegregation plan is legally unsound. The applicant states that it will rely on the School District to provide district-wide mailing lists. The plan depends on the School Board to release the names and addresses of its African American students for purposes of recruitment. The plan is unworkable because the School Board is prohibited by §1002.33, Florida Statutes, and the Family Education Rights and Practices Act (FERPA) from releasing the students identities, which are confidential under those laws.

The transportation portion of the desegregation plan is deficient because it fails to show how transportation will be used to promote racial and ethnic diversity. The charter school statute provides in part that transportation shall not be "a barrier to equal access for all students residing within a reasonable distance" of the charter school. §1002.33(20)(c), Florida Statutes. The application fails to establish that transportation will be a significant component of the school's attempt to achieve racial and ethnic diversity.

The application merely states that parents will be required to drop off their children, and if a student needs transportation, the school will look into providing it. That is not sufficient for students who will otherwise have no access to the school. Imagine representatives have admitted that the application does not expressly offer transportation at no cost to students who would otherwise be unable to attend the school, and that the school will wait until asked to provide transportation for a particular student. The application states: "We will encourage parents to drop their children off and pick them up and form car pools to do so. However, if the need arises for bus transportation, we will investigate local transportation companies, including contracting with the local School District."

**The pertinent Florida Statutes on this issue read as follows:**

§1002.33(7)(a)8. and §1002.33(20)(c), Florida Statutes

(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:

8. The ways by which the school will achieve a racial/ethnic balance reflective of the community it serves or within the racial/ethnic range of other public schools in the same school district.

(20) SERVICES.--

(c) Transportation of charter school students shall be provided by the charter school consistent with the requirements of subpart I.E. of chapter 1006 and s. [1012.45](#). The governing body of the charter school may provide transportation through an agreement or contract with the district school board, a private provider, or parents. The charter school and the sponsor shall cooperate in making arrangements that ensure that transportation is not a barrier to equal access for all students residing within a reasonable distance of the charter school as determined in its charter.

**5. Whether the application was deficient in the area of exceptional student education and curriculum.**

**The Charter School States:**

The Evaluation Instrument sets forth various concerns relating to exceptional student education. As to the alleged lack of description of ESE teacher consultation or direct instruction of ESE students, this issue is already addressed in the Application. If an ESE teacher provides direct instruction, the Application clearly provides for such teacher to be certified in the appropriate subject area.

With respect to the alleged lack of description of ESE needs and nature of exceptionalities, there is adequate description contained in the Application. There is no indication in the model form that anything beyond what was included is necessary or how an exhaustive listing of ESE needs and nature of exceptionalities served could be included without further consultation with District Staff. This is a similar issue to another issue raised in this Section of the Evaluation Instrument which questions what would occur if a student required more services that the School could provide. The School could not propose a solution without District feedback.

The Application actually provides for more frequent evaluations of EP's than the District requires. Finally, as to the amount of services required by Gifted students, the Application describes how the additional needs of Gifted students will be met in the general educational letting. There will not be a pullout program at the School, which is the same approach in the K-6 grades for the existing School. In addition, section 4 of the Evaluation Instruments indicates that District Staff believed the Application Curriculum Plan would meet the needs of all students at all levels.

**The School District States:**

The application is deficient in its Exceptional Student Education (“ESE”) plan. The ESE section of the application should demonstrate an understanding of the requirements to provide a concrete plan to meet the broad spectrum of the educational needs for all ESE students.

There is an insufficient description of how this will be accomplished and of the services within the range. The application lacks sufficient information regarding the nature of the exceptionalities that will be served. The application also lacks a description of the procedures and their costs, as well as the curriculum and resources, for gifted and ESE students who require services outside of a general education setting. The application also lacks a plan for transportation for ESE students, other than merely stating that the school will work with the School District to meet those needs.

The staffing includes only one ESE teacher, which would also share guidance duties. This single ESE teacher will also be shared by the elementary school. One ESE teacher sharing guidance duties is sufficient for the estimated 68 ESE students in grades kindergarten through eight. At least 1.5 full-time ESE teachers would be needed. The applicant states that additional services may be provided by contract, but does not list that expense in the proposed budget.

**The pertinent Florida Statutes on this issue read as follows:**

§1002.33(6)(a)2., Florida Statutes

(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 and submit an application on a model application form prepared by the Department of Education which:

1. Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.
2. Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.