

FLORIDA DEPARTMENT OF EDUCATION

# CHARTER SCHOOL APPEAL COMMISSION GUIDELINES

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GUIDELINES FOR CHARTER SCHOOL NON-  
RENEWAL, TERMINATION, AND IMMEDIATE  
TERMINATION APPEALS

As Adopted by the Commission, August 8, 2003

# CHARTER SCHOOL APPEAL COMMISSION GUIDELINES

## GUIDELINES FOR CHARTER SCHOOL NON-RENEWAL, TERMINATION, AND IMMEDIATE TERMINATION APPEALS

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### INTRODUCTION

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#### **Purpose**

The following document contains GUIDELINES, created by the Florida Department of Education Office of Independent Education and Parental Choice to assist the Charter School Appeals Commission establish a fair and impartial review of appeals received from Florida Charter Schools of Non-Renewal, Termination or Immediate Termination Orders issued by District School Boards in their capacity as sponsors of charter schools. These GUIDELINES will facilitate Members of the Appeals Commission to:

**Review** objectively all written filings by the parties including:

- a. District staff studies and makes recommendations related to the Non-Renewal, Termination or Immediate Termination of a Charter School.
- b. District Superintendent's Recommendation to the District School Board.
- c. The record of consideration and the written decision of the District School Board to Non-Renew, Terminate, or Immediately Terminate a Charter School
- d. The Notice of Appeal and documentation submitted by the affected charter school in support of its position
- e. The documentation in support of its position submitted by the District School Board in response to the Appeal filed by the affected charter school
- f. All other documentation filed in connection with the appeal of the Non-Renewal, Termination, or Immediate Termination order of the District School Board.

**Effectively evaluate** all evidence presented in support of or in opposition to the decision of the District School Board.

**Reach a decision** as to what recommendation for action is to be sent forward to the State Board of Education and to reduce the rationale behind the decision to writing.

#### **Organization**

These GUIDELINES have been organized into 4 sections. They are:

FLORIDA CHARTER SCHOOL APPEALS COMMISSION GUIDELINES FOR NON-RENEWAL,  
TERMINATION, OR IMMEDIATE TERMINATION APPEALS

Section I – OVERVIEW

- Non-Renewal, Termination, or Immediate termination of Charter Schools in Florida
- Legal Authority

Section II – NON-RENEWAL, TERMINATION, OR IMMEDIATE TERMINATION  
PROCESS AND REVIEW

Section III – DEFINITIONS AND PURPOSES OF NON-RENEWAL,  
TERMINATION, AND IMMEDIATE TERMINATION APPEALS  
DOCUMENTS

Section IV – COMMISSION REVIEW OF NON-RENEWAL, TERMINATION, OR  
IMMEDIATE TERMINATION ORDERS

- Review Process
- The Commission Decision on Non-Renewal, Termination, or Immediate Termination
- Legally Sufficient Causes for Non-Renewal, Termination, or Immediate Termination of
- Charter Schools, and Suggested Decision Benchmarks
  - Legally Sufficient Cause 1
  - Legally Sufficient Cause 2
  - Legally Sufficient Cause 3
  - Legally Sufficient Cause 4
  - Legally Sufficient Cause 5

## SECTION I

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### OVERVIEW

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#### **Non-Renewal, Termination or Immediate Termination of Charter Schools in Florida**

Non-Renewal, Termination and Immediate Termination are the strongest possible sanctions that can be applied to a Charter School in Florida. They amount to the forcible closure of the school either at the end of its current charter contract (Non-Renewal), by a date certain during the term of its contract (Termination), or immediately (Immediate Termination) in response to an extreme situations. In the case of an Order for Immediate Termination the District is charged by statute to “assume operation” of the school while the due process requirements are being satisfied.

Since the issuance of an order to Non-Renew, Terminate or Immediately Terminate is so powerful it is not one to be lightly undertaken by Districts, and Florida law provides only a limited number of causes for doing so. In addition, every order for Non-Renewal, Termination, or Immediate Termination is subject to certain due process requirements built into Florida law. Districts must give notice of intent to Non-Renew, Terminate, or Immediately Terminate to the Charter School in writing stating the grounds for the proposed action. Upon receipt of the notification the school has the right to request an informal hearing before the District Board prior to their making a final decision.

Once a decision to Non-Renew, Terminate or Immediately Terminate is rendered by the District the school is granted by law the right of appeal to the State Board of Education. To assist the SBE in this task statute provides for a Charter School Appeals Commission. This commission, chaired by the Commissioner of Education or her/his designee is charged with thoroughly reviewing the case and issuing a recommendation for action to SBE.

Once the Commission has forwarded its recommendation, the SBE, by majority vote, may elect either to sustain or overturn the district. State law declares that the decision of the SBE is a final action subject to judicial review, and that it is binding on the district unless a court of competent jurisdiction rules otherwise.

#### **Legal Authority**

##### **The following sections of the Florida Statutes govern the material presented in these Guidelines:**

Charter Schools Generally:

*s. 1002.33, F.S.* -- This section authorizes charter schools and covers all aspects of their creation and operations except Capital Outlay matters.

Charter School Capital Outlay:

*s. 1013.62, F.S.* -- This section authorizes the appropriation and distribution of capital outlay monies to charter schools and prescribes the permissible uses of such monies.

FLORIDA CHARTER SCHOOL APPEALS COMMISSION GUIDELINES FOR NON-RENEWAL,  
TERMINATION, OR IMMEDIATE TERMINATION APPEALS

District School Board Role:

*s. 1002.33(8), F.S.* -- This section describes the reasons a District may refuse to renew a charter school or order the termination of a charter school.

The Charter School Appeals Commission:

*s. 1002.33(6)(e)1, F.S.* -- This section creates the Appeals Commission.

*s. 1002.33(8)(b) & (8)(c), F.S.* -- This section describes the roles of the Appeals Commission in the case of Non-Renewal, Termination or Immediate Termination of a charter school.

Reasons for Non-Renewal, Termination and Immediate Termination:

*s. 1002.33(8)(a) & 8(d), F.S.* -- These sections provide the reasons why a district school board may order the Non-Renewal, Termination or Immediate Termination of a charter school.

Right of Appeal of Non-Renewal, Termination or Immediate Termination Order:

*s. 1002.33(8)(d) & (8)(e), F.S.* -- Grants charter schools subject to a non-renewal or termination order the right to appeal that decision to the State Board of Education through the Charter School Appeals Commission

Non-Renewal, Termination and Immediate Termination Appeal Process:

*s. 1002.33(6), F.S.* -- This section describes the Non-Renewal, Termination, or Immediate Termination Order appeals process.

State Board of Education:

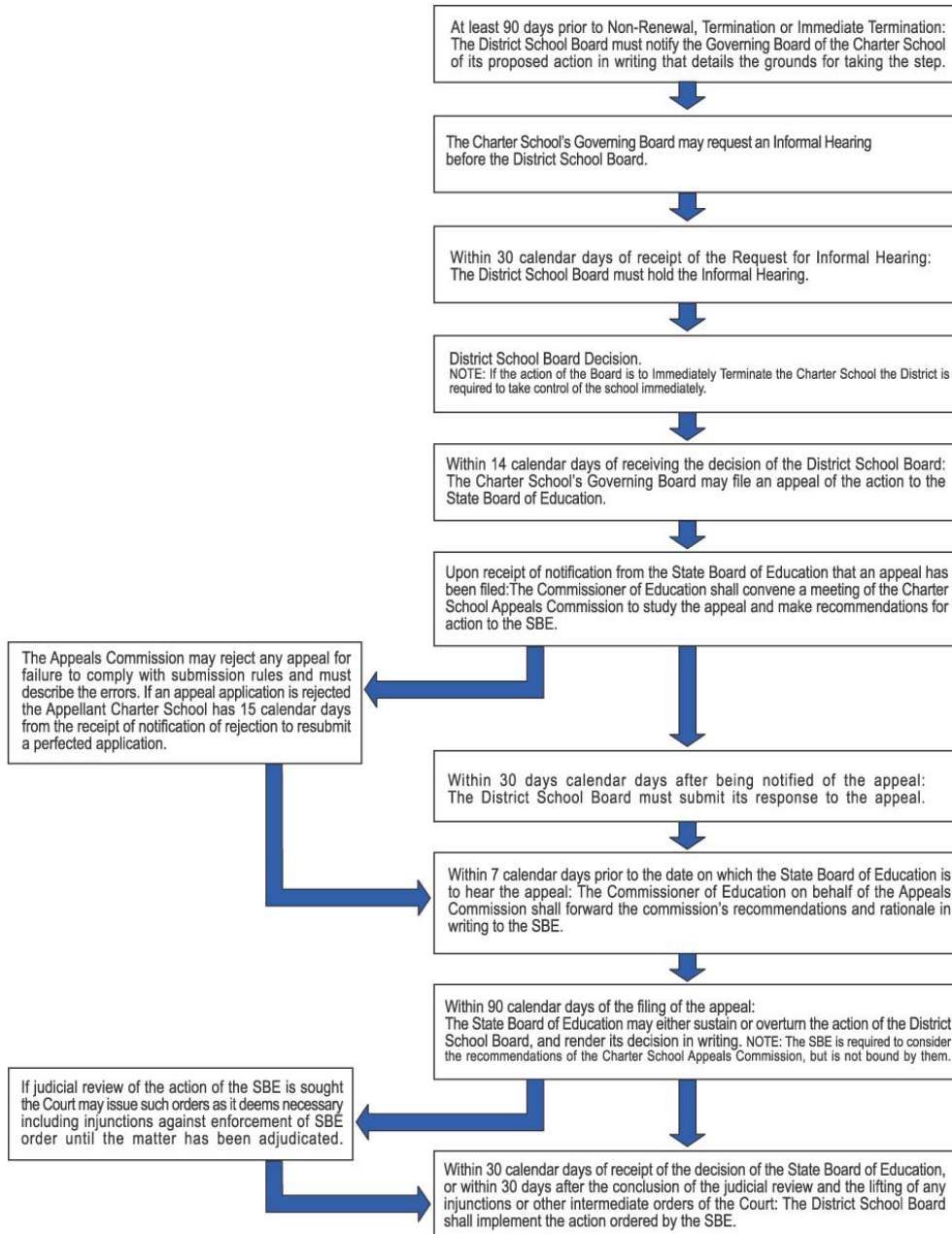
*s. 1002.33(6)(c), (d), & (e), F.S.* --These sections describe the role of the State Board of Education in the appeals process, delineate the effect of its rulings, and provide for judicial review of those rulings.

FLORIDA CHARTER SCHOOL APPEALS COMMISSION GUIDELINES FOR NON-RENEWAL, TERMINATION, OR IMMEDIATE TERMINATION APPEALS

## Section II

### NON-RENEWAL, TERMINATION, AND IMMEDIATE TERMINATION PROCESS AND REVIEW

The following flow chart describes the Charter School Non-Renewal, Termination, and Immediate Termination Appeal Process and Review.



**SECTION III**

**DEFINITIONS AND PURPOSES OF NON-RENEWAL, TERMINATION, AND  
 IMMEDIATE TERMINATION APPEALS DOCUMENTS**

| <b>DOCUMENT(S)</b>   | <b>DEFINITION</b>  | <b>PURPOSE</b>  |
|--|--|---|
| District Staff studies and recommendations related to the Non-Renewal, Termination or Immediate Termination of a Charter School. | Written assessment of Charter School with specific findings of issues that are believed to meet the standards for Non-Renewal, Termination or Immediate Termination with supporting expert opinion and/or documentation. The recommendations and evidence contained in the material must tie to at least one of the statutory causes for renewal or termination and this tie or ties must be clearly identified.   | Provides a foundation from which the District Superintendent may make a recommendation to the District School Board to Non-Renew, Terminate, or Immediately Terminate a Charter School.   |
| District Superintendent's Recommendation to the District School Board.   | A written recommendation from the District Superintendent to the District School Board outlining her/his reasons for seeking Non-Renewal, Termination, or Immediate Termination of a Charter School with supporting documentation including any material or expert judgments not included in the District Staff studies and recommendations. The recommendations and evidence submitted must tie to at least one of the statutory causes for Non-Renewal, Termination, or Immediate Termination and this tie or ties must be clearly identified. | To articulate clearly the reasons and rationale of the District's highest administrative officer for recommending the Non-Renewal, Termination or Immediate Termination of a Charter School based upon an evidence-backed qualified cause for taking such action. |

FLORIDA CHARTER SCHOOL APPEALS COMMISSION GUIDELINES FOR NON-RENEWAL,  
TERMINATION, OR IMMEDIATE TERMINATION APPEALS

| DOCUMENT(S)  | DEFINITION   | PURPOSE  |
|--|--|--|
| <p>The record of consideration and the written decision of the District School Board to Non-Renew, Terminate, or Immediately Terminate a Charter School.</p> | <p>This is a complete, though not necessarily a verbatim account or transcript, of the deliberations and discussions of the District School Board that preceded its decision. The record should include all documentation submitted to the Board by the parties, a record of the informal hearing including the substance of any testimony given not included in the documentary record, a record of the discussion and/or debate among Board members, and the motions and votes taken in regard to the matter including the final motion and vote.</p> <p>The written decision of the District Board must be one adopted by majority roll-call vote and must cite specific evidence-backed qualified causes for issuing the order to Non-Renew, Terminate or Immediately Terminate a Charter School.</p> <p>It shall be permitted for a member or members of the District School Board who were in the Minority on the vote to Non-Renew, Terminate, or Immediately Terminate a Charter School to file a Minority Report in which they specifically refute finding(s) and decision(s) of the Majority. The Minority Report, if any, shall be filed at the same time as the Majority Report.</p> | <p>Consolidates the record of the action and the reasons therefor as heard before and decided by a Majority of the elected members of the District School Board. Also allows the airing of view(s) of those members in the Minority.</p> |

FLORIDA CHARTER SCHOOL APPEALS COMMISSION GUIDELINES FOR NON-RENEWAL,  
TERMINATION, OR IMMEDIATE TERMINATION APPEALS

| DOCUMENT(S)  | DEFINITION   | PURPOSE   |
|--|--|---|
| <p>The Notice of Appeal and documentation submitted by the affected Charter School in support of its position.</p> | <p>This document is in two parts:</p> <p>First, a Notice of Appeal directed to the State Board of Education requesting it hear the Appeal of the affected Charter School of the Order of Non-Renewal, Termination, or Immediate termination issued by the District School Board.</p> <p>Second, a statement of the Charter School’s position on each and every finding and decision made by the District School Board that must contain specific evidence-backed refutations. These statements of position and the refutations may be supported by appropriate additional documentary evidence if a finding or decision of the District School Board was made in response to issues raised at the Informal Hearing or at the time the Board considered the action and that the school did not have the opportunity to respond to in writing prior to the vote(s) of the Board. They may also, if clarification or further explanation is needed on a particular point or points to adequately make the appellant’s case, contain such additional material and expert opinion necessary to facilitate a clear understanding of the issue(s) involved.</p> | <p>Provides the Charter School Appeals Commission and the SBE with the evidentiary and documentary base of the case in favor of the Charter School. Provides the specific arguments refuting the findings and decision(s) of the District School Board together with the documentation that supports the refutations.</p> |

FLORIDA CHARTER SCHOOL APPEALS COMMISSION GUIDELINES FOR NON-RENEWAL,  
TERMINATION, OR IMMEDIATE TERMINATION APPEALS

| DOCUMENT(S)   | DEFINITION  | PURPOSE   |
|---|---|---|
| <p>The documentation in support of its position submitted by the District School Board in response to the Appeal filed by the affected Charter School.</p>      | <p>This is a restatement of the position of the District Board that must also contain specific responses to the issue(s) raised by the Charter School in its Notice of Appeal that were not covered in the previously submitted Record of Consideration and Written Decision of the Board. It may contain, if necessary, revisions and extensions of points raised there that are in need of further clarification or explanation. This response may also contain such additional material and expert opinion necessary to facilitate a clear understanding of the issue(s) involved.</p> | <p>Allows the District School Board to complete its case based upon the filings of the affected Charter School.</p> |
| <p>All other documentation filed in connection with the appeal of the Non-Renewal Termination, or Immediate Termination Order of the District School Board.</p> | <p>This is material filed by persons or entities not officially associated with either party in support or opposition to either party's position that is submitted within the allowable time frames in an attempt to assist the Charter School Appeals Commission and the SBE in their deliberations, or to influence them toward adopting a particular position. This material may be as formal as a legal brief or as informal as letters and petitions.</p>  | <p>To allow the public or interested entities to express their opinions and positions on the pending appeal.</p>    |

FLORIDA CHARTER SCHOOL APPEALS COMMISSION GUIDELINES FOR NON-RENEWAL,  
TERMINATION, OR IMMEDIATE TERMINATION APPEALS

| DOCUMENT(S)  | DEFINITION   | PURPOSE  |
|--|--|--|
| Charter School Appeals Commission Recommendation and Rationale | This is the formal recommendation(s) for action and rationale adopted by a majority vote of the Charter School Appeals Commission that is sent forward to the SBE. The recommendations and rationale are to be fact-based and tied to at least one statutory cause for Non-Renewal, Termination, or Immediate Termination. The recommendation(s) is to be accompanied by the documentary record.   | As required by Statute this Document is designed to inform the SBE of the deliberations of, and the conclusions reached by, the Charter School Appeals Commission and to communicate its recommendation(s) for SBE action. Copies of the recommendation(s) and rationale are to be forwarded to each of the parties by the Commission. |
| State Board of Education Decision and Order                    | This is the formal written decision and Order to the District School Board adopted by majority vote of the State Board of Education. The SBE must consider the recommendation(s) made by the Charter School Appeals Commission, but may either adopt or reject the recommendation(s) of the Commission. The formal decision of the SBE is to be one that either approves or disapproves of the action taken by the District. If the decision is disapproval, the District has 30 calendar days from the receipt of the notification to act in accordance with the position adopted by the SBE. | Concludes, barring Judicial Review, the Non-Renewal, Termination, or Immediate Termination Appeals Process and remands the matter to the District School Board for appropriate action.   |

## SECTION IV

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### COMMISSION REVIEW OF NON-RENEWAL, TERMINATION, AND IMMEDIATE TERMINATION ORDERS

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#### Review Process

The process for the Charter School Appeal Commission's review of cases is laid out in s. 1002.33(6)(e)2, F.S. and in s. 1002.33(6)(e)5, F.S.. These sections read in pertinent part:

s.1002.33(6)(e)2, F.S. –

*“The Charter School Appeal Commission may receive copies of the appeals documents forwarded to the State Board of education, review the documents, gather other applicable information regarding the appeal, and make a written recommendation to the commissioner. This recommendation must state whether the appeal should be upheld or denied and include the reasons for the recommendation being offered.”*

s. 1002.33(6)(e)5, F.S. –

*“Commission members shall thoroughly review the materials presented to them from the appellant and the sponsor. The commission may request information to clarify the documentation presented to it. In the course of its review, the commission may facilitate the postponement of an appeal in those cases where additional time and communication may negate the need for a formal appeal and both parties agree, in writing, to postpone the appeal to the State Board of education. A new date certain for the appeal shall then be set based upon the rules and procedures of the state Board of education. Commission members shall provide a written recommendation to the state board as to whether the appeal should be upheld or denied. A fact-based justification for the recommendation must be included.”*

A reading of the sections above make it clear that within the time allotted to do its work, the latitude of the Review Commission is broad in terms of its approach to reviewing the cases it receives so long as it conducts a “thorough review.” However, the commission must only consider evidence that was before the district at the time it made its decision.

In the main, the review is to be conducted based upon the contents of the written documentation and filings presented by the parties, or forwarded to the State Board of Education. However, the commission is empowered to seek additional information. In one sense it is empowered to seek clarifying information, but it is also empowered to “gather other applicable information regarding the appeal.” There are no restrictions on the sources of this information, nor

FLORIDA CHARTER SCHOOL APPEALS COMMISSION GUIDELINES FOR NON-RENEWAL,  
TERMINATION, OR IMMEDIATE TERMINATION APPEALS

is it specified that the information must be documentary in form. It can be, at the discretion of the commission, documentary information, live testimony, or in any other form that the members deem useful. Further, the information need not come, nor be solicited from, the parties to the action. The commission may seek information from any source, provided such information was available to the District and the Charter School at the time the District's decision was made.

Given the above, the flexibility granted to the commission, and through it to its staff, in the statutory language ensures that it will be able to tailor its approach to each case in order to best serve the interests of impartiality and fairness.

In practice, regardless of any adjustments that may be made to meet the circumstances of any particular case, it is recommended that when an appeal is filed that the commission members be supplied with the documents submitted and that the commission direct its staff to fully review all filings and documents and prepare a report detailing the issues at controversy, the arguments on both sides and what support is present for each position. During the staff study period members should review the documents and notify staff of their thoughts on what steps might best be taken to clarify the questions before them or add context and depth to their understanding including the employment of outside consultants and experts.

### **The Commission Decision on Non-Renewal, Termination, or Immediate Termination**

The imposition of Non-Renewal, Termination, or Immediate Termination on a Charter School is a death sentence. Accordingly, the grounds for such an action are very limited. Each decision taken by a district school board must be based in fact and must be supported by at least one of the following statutorily sufficient causes. Each point a charter school seeks to refute in an appeal must address the same cause or causes and the argument(s) must be fact-based. The commission must review the materials submitted and determine if the district had sufficient relevant and material evidence before it to adequately support its specific finding to justify termination or non-renewal.

In other words, if a review of the facts provides evidence that a reasonable mind would accept as adequate to support the conclusion that termination was justified, the commission should not consider whether the evidence may have supported another conclusion, even if the commission may have come to a different conclusion if it had been charged with making the same determination.

On the other hand, the commission's review of the district's interpretation of charter school non-renewal and termination statutes does not require the same deference. The commission may overturn the district's interpretation of the law if it believes that interpretation is incorrect.

**Legally Sufficient Causes for Non-Renewal, Termination, or Immediate Termination of  
Charter Schools  
And  
Suggested Decision Benchmarks**

**A.  
Legally Sufficient Cause 1**

**FAILURE TO PARTICIPATE IN THE STATE'S EDUCATION ACCOUNTABILITY  
SYSTEM CREATED IN S. 1008.31, F.S., OR FAILURE TO MEET THE  
REQUIREMENTS OF STUDENT PERFORMANCE STATED IN THE CHARTER.**

- (1) Failure to participate in the state's educational accountability system

*This cause is rooted in statutory language. Any allegation by a district related to it must cite specific violations and supply supporting factual evidence for this charge to be sustained.*

**Suggested Decision Benchmarks:**

- (a) Has specific fact-based evidence been presented showing the charter school has failed to participate in the state's education accountability system?
- (b) Is the alleged failure to participate the result of an unwillingness or inability to conform to the statutory requirements?
- (c) Has the charter school been notified of its failures or shortcomings in terms of compliance and been given a chance to come into compliance?
- (d) Is there a pattern of non-compliance or failure to correct non-compliance or is this an isolated case?

- (2) Failure to meet the requirements of student performance stated in the charter.

*This cause is based in the terms of the charter itself. Any district alleging a violation based on the terms of the contract must cite specific examples and provide supporting factual evidence for the charge to be sustained.*

**Suggested Decision Benchmarks:**

- (a) What are the specific terms of the charter, and do the parties have a common understanding of them?
- (b) Are there extenuating circumstances which might be responsible for the alleged failure?
- (c) Is the failure an isolated case or it part of a pattern of failure?
- (d) Are the requirements as stated realistic or might the contract have placed the school in a no-win situation from the beginning?
- (e) What are the measurements used by the district to allege failure? Are they the same measurements that were agreed upon in the charter, and even if they are, are they valid?

- (f) Is there a possibility that the charter school could rectify the situation if given the chance?
- (g) Has the charter school been given a reasonable chance to rectify the situation, and, if so, with what result?

**B.**  
**Legally Sufficient Cause 2**

**FAILURE TO MEET GENERALLY ACCEPTED STANDARDS OF FISCAL  
MANAGEMENT.**

*The terms of this cause are dependent upon the definition that is used for the term “generally accepted standards.” This is a term of art among financial professionals as it does not speak to the issue of financial crime. A district alleging this cause must provide specific examples and factual evidence that the charter school failed to meet the standard.*

**Suggested Decision Benchmarks:**

- (a) What are the allegations?
- (b) How does charter school’s conduct of its financial affairs fail to meet the standard?
- (c) Is the failure to meet the standard an isolated incident or part of a pattern of inadequate fiscal stewardship?
- (d) Has the charter school been notified of its shortcomings and afforded an opportunity to rectify the situation?
- (e) Were there immediate steps (personnel changes, changes in procedures, etc.) the charter school could have taken which could have cured the problem if given the opportunity, or have such steps been tried to no avail ?
- (f) What is the severity of the allegations? Is the district’s action the result of a large shortcoming or of a combination of many small problems?
- (g) How did the problem(s) come to light? Were they discovered by the district? By the charter school? By an outside party? Was the charter school aware of the problem(s) before they were revealed?
- (h) If the allegation is based upon the charter school finding itself in a deficit position is it possible for the school to correct the situation through its private support network?

**C.**  
**Legally Sufficient Cause 3**

**VIOLATION OF LAW**

*There are many violations of law ranging from civil infractions to criminal felonies. Therefore, an allegation based on this cause should be material. In other words, it must rise to the level that in itself warrants the closure of a charter school due to its severity, or the level must be reached through a cumulative violation situation that in toto indicates an inability or unwillingness to conform to legal expectations. In either case, a district seeking to close a charter*

*school must cite specific examples of violation of law and support the examples with factual evidence as to why the violations warrant the closing.*

**Suggested Decision Benchmarks:**

- (a) What is the nature of the violation(s) alleged?
- (b) Are the violations technical in nature, or do they appear to be deliberate?
- (c) Do the violations involve those statutes that are specifically listed as applicable to charter schools and that cannot be waived?
- (d) Are the violations alleged attributable to certain identifiable persons within the charter school or its management, and could they be eliminated by the departure of these individuals?
- (e) Is there competent, substantial evidence to support the district's finding of a violation(s)?
- (f) Are the violations alleged indicative of a pattern of behavior that cumulatively indicate a general lack of concern of legal requirements on the part of the school?
- (g) Do the violations alleged tend to endanger the health, safety or welfare of the students, faculty or staff of the school?
- (h) Has the school been notified of its violations and been given a chance to take corrective action?
- (i) Could the violations be the result of honest mistakes or misunderstanding of legal requirements?
- (j) Are the violations alleged of such severity as to jeopardize the standing of the school in its community, or permanently damage that standing beyond all repair?

**D.**

**Legally Sufficient Cause 4**

**OTHER GOOD CAUSE SHOWN**

*“Good cause shown” is a term of art by which the legislature conveys a certain degree of discretion to the entity which is reviewing the matter. The first place such entity must generally look in determining what constitutes “good cause” is the statutory requirements and guidelines for charter schools. This could be found in the guidelines, the charter requirements, the charter contract and any place in the statute in which expectations for charter schools are set forth. For example, a material breach of the charter school contract would likely be “good cause” for termination. Basically, if a charter school runs afoul of, or is somehow materially failing to meet the overriding purposes for which charter school legislation was enacted and implemented, there would be “good cause” for termination.*

**Suggested Decision Benchmarks:**

Is the charter school materially failing to meet an expectation for that charter school set forth in statute or in the charter?

Is there an act or omission on the part of the charter school that materially fails to meet the overriding purposes for which charter school legislation was enacted?

**E.**  
**Legally Sufficient Cause 5**

**GOOD CAUSE HAS BEEN SHOWN OR IF THE HEALTH, SAFETY, OR WELFARE  
OF THE STUDENTS IS THREATENED**

*This cause is found outside the list of legally sufficient causes for Non-Renewal in S. 1002.33 (8)(a). It is located in s. 1002.33(8)(d) and it is the cause that if invoked will result in immediate termination of a charter school. It is not an independent cause. Its component parts are part of one or more of the other legally sufficient causes given above.*

*However, as it is the most drastic form of charter school termination possible, any appeal from a district decision to terminate based upon one of its parts must be kept in mind by the commission. The “good cause” set forth in subsection (8)(d) must necessarily be a higher standard of good cause than that which has been set forth in (8)(a) in order for the 90-day notice and hearing provisions of (8)(c) to have meaning.*

*Accordingly, the commission must take into account the totality of the circumstances presented as good cause in determining whether those facts and circumstances justified an immediate termination. This may include, but not be limited to, a review of the immediacy of the district’s concerns, the extent of those concerns, the amount of constructive notice the school had regarding these concerns, and the likelihood that the school could or would have remedied those concerns with proper notice.*

*If sufficient evidence of good cause has been shown this provision is triggered. Also, if there is substantial competent evidence that the health, safety or welfare of the charter school’s students is threatened, the provision is triggered.*

**Suggested Decision Benchmarks:**

- (a) See “C. Cause 3 Violation of Law,” above
- (b) See “D. Cause 4 Other Good Cause Shown,” above
- (c) Did the totality of the circumstances as set forth above, justify the district’s decision to forego the 90-day notice and hearing, and terminate immediately.