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STATE OF FLORIDA
CHARTER SCHOOL APPEAL COMMISSION

SOUTH PALM BEACH CHARTER
VS.
THE SCHOOL BOARD OF PALM BEACH COUNTY

DATE: Wednesday, June 13, 2018

TIME: Commenced at 9:30 a.m.
Concluded at 11:15 a.m.

LOCATION: 325 West Gaines Street
Tallahassee, Florida

REPORTED BY: MICHELLE SUBIA, RPR, CCR
Court Reporter and Notary
Public in and for the
State of Florida at Large

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COMMISSION MEMBERS APPEARING :

LOIS TEPPER, CHAIR

JENNA HODGENS

SONIA ESPOSITO

OSVALDO GARCIA

RICHARD MORENO

* * *

CERTIFICATE OF REPORTER

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P R O C E E D I N G S

1
2 CHAIR TEPPER: This is a meeting of the
3 Charter School Appeal Commission. Today is
4 June 13, 2018. My name the Lois Tepper. I'm the
5 Commissioner's designee to Chair the Commission.
6 Also here for the Department is Amanda Gay. She's
7 new to the Department. She'll be counsel for the
8 Appeal Commission today. Mr. Miller was here, but
9 I think he's gone.

10 Our panel today is made up of two
11 representatives from School Districts, two
12 representatives from Charter Schools. The statute
13 requires that it balanced, and indeed it is today.

14 We have a few administrative issues. The
15 restrooms on this floor are not operational so you
16 have to go to the first floor to use the restroom
17 or go to the cafeteria to get a drink or something
18 to eat. If you're not a DOE employee, you can't
19 leave this meeting and leave our floor without an
20 escort. There is an escort dedicated to this
21 meeting. He's at the elevator. So feel free to
22 excuse yourself and go, but you have to be
23 accompanied by that guard if you leave.

24 If sometime during the meeting you need a
25 break and I haven't taken a break, just give me

1 the high sign and we'll figure it out. We realize
2 it's a little bit of an issue today.

3 As you know, we're holding two hearings today
4 as a result of a Mandate by the District Court of
5 Appeal instructing us to provide fact-based
6 justification to support our recommendations to
7 the State Board.

8 We've previously heard both of these appeals.
9 We will work together as a group to form those
10 recommendations as we did before. Remember that
11 the DCA did not say your decisions were incorrect,
12 they said we did not give them enough facts to go
13 on for them to conduct an appeal. As the subject
14 matter experts, they rely on your expertise. If
15 this matter goes back to appeal, they have to have
16 something to review.

17 I've received comments from both parties
18 regarding the motion sheets as drafted, and I have
19 considered all those comments. We will proceed
20 today with the motion sheets as they stand.

21 The Charter Schools have requested that we
22 take official recognition of the case of
23 Renaissance Charter Schools, Inc. vs. the School
24 Board of Palm Beach County in which the
25 Administrative Law Judge found the Palm Beach

1 County School Board Policy that defines innovation
2 as beyond the statute quo constitutes an invalid
3 exercise of delegated legislative authority. This
4 Commission takes official recognition of that
5 case.

6 We have a court reporter today. Each time
7 you go to the microphone, if you could please
8 identify yourself. When you speak, you must be at
9 the microphone so she can hear you. She can only
10 hear one person at a time. If you talk over each
11 other, I'll stop you.

12 Sometimes I know you know this material so
13 well that you're going to speak really, really
14 quickly. Please slow down. I'm guilty of the
15 same thing. And she'll give me a sign, so I may
16 ask you just to slow down when you're at the
17 microphone.

18 So our procedure for today will be each side
19 will have ten minutes to tell us the overall story
20 of this Charter School. I'll read each issue into
21 the record. We will have three minutes on each
22 issue. The members will ask questions. We'll
23 discuss it, and we'll come up with a fact-based
24 recommendation and reason for our vote on each
25 issue, then we'll take a final vote.

1 After we finish the first one, we'll take a
2 break so that Amanda and I can go downstairs and
3 type up a recommendation, bring it back, let the
4 members review it, approve it, change it, and we
5 will have that for the State Board. We'll repeat
6 the whole process for the second appeal, probably
7 take a longer break, which will be your lunch
8 break, I hope, so we can type up that
9 recommendation, which has more issues, come back
10 up and do the same thing.

11 Any questions before we start?

12 (No response.)

13 CHAIR TEPPER: So the first appeal today is
14 South Palm Beach Charter vs. The School Board of
15 Palm Beach County. And we always start with the
16 School.

17 MS. ALEXANDER: I didn't get a chance to tell
18 you I had eye surgery on Monday so I'm keeping my
19 sunglasses on because my eyes are still sensitive.
20 I just wanted to let you know.

21 As you know, my name is Stephanie Alexander.
22 I represent the Applicant in this appeal and its
23 governing board. Attending with me here today is
24 Rod Jurado, the Chairman of the governing board of
25 Florida Charter Educational Foundation, Derek

1 Kelmanson, who is a representative of the ESP, and
2 other members, who, if necessary, will get up and
3 speak on particular issues.

4 I'm going to be brief here. The only single
5 substantive issue in this appeal is whether or not
6 the School Board's definition of innovation, which
7 is the only substantive reason that they denied
8 this appeal, be upheld.

9 Now, as the Chair just noted, Renaissance
10 Charter School vs. Palm Beach County School Board,
11 an Administrative Law Judge of this state has held
12 that the innovative definition used in the very
13 appeal -- and it hadn't even been adopted by rule
14 at the time this charter application had been
15 submitted -- was invalid and illegal for going
16 beyond the statute. Hence, it is our view that
17 since this was an illegal rule, an illegal
18 definition, that it can't be used as the basis for
19 the charter application denial at issue in this
20 case.

21 With that being said, I don't want to take
22 too much time. I'm going to defer right now to
23 the Chair, Rod Jurado, for a few comments. Thank
24 you.

25 MR. JURADO: Good morning. Rod Jurado,

1 Chairman of Florida Charter Educational
2 Foundation. It seems to me that as I heard the
3 unveiling from -- as the School was coming up,
4 that everything was fine and the authorizer on
5 that committee had reviewed the application, was
6 able to ask some questions that were corrected and
7 amended and approved it, passed it on to the
8 Superintendent. The Superintendent went ahead and
9 approved it as well.

10 It went to the School Board and with no real
11 prior knowledge by Derek, the point was pulled
12 from a consent agenda and the School Board made a
13 decision to go against the authorizer on the
14 committee and they came up with a definition or
15 came up with a reason that wasn't part of the
16 application, and that was it wasn't innovative
17 enough.

18 I guess the real question is, is how do you
19 define innovation? You know, is it doing
20 something that nobody else has done or is it
21 trying to improve something that is being done and
22 move it forward?

23 I was relatively new to the Board and I
24 wasn't even the Chairman of the Florida Charter
25 Educational Foundation, so I'm hearing all of this

1 secondhand. But as I understand innovation, it's
2 improving on a situation, not just coming up with
3 something brand new. And Charter Schools USA
4 has -- what attracted me to Charter Schools USA as
5 an ESP was they have been trying to measure goals
6 and student improvement all along as a group.
7 They had outgrown a measurement system and had
8 been recreating and building.

9 And, you know, I live in Tampa, and there's a
10 lot of construction going on in downtown Tampa.
11 And right now we're not seeing the buildings going
12 up. We're seeing the foundation being built. And
13 eventually when the foundation is being built
14 solidly, then we'll see the cranes coming in, the
15 highrises go in.

16 And I think that's a lot like any school, is
17 you build the foundation first, and looking at how
18 I, as a Board member and a Board Chair, can get a
19 report on a dashboard that tells me how schools
20 are doing and how that compares to the goals.
21 That's one thing.

22 I know my principals can look at each
23 classroom, each student in the classroom, each
24 grade level and be able to compare that to the
25 goals, and the computer -- mining computer

1 measurement is able to say they're on pace or
2 behind pace, I see green arrows or red arrows.

3 And in talking -- I've been now involved with
4 Charter Schools USA's schools and I've been
5 talking to other people at the national
6 conventions and the state conventions, and any
7 time I can get possible training, that's pretty
8 innovative. A lot of groups aren't doing that.
9 And because it's a proprietary thing, I'm not in a
10 position where I can give out and say here's what
11 we're doing, here's how we're doing it. I don't
12 need to see all the data. But I know that in
13 terms of measurement, I don't know that there's
14 anybody else who is as invested in measuring --
15 setting goals for students and being able to
16 measure their progress, being able to track the
17 amount of time they're spending on computers to do
18 math and to do reading and science and those types
19 of things. And we're seeing the changes. We're
20 seeing improvements.

21 So I guess the real question is, first of
22 all, how do you say that we don't have enough
23 innovation when innovation wasn't part of the
24 original charter or the application? And then
25 secondly, how do you come in and just give an

1 arbitrary decision as to what innovation may or
2 may not be?

3 And then, thirdly, we have been moving
4 forward. And like I told Superintendent Eakins in
5 Hillsborough County when I met with him, that I
6 liken Hillsborough County and other School Boards
7 like that, as big as they are, as being
8 battleships. It's real hard to turn around a
9 battleship when it's moving forward at full steam.
10 I see the Parent Choice Movement as being the
11 destroyers and the PT boats that surround that
12 battleship and support it. They can't certainly
13 take over the battleship or even the aircraft
14 carrier, but they protect it.

15 And I think that the challenge that's been
16 made that you're not innovative enough and not
17 giving a definition was already set up, it was
18 established after the charter was turned down, is
19 a tough argument. But we are being innovative on
20 a regular basis. We are trying to move our
21 students forward, and I think that we'll see the
22 progress.

23 I just saw some preliminary reports from the
24 third-graders that our learning gains are higher
25 than all but one of the schools around us in

1 Hillsborough County. And I've got five schools.
2 Our Board oversees five schools in Hillsborough
3 County. And I didn't see all those schools, but
4 the one that was the lowest performing was kind of
5 measured against the schools that surround us.
6 And the students that we're watching, the
7 third-graders especially, are moving forward.

8 And I think ultimately the reason for
9 innovation is to help move the needle forward a
10 little bit. Our third graders are doing better
11 and better. And what we can attribute to is how
12 much time they're being monitored, that the
13 teachers are able to watch them and help them to
14 the (inaudible), the kind of things that help them
15 grow individually. The tide's rising.

16 And so in reviewing the information that
17 happened before I was a Board Chairman for the
18 school in question in West Palm Beach, I believe
19 the School System just said it's time for civil
20 disobedience, which to me means that despite the
21 law, they decided that they wanted to, I guess,
22 take a stand against Charter Schools USA. And
23 they did by making up a definition of what
24 innovation is, that it wasn't measured until after
25 they made that definition up and didn't tell us

1 about it until the School Board turned us down.

2 So I know there's a lot more technicalities
3 involved in that, and we have people here who can
4 talk to the student support and the student
5 measurement process, and I hope you ask some
6 questions on that because I think, first of all,
7 innovation is tough to define, and you can't
8 define it after the fact and say that's not
9 innovative, we're already doing that.

10 Secondly, to say we're going to measure --
11 we're going to design a definition so that it
12 doesn't include you. And then, thirdly, be able
13 to say, here's what we're doing and to be told it
14 doesn't matter, is, I think, the real question
15 involved here.

16 So I don't know how much more time I have,
17 and I want to give up, so if Stephanie wants to
18 finish anything else out to give a history of the
19 school.

20 Like I said, I came to this argument a little
21 late. I wasn't part of the Charter process, but I
22 became the Board Chairman a couple of months after
23 I heard about it. And the first time I came to
24 this Board was I think in my fourth month as the
25 Chairman. So I'm surprised that it's still going

1 on so long. And I appreciate the fact of you
2 taking the time to continue to reconsider it. And
3 hopefully you'll see that we've done nothing
4 wrong.

5 We've tried to give information and do it
6 with -- and I think that our charter applications
7 are getting more and more robust and more and more
8 focused based on things that we've learned. But
9 it's hard to respond to something or even reply to
10 -- not reply -- it's hard to respond to something
11 that wasn't in the application in the first place
12 and then find out that that's a definition that
13 was used to deny us. And it wasn't even from the
14 authorizer or the authorizing team or the
15 Superintendent, it was kind of a capricious action
16 by the Board to say, we don't care, we're just
17 going to take a stand against this school.

18 So thank you very much for your time. And
19 I'll give it to Stephanie.

20 CHAIR TEPPER: Your time is actually up.
21 Thank you.

22 And for the District, ten minutes.

23 MR. FAHEY: Good morning, Commission members.
24 My name is Sean Fahey. I'm an Associate Attorney
25 with the Office of General Counsel for the School

1 Board of Palm Beach County. I have with me here
2 today A. Denise Sagerholm, another attorney from
3 our office. I also have with us Director of
4 Charter Schools for our District, Jim Pegg, and
5 the Director of Budget for our District, Jim Pegg.

6 MS. SAGERHOLM: Heather Knust.

7 MR. FAHEY: What did I say?

8 MS. SAGERHOLM: Jim Pegg.

9 MR. FAHEY: I said Jim Pegg twice. Heather
10 Knust is our Budget Director. Jim Pegg is our
11 Director of Charter Schools.

12 I'm going to make an objection first of all.
13 I think what we basically just heard was several
14 minutes of new evidence and testimony, which is
15 contrary to the procedures in Rule 6A-6.0781,
16 Paragraph 2A. The opening remarks are not
17 supposed to include -- "No evidence will be
18 received or testimony presented, only oral
19 argument." And I think a lot of what you just
20 heard about the Schools performing the innovation
21 practices was new. It was new to me.

22 But what I will say is the first comment that
23 I just heard was that innovation is not part of
24 the application. I think they need to review
25 closely the application they submitted because

1 there is a section of the application that
2 purports to describe how this proposed Charter
3 School will encourage the use of innovative
4 learning methods. And that's part of the state's
5 model application. It's also part of the Charter
6 School Statute.

7 The Charter School Statute requires an
8 Applicant to demonstrate how it will fulfill the
9 mandatory purposes of Charter Schools. And one of
10 those mandatory purposes is that School Board
11 encourage the use of innovative learning methods.

12 So in this application for South Palm Beach
13 Charter School, there are a series of practices
14 there are identified. But as we explain in our
15 written arguments and as the Board members
16 discussed -- and I'll get to their comments in a
17 moment from the dais -- the practices that are
18 described as being purportedly innovative about
19 the School, maybe although reframed slightly or
20 given different labels or names, are in fact the
21 practices that have been in our District for over
22 a decade. And that was the reason why they were
23 deemed not to be innovation.

24 And we also explain in our written arguments
25 why those practices have not been demonstrated to

1 be fulfilled in these existing schools that are
2 managed by Charter Schools USA in this District.

3 So I believe I heard something to the effect
4 of what is innovation, is innovation doing
5 something new or different, is it improving upon
6 something that's already being done. And as we
7 explain in our written arguments, this application
8 didn't demonstrate either of those things. And
9 that is our position for why there was good cause
10 to deny this application.

11 Now, again, Ms. Alexander made reference to a
12 ruling by an Administrative Law Judge, which this
13 Commission has taken official recognition of, we
14 have no objection to that. It's a published
15 decision in Westlaw. We do know it's not binding
16 on this Commission because it's just an
17 Administrative Law Judge's decision. We also know
18 that it's currently on appeal to the Fourth
19 District Court of Appeal.

20 And the final note is that that concerned a
21 policy that was adopted after this Charter School
22 was -- after this Charter School application was
23 considered and denied by the School Board. So
24 while some of the reasoning might arguably apply
25 here, the ruling itself does not because it

1 invalidated a policy provision that was not an
2 issue in this case.

3 So circling back to essentially what the
4 issues are before the Commission today, we have
5 two. The first issue is whether the School Board
6 deprived these Applicants of due process in
7 reviewing and denying this Charter School
8 application. And the second is whether the School
9 Board's reasons for denial were supported by
10 competent substantial evidence and whether they
11 amounted to good cause to deny this application.

12 And the answer to the first question is no,
13 the School Board did not deprive the Applicants of
14 due process. And the answer to the second
15 question is yes, the School Board's reasons are
16 supported by competent substantial evidence and
17 they are statutory good cause to deny this
18 application.

19 So what you've primarily heard from the
20 Applicants today is that the School Board denied
21 this application to send a message or because it
22 was being hostile to Charter Schools or some other
23 illegitimate reasons. And they make that point by
24 essentially isolating a few comments from a couple
25 of Board members.

1 But it's important to emphasize that these
2 comments do not represent the vote of the School
3 Board and they also don't represent the reasons
4 for denial. What this Commission is tasked with
5 determining is the reasons for denial that are in
6 the denial letter, looking to see if those are
7 supported by competent substantial evidence and if
8 those are statutory good cause.

9 So with that said, however, I think it's
10 really important to set the record straight on
11 this point and share just a few of those comments
12 that the Board members made to show that their
13 concern was about the purported innovative
14 practices of this school and their experience with
15 other schools managed by Charter Schools USA in
16 our School District.

17 And I'll start with Frank Barbieri, who said
18 plainly, quote, "This particular school
19 application, it has nothing innovative that we
20 don't have down the street at our other high
21 schools," end quote.

22 School Board Member Karen Brill, quote, "We
23 have some really great partnerships with some
24 really terrific Charter Schools who really are
25 serving a great purpose in our District, but I'm

1 with Mr. Barbieri, I say let's test the statute
2 regarding innovation now that you are bringing
3 this forward." Marsha Andrews, quote, "As a Board
4 member, I can decide to vote on what I think is
5 going to be best for our children in our public
6 schools," end quote. And then she later said,
7 quote, "We really don't need anymore duplication,"
8 end quote.

9 Keep in mind there are six -- at the time
10 this application was reviewed, there were six
11 Renaissance Charter Schools in the District managed
12 by Charter Schools USA with the same educational
13 model in essence. In fact, the Applicants rely on
14 that in order to chastise the School Board as if
15 it was duty bound to approve this application
16 because it apparently approved allegedly the same
17 one in the past.

18 Debra Robinson echoed the concern about
19 charters that, quote, "Just fill out the paperwork
20 properly and don't have anything special to offer
21 our children," end quote. And then finally the
22 most pertinent exchange between Board member Mike
23 Murgio and District staff, including the
24 Superintendent, where he asks staff if this school
25 was, quote, "Providing any program that we can't

1 provide or are not providing that is innovation
2 and different than what we are currently doing in
3 some of our schools," end quote. And the
4 Superintendent answered no.

5 And that's really the essence of our position
6 in this appeal today, the Superintendent saying,
7 no, there's nothing about this school that
8 satisfies that statutory criterion.

9 So I share these comments to make it clear to
10 this Commission that that's what the School Board
11 was concerned about. It was concerned about
12 whether the School is innovative, whether it
13 fulfilled this statutory requirement, which the
14 Board members believe is a statutory requirement,
15 and they're correct. And this application did not
16 demonstrate those purposes.

17 This Commission must reject these baseless
18 attempts to distort the School Board's legitimate
19 concerns about innovation and educational quality
20 and twist them into something else.

21 On the second issue, due process, we've heard
22 those arguments again today that the School Board
23 believes -- the School believes it wasn't provided
24 sufficient notice. And there are two points that
25 I have to say to that. First is that it's

1 contrary to the basic principles of School
2 District governance to suggest that they were sort
3 of hoodwinked into believing their application was
4 going to be approved simply because there was a
5 staff recommendation for approval. That's simply
6 not how it works when you're dealing with a
7 District School Board, particularly in this
8 Charter School context where it's the School Board
9 that has the decision-making authority, not the
10 Superintendent, not the Director of Charter
11 Schools, not any staff member. They can make a
12 recommendation. The School Board is not bound to
13 that recommendation. The School Board is bound to
14 do what it believes is right under the law. And
15 that's what happened here. So that's the first
16 point. So that due process argument can't hold
17 any water.

18 The second argument is even if they're
19 entitled to some kind of notice in advance that
20 certain issues might be ripe for School Board
21 discussion and might be a basis on which the
22 School Board would deny the application, they in
23 fact got that here.

24 In our written materials, we submitted an
25 affidavit from James Pegg, our Director of Charter

1 Schools, in which he explains that he informed
2 Derek Kelmanson, who is the contact person on the
3 application, he informed him that it was in the
4 best interest of his client to register to speak
5 at that School Board meeting and to address the
6 subject of innovation in this application. So
7 even if they were entitled to some kind of notice,
8 they got it. So that due process argument also
9 fails for that reason.

10 So I'll save my remaining remarks for --
11 well, I'm sorry, one more remark about innovation,
12 which is where is the definition? I feel like the
13 Board member's comments that we just read to you
14 explain what they're looking for regarding
15 innovation. It's also important to note in the
16 denial letter what was cited for the definition of
17 innovation. It wasn't some made up magical
18 standard that they couldn't have been on notice
19 about. It's the mere dictionary definition where
20 you're using new ideas or methods or new ideas
21 about how learning can be done. That's what
22 innovative means. It's in the statute. And the
23 Applicants purported to identify innovative
24 practices. They understood this was a
25 requirement. They just failed to fulfill it.

1 So with that, the School Board did have good
2 cause. Its decision is supported by competent
3 substantial evidence. And we will address the
4 other issues in more depth during the appropriate
5 time. Thank you.

6 CHAIR TEPPER: Thank you.

7 And so for the School, three minutes on the
8 issue of due process.

9 MS. ALEXANDER: With respect to the affidavit
10 of Jim Pegg, it's clear under the law that the
11 administrative record is not supposed to contain
12 materials that are additional to the application
13 in those proceedings. And a self-serving
14 affidavit that is created after the fact, we would
15 urge to be stricken or disregarded because they're
16 outside the scope of the administrative record.

17 Putting that aside, what happened here is
18 very clear. FCEF submitted a Charter School
19 application, an application that had been approved
20 seven times previously. The staff reviewed the
21 application, and all 19 sections they held to have
22 been satisfied, held to satisfy the law. The
23 Superintendent, contrary to Mr. Fahey's
24 representations here, actually recommended that
25 the application be approved. It was only when

1 some School Board members got involved that the
2 issue was pulled from the consent agenda and
3 discussed with hostility that they wanted to
4 create or perform an act of civil disobedience.

5 So what we have here is the staff reviews it
6 and thinks it's fine. The Superintendent reviews
7 it, places an official recommendation, thinks it's
8 fine, the application, and in fact it's placed on
9 the consent agenda. We had no notice that we
10 might need to defend the application at the
11 hearing -- I'm sorry -- at the School Board
12 meeting, we had none at all until we got there.
13 We didn't have a court reporter. We didn't have
14 people necessary to speak to particular issues
15 because we didn't know what the issues would be.
16 None had been explained to us because every single
17 section of the charter application at issue here
18 had been held to satisfy the standards.

19 So once we get to the School Board meeting,
20 Mr. Pegg apparently says with a wink and a nod you
21 might want to register, sign the card to speak
22 publicly. We don't know what that's about. He
23 didn't give specifics. Were we supposed to rise
24 up and thank the School Board for its
25 consideration? We had no idea what was coming and

1 we weren't prepared. That has to be the very
2 fundamental sense of due process.

3 Besides, even if we had in fact signed a
4 comment card and asked to speak, we would have
5 been provided three minutes to rebut an innovation
6 standard that had not been disclosed to us and not
7 been articulated.

8 I've raised this issue a number of times over
9 the years in terms of School Boards and due
10 process. And if ever a time that due process
11 should prevail, it's here. We had no notice that
12 it was going to go south.

13 Now, in fact, you're right, it's possible
14 that a decision maker can change their mind. But
15 we would have had to have notice of that to
16 provide evidence, to rebut. If it's going to be a
17 hearing, then we have to have notice and ample
18 time to do that, and we had none of that here.

19 I also wanted to take issue with Mr. Fahey's
20 representation that the definition of innovation
21 at issue here is not -- was not at issue in the
22 administrative proceeding where it was held that
23 the definition is illegal. That's not true. We
24 actually raised both the FCEF case, the charter
25 application here, and then the charter application

1 that you're going to hear afterwards as a basis
2 for asserting that their definition of innovation
3 was wrong.

4 So all that being said is if -- think about
5 it from your own perspective. If you have an
6 adverse proceeding with an entity and they say
7 everything is fine, the Chair says everything is
8 fine, the vote is positive that everything looks
9 fine, the fact that you get there and everything
10 changes without any notice to you beforehand has
11 to be a violation of due process. All we're
12 asking is for an opportunity to have had a
13 meaningful conversation with them about it. And
14 we can't since they even invented a standard after
15 the fact.

16 The definition of innovation that they use
17 says something new or different, they're
18 specifically defining, which is why the ALJ said
19 it was illegal, they were defining innovation to
20 mandate the Charter Schools do something different
21 than they did. So basically they were saying was
22 we're only going to approve an application that
23 doesn't -- or a school that doesn't compete with
24 us.

25 CHAIR TEPPER: Your time is up.

1 MS. ALEXANDER: And that flies in the face of
2 the Charter Statute. Thank you.

3 CHAIR TEPPER: Thank you.

4 Mr. Fahey.

5 MR. FAHEY: This is Sean Fahey again for the
6 School Board.

7 I'll first say that if I suggested that the
8 Superintendent hadn't recommended approval, I
9 misspoke. He did recommend approval. I fully
10 agree. But I'll reiterate what I said earlier,
11 which is that that's the way it works when you're
12 in a School District with the Superintendent
13 making a recommendation to the School Board, it is
14 not any guarantee of how the School Board is going
15 to proceed. Staff can even maybe suggest, well,
16 we think the Board might approve. But we never
17 know until they take that vote. And that's sort
18 of just the way a School Board governance is.
19 It's the frustrations or the joys, or however you
20 choose to see it.

21 With regard to whether Mr. Pegg's affidavit
22 should be stricken, we don't even need that
23 affidavit because of what I just said, that that's
24 the way it works. An Applicant for a Charter
25 School should be prepared to address the

1 application and all material respects at the
2 School Board meeting where the vote is going to
3 take place. No one should have to tell the
4 Applicant that. That's just the way it works. As
5 is true of any business item on the School Board
6 agenda. That's why we routinely invite Charter
7 Schools to come, even if they're on the consent
8 agenda, come and be prepared to address the School
9 Board, because it may not stay there. And the
10 School Board, of course, has the right to pull
11 items off the consent agenda. That's nothing
12 surprising or new.

13 And another point, it's unclear exactly what
14 evidence they were deprived of the opportunity to
15 present to the Board because of the way this
16 unfolded. The evidence is the application itself,
17 are those learning methods in the application
18 described as innovative, are they innovative or
19 not, the track record of the other Renaissance
20 Schools which are managed by Charter Schools USA,
21 are those a basis for the School Board to approve
22 yet another application? It's unclear how exactly
23 they were deprived of defending themselves and the
24 merits of their application here. So with that,
25 I'll end the due process points. There's

1 certainly no deprivation of due process here. It
2 was standard School District governance practice.

3 CHAIR TEPPER: Thank you.

4 So questions by Commission members for either
5 side?

6 When you ask your question, let each side
7 know who it's for. And I'll, of course, give the
8 other side a chance to respond.

9 MS. HODGENS: I have a question.

10 CHAIR TEPPER: Jenna.

11 MS. HODGENS: This is for the School. Was
12 there someone at the Board meeting that was able
13 to speak to the application?

14 MR. KELMANSON: Good morning, everyone. My
15 name is Derek Kelmanson from Charter Schools USA.

16 To answer your question directly, yes, myself
17 and the Chairman, Mr. Hage, were at that meeting.

18 MS. HODGENS: Okay. And is there any reason
19 why you chose not to speak at that meeting?

20 MR. KELMANSON: Well, we did not sign the
21 blue card for public comment. But if a Board
22 member had asked us is anyone from the School
23 here, we would have gotten up and responded to
24 their questions.

25 MS. HODGENS: Okay.

1 CHAIR TEPPER: Other questions?

2 MR. MORENO: On the public speaking -- this
3 is for the School District -- is that before or
4 after the item gets pulled from the consent
5 agenda?

6 MR. JURADO: Before.

7 MS. SAGERHOLM: No, public speaking on the
8 agenda item is --

9 CHAIR TEPPER: Please go to the microphone.
10 Thank you.

11 MS. SAGERHOLM: They could have -- they were
12 instructed --

13 THE COURT REPORTER: Who is this?

14 MS. HITCHCOCK: Denise Sagerholm.

15 MS. SAGERHOLM: -- in the letter that
16 Mr. Pegg sends out very routinely about how they
17 can sign up to speak, if they chose to. But
18 separate from that, when an item is pulled from
19 the consent, then they could ask then to speak on
20 it after there was discussion by the Board
21 members.

22 MR. MORENO: Okay. So there was an
23 opportunity to speak after the item was --

24 MS. SAGERHOLM: Was pulled.

25 MR. MORENO: -- discussed and pulled?

1 MS. SAGERHOLM: Yes.

2 MS. ALEXANDER: We would like to response.

3 CHAIR TEPPER: Quickly.

4 MR. KELMANSON: Not to my knowledge, there
5 was not afforded that opportunity. No one said is
6 there anyone here from the School that would like
7 to respond to these. Now, if I am supposed to
8 just like, you know, wave my hands and say, hey,
9 can I talk. But I didn't know what the procedure
10 was.

11 CHAIR TEPPER: Did you know that there were
12 blue cards you could have --

13 MR. KELMANSON: Yes, ma'am.

14 CHAIR TEPPER: -- filled out to speak?

15 MR. KELMANSON: Yes, ma'am.

16 CHAIR TEPPER: And did you?

17 MR. KELMANSON: No, I did not.

18 CHAIR TEPPER: Okay. Other questions by
19 Commission members?

20 (No response.)

21 CHAIR TEPPER: Then if someone would please
22 make the motion and choose did or did not, whether
23 the School District violated the Charter School's
24 due process rights, and then we will try to do the
25 because part.

1 Jenna.

2 MS. HODGENS: I move that the Commission find
3 that the School Board did not violate the Charter
4 School's due process rights because the Applicant
5 was aware of their ability to speak at the School
6 Board meeting and could have signed up on a blue
7 card and had an opportunity to address anything in
8 their application, as they should have been
9 knowledgeable about it.

10 That was a lot to ask, I'm sorry.

11 CHAIR TEPPER: That's okay. That's why we
12 have our court reporter.

13 MS. HODGENS: Are you doing good? I did it
14 slow.

15 THE COURT REPORTER: Yes. Thank you.

16 MS. HODGENS: Okay. Good.

17 CHAIR TEPPER: Okay. You've heard the
18 motion, that the Commission find the School Board
19 did not violate the Charter School's due process
20 rights. You've heard Jenna's explanation.

21 Is there a second?

22 MS. ESPOSITO: I'll second.

23 CHAIR TEPPER: Sonia.

24 So the motion is that the School Board did
25 not violate the Charter School's due process

1 rights.

2 Jackie.

3 MS. HITCHCOCK: I didn't hear who seconded
4 it.

5 CHAIR TEPPER: Sonia.

6 MS. HITCHCOCK: Jenna.

7 MS. HODGENS: Yes.

8 MS. HITCHCOCK: Sonia.

9 MS. ESPOSITO: Yes.

10 MS. HITCHCOCK: Osvaldo.

11 MR. GARGIA: No.

12 MS. HITCHCOCK: Richard.

13 MR. MORENO: No.

14 CHAIR TEPPER: So it's a tie, which means I
15 vote. I vote yes, which means that the due
16 process rights of the Charter School were not
17 violated, and we don't need to do the second part.

18 That will take us to the only substantive
19 issue that we have today, which is whether the
20 Applicant's educational plan failed to meet the
21 following standards. You can see the standards
22 set out there before you.

23 For the School, three minutes on your
24 educational plan.

25 MS. ALEXANDER: It is the Applicant's

1 contention that because the definition of
2 innovative, which the School Board illegally
3 defined after the fact to deny this application
4 and then adopted in its rules, which has been held
5 to be illegal, is actually dispositive of this
6 issue.

7 We were not required to be more innovative
8 than district schools, and that's what the
9 Administrative Law Judge held and the official
10 recognition of this case has been held here today.

11 More over, with respect to the innovation
12 issue, it's clear that it's a pretext. If you
13 look at the School Board's evaluation instrument,
14 nowhere does it say that we didn't meet the
15 guiding principles. In fact, it says the exact
16 opposite, that we did. In fact, we met all 19
17 sections. Further, the Superintendent says we met
18 the innovation standard, recommending the
19 application for approval.

20 They only decided -- the School Board only
21 decided to graft this innovative standard on this
22 application and others because it did not want
23 anymore competition from Charter Schools. And we
24 pointed out in our briefs, and we stand on them,
25 that if you look at the transcript of the meeting

1 where say they, yes, we know that this application
2 meets all the legal standards, but we want to
3 commit an act of civil disobedience, we're tired
4 of competition from Charter Schools. That's
5 illegal. They're not allowed to do that. It's
6 not functionally different than the Kentucky clerk
7 that decides that she doesn't want to sign
8 licenses for same sex marriages. The law is the
9 law and you have to follow it.

10 The School Board here engaged in civil
11 disobedience. That's crazy. They really went
12 rogue. And it's inappropriate for them to use
13 their own standards to thwart competition from
14 Charter Schools, when in fact the Charter School
15 Statute is premised upon allowing competition and
16 Charter Schools to flourish. That is why the ALJ
17 held that their standard was illegal.

18 Given the fact that the School Board itself
19 concedes that it basically approved the same --
20 the very same application seven times previously
21 with respect to this application, all 19 sections
22 were met, the Superintendent even recommends it
23 for approval, given all of that and the innovative
24 stuff spoken about previously by the Board Chair
25 here, we more than met whatever standards there

1 are in the application. If we hadn't, they
2 wouldn't have recommended it for approval. If we
3 hadn't, they wouldn't have approved the same
4 application seven times previously.

5 Moreover, the Charter Statute doesn't mandate
6 innovation. It says that we have to encourage the
7 use of innovative learning methods. And I think
8 it's clear by the application and all the previous
9 application approvals by this very School Board,
10 that in fact we met that standard. Thank you.

11 CHAIR TEPPER: For the District, three
12 minutes.

13 MR. FAHEY: Thank you. Sean Fahey for the
14 School Board again.

15 So I'll start by just briefly outlining an
16 argument you've heard from us before. It's in our
17 written materials about why innovation is required
18 to be demonstrated in the application.

19 It is true, one of the mandatory purposes of
20 Charter Schools is to encourage the use of
21 innovative learning methods, and that this is
22 required to be demonstrated in the application.
23 The Applicant suggests that that's not a standard,
24 it's not mandatory, it doesn't mean that a Charter
25 School actually has to be innovative or has to be

1 more innovative. But the Applicants ignore one of
2 the sponsor's duties ultimately is to ensure that
3 the Charter is innovative. And that's in
4 Subsection 5 of the Charter School Statute.

5 And we've gone back and forth on this over
6 the years and argued it out. The Applicant's
7 position is that that doesn't mean that the
8 Charter School has to demonstrate innovation in
9 the application stage. We submit, of course, it
10 does because the educational model of this School
11 is not going to change fundamentally from the
12 application phase to when we draw up the Charter.

13 And the term "innovative" occurs multiple
14 times in the Charter School Statute and it means
15 something. And what it was held to mean in this
16 case and what the School Board articulated it to
17 mean is what the dictionary says it means. And
18 the Applicants identify a series of purportedly
19 innovative practices. But they are not in fact
20 innovative when compared to the other schools in
21 this District. Maybe they are somewhere else in
22 Florida, I can't say. But they weren't for this
23 District.

24 Now, the Applicant had said that there's only
25 one substantive issue in this case, but that's not

1 quite true. There was a second reason in the
2 letter of denial relating to the School Board's
3 experience with other Charter Schools USA managed
4 schools in this District, one of which had just
5 received a D at the time this application was
6 denied. So the School Board wasn't only looking
7 at the fact that the purportedly innovative
8 practices of this School are not in fact
9 innovative, it was also looking at its experience
10 with other Charter Schools USA schools in the
11 District and saying we don't need another one of
12 these. There were six in operation at the time,
13 there was a seventh application that had been
14 approved. There was a charter essentially sitting
15 on the shelf. It was later terminated because the
16 school never opened.

17 The School was entitled to say, no, these
18 schools aren't good enough, we don't need another
19 one of these. It doesn't matter that they
20 approved seven applications in the past. It
21 doesn't mean that this application, evaluated on
22 its own merits, met the purposes of the statute.
23 And so we'll leave it at that. Thank you.

24 CHAIR TEPPER: Thank you.

25 So questions by Commission members regarding

1 the educational plan?

2 MS. ESPOSITO: I have a question for the
3 District.

4 CHAIR TEPPER: Sonia.

5 MS. ESPOSITO: And I'm trying to wrap my head
6 around this one more time. Your review team,
7 which is the group of experts in your District,
8 reviewed this application and they found that this
9 application met standards in every one of the
10 sections, including the educational plan and so on
11 and so forth. I'm trying to understand what is it
12 that the staff missed that the Board -- and I
13 understand that all they do is make a
14 recommendation, but what is it that the Board saw
15 that staff missed in regards to that innovation?

16 MR. FAHEY: So I can answer that question
17 first with something we've addressed in our
18 written arguments was that the evaluation
19 instruments, which is part of the reason we
20 objected to the motion sheet simply reciting the
21 language of the evaluation instrument, that is
22 what District staff is looking at. And it gives
23 two criteria.

24 The clear and compelling -- at the time, it
25 didn't make any reference to the statutory

1 purposes of Charter Schools and so the District
2 staff, in looking at that, they weren't alerted to
3 that requirement. But the School Board was
4 concerned about that requirement and therefore
5 entered into an exchange with the educational
6 leadership of the District, including the
7 Superintendent, and asked, okay, well, this is
8 what we're concerned about in this application, it
9 doesn't demonstrate these innovative practices.
10 And the Superintendent said unequivocally, no, it
11 does not. And if you can give me a moment.

12 Do you have anything?

13 CHAIR TEPPER: Gentlemen, you have to go to
14 the microphone to speak and state your name.

15 MR. FAHEY: I'm sorry. That concludes my
16 answer.

17 CHAIR TEPPER: Okay. Did the School want to
18 respond to that?

19 MS. ALEXANDER: Yes, a couple of things. We
20 do acknowledge that the statute also says that the
21 Charter must be innovative. But we all know here,
22 we are all in the Charter industry, the Charter is
23 the contract, so the contract has to be
24 innovative. That's sort of a red herring argument
25 from the School Board here.

1 They also say, well, there had been a D
2 school and that's what we were concerned about.
3 Well, first of all, that wasn't even a school run
4 by the Florida Charter Educational Foundation; as
5 such, it's inappropriate to hold that governing
6 board responsible.

7 The other issue is Mr. Fahey says that the
8 School Board was suddenly concerned about
9 innovation. It's not true. If you read further
10 in the transcript, the Superintendent says they
11 are doing something -- or maybe it was Mr. Pegg --
12 they are doing some things that are innovative.
13 So it's not true that he equivocally says, no,
14 they're not being innovative at all. Plus if you
15 look at the application, it goes on for page after
16 page after page and it describes the innovative
17 learning methods that the ESP model uses here.

18 All that being said, the issue is they
19 defined -- they adopted a standard of innovation
20 that's not in the Charter School Statute, that's
21 not in the evaluation instrument, and it's not in
22 the rules. The ALJ held that that was illegal.
23 It's illegal for them to set that standard here
24 because it basically just allows them to deny
25 applications that they know are legally valid just

1 so that they don't have to have increased
2 competition. And that basically thwarts the whole
3 premise of the School Choice Movement. So thank
4 you.

5 CHAIR TEPPER: Other questions?

6 MS. HODGENS: I have questions.

7 CHAIR TEPPER: Okay.

8 MS. HODGENS: Are you --

9 MR. GARCIA: I have a question.

10 MS. HODGENS: Okay. Go ahead.

11 MR. GARCIA: For the School Board. Can you
12 tell me about the panel that reviews the
13 application, what kind of experts do you have on
14 that panel?

15 MR. PEGG: I'm Jim Pegg. I'm the Director of
16 the Department of Charter Schools for the School
17 District of Palm Beach County.

18 The application review team is comprised of
19 expertise from the School District. For example,
20 for curriculum, we utilize people that have been
21 trained or are specialists in the area of
22 curriculum. Likewise, when we talk about the
23 mission and vision, we look for people who have
24 been working with school approval plans and also
25 with the development of other mission and vision

1 statements and directions to be used for the
2 School District. And, of course, when we talk
3 about budget and finance, we use the budget and
4 accounting department to review those parts of the
5 application.

6 So the application is reviewed by expertise
7 of the School District in the various subject
8 areas of the application itself.

9 MR. GARCIA: I assume that they're very well
10 acquainted with state statute?

11 MR. PEGG: They are. As we enter into the
12 review of the application, there is training for
13 the review team so that they are made aware of any
14 changes or any specifics of the -- we'll say the
15 evaluation criteria of the application, that they
16 can use that appropriately as they make their
17 assessment of the application.

18 MR. GARCIA: And their recommendation was to
19 approve the charter?

20 MR. PEGG: They had brought forth their
21 various assessments of each of the sections as
22 having either met or partially met the standard.

23 MR. GARCIA: That's all my questions.

24 CHAIR TEPPER: Okay.

25 MS. HODGENS: Can I have a question before he

1 leaves?

2 CHAIR TEPPER: Yes, ma'am.

3 MS. HODGENS: Okay. So, Mr. Pegg, when you
4 talk about the experts on the review team and they
5 brought forward -- I believe this one met on all
6 areas. I don't think there were any partially
7 meets on this application, it all met. So was
8 there anyone that brought up anything of those
9 experts? They reviewed the whole application,
10 correct?

11 MR. PEGG: Correct.

12 MS. HODGENS: Okay. Did anyone bring up
13 anything during the review team meetings that
14 would bring you to the conclusion that anyone was
15 concerned about innovation or doing something
16 differently?

17 MR. PEGG: Also inclusive with the
18 application review team, I take the applications
19 to the leadership of the District to discuss the
20 assessments that the review team has made. And
21 when we took it to the leadership, the leadership
22 had brought some questions for it about whether
23 there was innovation or innovative actions in the
24 application.

25 MS. HODGENS: And did that happen prior to

1 the recommendation to the Superintendent?

2 MR. PEGG: It always does, yes.

3 MS. HODGENS: Yes, okay. All right. Thanks.

4 MR. PEGG: You're welcome.

5 CHAIR TEPPER: I'm sorry, do you have a
6 question?

7 MS. ESPOSITO: Can I follow up on that?

8 CHAIR TEPPER: Go ahead.

9 MS. ESPOSITO: So they usually make some
10 comments. Were those comments then added to the
11 evaluation form? Was the School able to see those
12 comments or concerns or the evaluation form stayed
13 as it was?

14 MR. PEGG: The evaluation form stayed as it
15 was. The comments that were made to me I did
16 share with Mr. Kelmanson on a couple of
17 opportunities that he and I spoke.

18 MS. ESPOSITO: Okay. Thank you.

19 CHAIR TEPPER: Other questions?

20 MS. HODGENS: I have a question for the
21 School. Can you tell me what is innovative about
22 your program? I'm on page -- hold on a second,
23 I'm not ready for this computer thing -- page 3 of
24 878 on your application, and I just want you to
25 talk me through what is innovative about your

1 program.

2 MS. EVANS: Good morning. My name is Jodi
3 Evans. I'm the lead principal for Charter Schools
4 USA.

5 MR. KELMANSON: Section 3 starts on page 12.

6 MS. ALEXANDER: Was that what you're looking
7 at, Jenna?

8 MS. HODGENS: I'm actually looking at page 3
9 where it talks about "To achieve its goal of
10 meeting high standards of student achievement, the
11 School will use unique and innovative academic
12 components." It's on page 3.

13 I'm on a PDF so -- I mean, if that's not
14 where the innovation is and you have it elsewhere,
15 you can talk me through that, too, but I'm here
16 right now.

17 MS. EVANS: Okay. No problem. The first
18 thing that we do as a school is when students come
19 into our schools, we develop a personalized
20 learning plan with them based off of their data,
21 whether they're coming from schools within the
22 District or schools within the state, so we want
23 to make sure that we have baseline data on them to
24 get started and functioning in classrooms that are
25 appropriate for them. So the personalized

1 learning plan has started.

2 Within the personalized learning plan, we
3 have goal setting, so the students have quarterly
4 grades that they set goals for. We also have NWEA
5 benchmark data that we put in so they are -- all
6 of their data within the first two weeks of school
7 is in realtime, so we have that data for them.
8 That is also housed on the personalized learning
9 plan.

10 Then students, based on their data, have data
11 chats with teachers and they complete those
12 quarterly. And they also lead to student-lead
13 conferences, which has been amazing in our schools
14 with parents and teachers. So that's something
15 that has collaborated the community and the
16 parents and all the stakeholders.

17 So I feel like the personalized learning plan
18 is really our foundation where we start with that
19 innovation because in that plan, there's also
20 anything with student interest. So if they have
21 particular interests and the student is
22 struggling, the teacher can pull the personalized
23 learning plan and try to create learning pathways
24 based on the student's interests. And I believe
25 that is in our Section 3 there.

1 The next thing we do is we have timely and
2 effective measurement tools. So as I discussed,
3 our NWEA benchmark assessments, those actually
4 create -- it's a growth program that we use. So
5 students will take it as an adaptive test, so it
6 gives us exactly what level students are on.

7 So when the students receive their
8 information back, it actually gives the teacher,
9 the students, and the parents the pathway. So it
10 tells them what skills they need to learn next in
11 order to move up in the next levels. So it's
12 really a great tool for parents especially who are
13 at home and not really sure what to use.

14 We go ahead and pull the learning continuum
15 for the NWEA and we show them these are the skills
16 that your student needs to work on first at home,
17 if you can help us. Then the teacher has those
18 skills as well so they can pull small groups and
19 differentiate instruction using that tool as well.

20 And what's very unique about it is that they
21 have pathways that we can create. Many of our
22 schools have technologies these days, so it's very
23 simple for a teacher to go in and create a pathway
24 for a student, and that will link them to a
25 specific program such Khan Academy, where they can

1 have individualized instruction and give them
2 other opportunities.

3 So not only are they learning from a teacher
4 in the classroom, they're also learning from Khan
5 Academy videos and different things so that if
6 they're interested and they learn better on
7 technology than they do per se in the classroom
8 one on one with a teacher, that's available
9 through that program, too.

10 Another timely tool that we use as a
11 measurement is our common monthly assessment. So
12 our NWEA is more a growth measure that we try to
13 build the students up. Every month, all students
14 will take common monthly assessments, that's also
15 in Section 3, where we pull data based on the
16 grade level standards. So not only are our
17 schools looking at where our students are, but
18 we're also assessing grade level standards as
19 well. So we do NWEA benchmarks and we do common
20 monthly assessments. And that all is housed on
21 the PLP.

22 With that information, we have data chats
23 with teachers, students, and parents, which I feel
24 are very innovative. We have them biweekly in our
25 schools. Some schools may have more, dependent

1 upon where they are in professional development.

2 But one of the most unique things as a
3 principal that I spend a lot of time explaining
4 with parents is our standards-based grading
5 policy. So we are truly a standards-based grading
6 organization. So students not only have to show
7 mastery of standards, but that's the only thing
8 that they're actually graded on. So a student who
9 turns in a late assignment cannot lose points for
10 that. We give them multiple opportunities within
11 a quarter to show mastery of the standard. So we
12 really want to show if they're actually mastering
13 grade level standards or where they are.

14 This has been truly an educational
15 opportunity for families that we serve so I feel
16 like it's really an innovative practice because we
17 do spend so much time as administrators in
18 buildings and teachers educating our parents and
19 students. So if a student is below grade level,
20 we're going to show that obviously if they're not
21 getting an A or a B, they shouldn't be below grade
22 level D, F, and then link that up with our NWEA
23 data showing them these are the skills. So all is
24 housed together.

25 Another thing that we do are IFPs,

1 instructional focus plans. So based on all the
2 data that we have within the building, we
3 create -- during our data chats, we create
4 targeted assessments and many lessons that we use
5 in the classrooms where students will again
6 reteach standards. The teachers will reteach
7 standards for the students and provide
8 opportunities to learn there.

9 Based on our IFPs, if we still have a group
10 of students after a week of reteaching, then we
11 have after school free tutoring where students can
12 come and they can again have one-on-one or
13 one-to-three level ratio tutoring after school
14 based on those standards as well.

15 One of our biggest things that we do for our
16 teachers in our organization is we have ongoing
17 professional development. So teachers are given
18 opportunities weekly where we provide professional
19 development based on their needs. So we look at
20 it in a whole different -- in a lot of different
21 ways.

22 So based on classroom walk-throughs, we
23 create a plan for the month of things that they
24 need to work on. We can also differentiate our PD
25 for our teachers in that regard because CSUSA

1 provides a PD bank through Edmodo for all the
2 schools. So they're able to have access to
3 anything that that school may need, depending upon
4 where their weaknesses are and where their
5 strengths are.

6 We also offer Cadres, which is a once a month
7 meeting for all of our instructional coaches, a
8 principals institute, which is once a year for
9 professional development, and have we quarterly
10 meetings and monthly meetings with principals for
11 their professional development as well for
12 leadership.

13 We have a leading edge program where anyone
14 who is interested in forwarding their career or
15 becoming a leader within our organization, they
16 get additional professional development after
17 school, on weekends. And then our TLC community,
18 which is brand-new teachers.

19 MS. HODGENS: Can we go back to the
20 personalized learning plan for a minute?

21 MS. EVANS: Sure.

22 MS. HODGENS: Does every student have a plan?

23 MS. EVANS: Yes.

24 MS. HODGENS: And it's individualized to that
25 student --

1 MS. EVANS: Yes.

2 MS. HODGENS: -- that comes into your school?

3 MS. EVANS: Yes.

4 MS. HODGENS: Okay. Can I ask another
5 question of the District?

6 CHAIR TEPPER: Certainly.

7 MS. HODGENS: I'm sorry. Thank you.

8 MS. EVANS: No problem.

9 MS. HODGENS: So to the District then. Do
10 you have schools in your District that have a
11 personalized learning plan for every student that
12 comes into the school, has an individual plan
13 based on their needs, ESE or not?

14 MR. FAHEY: I'm sorry, could you reask that
15 question?

16 MS. HODGENS: Yeah, I think so. Do you have
17 schools within your District that do personalized
18 learning plans where every student that comes into
19 the school has a plan of their own and that plan
20 is monitored and, you know, goals and objectives
21 are changed for that student based on those plans?

22 MR. FAHEY: Mr. Pegg.

23 MR. PEGG: Sure. And I think that's the
24 issue at hand with regards to the School District
25 of Palm Beach County in this application. Much of

1 what was described just now by the Applicant's
2 administration has been regular practice in the
3 School District of Palm Beach County since the
4 '90s. We've been developing individual
5 educational plans for regular education students
6 since we developed the educational data warehouse
7 in the 1990s, where we sit down with teachers and
8 students sit down together in data chats, and also
9 include parents to share the data and the
10 information so that they can develop those plans
11 that are going to lead to the success of the
12 student. That's why that didn't look different to
13 us. We have been doing it for quite a long time.
14 We too have diagnostic --

15 MS. HODGENS: I'm only going to ask you about
16 the personalized learning plan, okay?

17 MR. PEGG: Okay.

18 MS. HODGENS: Because I know -- some of the
19 other things I understand.

20 MR. PEGG: Okay.

21 MS. HODGENS: All right. Thank you.

22 MS. ALEXANDER: Can we respond?

23 CHAIR TEPPER: Yes, ma'am.

24 MS. ALEXANDER: If you look at the
25 transcript, in fact, I think it was this --

1 sometimes the applications are blurring now -- but
2 it was asked about the -- and one of the School
3 Board members actually said, why aren't we doing
4 these individual kind of plans or something to
5 that effect. So it's not in evidence that in fact
6 the School Board does these individual learning
7 plans for every single student in the District.
8 In fact, that's not accurate, and it's not --
9 there's no evidence to that effect. Thank you.

10 CHAIR TEPPER: For the School I have a
11 question. Does your application in fact state and
12 track the statute that the School will encourage
13 the use of innovative learning methods?

14 MS. ALEXANDER: I believe so. Mr. Kelmanson
15 will speak to that, Ms. Chair, Madam Chair.

16 MR. KELMANSON: As you all know, this charter
17 application was submitted in August of 2014. The
18 DOE model charter application has a Section 1, and
19 in that Section 1 under Subsection C, describes
20 how the School will meet the prescribed purposes
21 of Charter Schools found in law, and there is a
22 short response to that.

23 CHAIR TEPPER: Okay.

24 MR. KELMANSON: Because the way the model
25 application is laid out, as everyone knows, is you

1 kind of give a synopsis, 10,000 feet view in
2 Section 1. But then everything that Ms. Evans
3 mentioned is found in great detail in Section 3.

4 CHAIR TEPPER: Perfect. Thank you.

5 Other questions?

6 (No response.)

7 CHAIR TEPPER: Okay. Would somebody like to
8 try to make the motion based on what we just heard
9 and choose whether the School Board did or did not
10 have competent substantial evidence to support its
11 denial?

12 Jenna.

13 MS. HODGENS: I move that the Commission find
14 that the School Board did not have competent
15 substantial evidence to support its denial of the
16 application based on the Applicant's failure to
17 meet the standards for the educational plan
18 because --

19 CHAIR TEPPER: Go ahead. And then we'll all
20 pitch in.

21 MS. HODGENS: Yeah. And you guys will really
22 need to help pitch in on this one. Because the
23 application addresses areas of innovation based on
24 the prescribed purposes found in the Charter
25 School Statute of encouraging the use of

1 innovative learning -- hold on.

2 MS. ESPOSITO: Methods.

3 MS. HODGENS: Learning methods, period.

4 Thank you.

5 MS. ESPOSITO: Can we add as stated in the
6 model application?

7 CHAIR TEPPER: As stated in the model app,
8 yes.

9 MR. MORENO: Yeah, add something for the
10 model application.

11 CHAIR TEPPER: Okay.

12 MS. ESPOSITO: Yeah, if we can do that.

13 CHAIR TEPPER: Okay.

14 MR. GARCIA: How about say as also evident by
15 the approval of the review committee, a provision
16 that the School Board had.

17 MR. MORENO: Or the recommendation.

18 MR. GARCIA: The recommendation.

19 CHAIR TEPPER: As evident by the
20 recommendation of the District's review committee?

21 MR. GARCIA: Correct.

22 CHAIR TEPPER: Anything else?

23 (No response.)

24 CHAIR TEPPER: Okay. So you've heard the
25 motion that the Commission find that the School

1 Board did not have competent substantial evidence
2 to support its denial of the application based on
3 the Applicant's failure to meet the standards for
4 the educational plan because of all the reasons
5 that this Board just said, which we're going to
6 reduce to writing and you'll still get to pass on.

7 Jenna has made the motion. Is there a
8 second?

9 MR. GARCIA: I'll second.

10 CHAIR TEPPER: Osvaldo.

11 So if you vote yes, you are voting for the
12 Charter School. If you vote no, you are voting
13 for the School District.

14 Jackie.

15 MS. HITCHCOCK: Jenna Hodgens.

16 MS. HODGENS: Yes.

17 MS. HITCHCOCK: Osvaldo Garcia.

18 MR. GARCIA: Yes.

19 MS. HITCHCOCK: Sonia Eposito.

20 MS. ESPOSITO: Yes.

21 MS. HITCHCOCK: Richard Moreno.

22 MR. MORENO: Yes.

23 CHAIR TEPPER: So the School prevails on that
24 issue, we do not need to do Section 2.

25 So before we take the final motion to grant

1 the appeal, we're going to take a 20-minute break,
2 come back at ten minutes till 11:00. We're going
3 to take the court reporter with us. We're going
4 to go draft something.

5 Both sides will have a copy, the members will
6 have a copy. We'll talk about it and adjust it as
7 necessary. And based on that recommendation,
8 we'll take a vote on that.

9 The guard should be at the elevator.
10 Everything is on the first floor, restroom, food.
11 Feel free to bring anything back to this floor
12 that you like.

13 And then after we finish the first one, we're
14 going to go right to the second one. And I don't
15 plan to take a break until we need to type again,
16 okay? If it comes up we may, but that's what I
17 plan for now. So we'll be back at ten minutes of
18 11:00.

19 (Whereupon, a recess was taken.)

20 CHAIR TEPPER: I'm sorry it took us longer
21 than we thought. We'll allow more time on the
22 next one.

23 Basically the language that the members
24 discussed you will find in paragraph D, due
25 process, at the end of page 2 and the beginning of

1 page 3, and in Issue 1, educational plan,
2 paragraph C.

3 For Commission members, do you have changes
4 to what we set out? Nothing is sacred. Please
5 feel free to edit.

6 MS. ESPOSITO: I'm okay with it.

7 CHAIR TEPPER: Sonia, you're okay?

8 MS. ESPOSITO: Yes.

9 MR. MORENO: I'm fine.

10 MR. GARCIA: Yes.

11 MS. HODGENS: I'm okay with it.

12 CHAIR TEPPER: I'm going to give each of the
13 parties an opportunity if there's something in
14 there, even if it's in our citing the facts.

15 For the Charter School, is there anything
16 that we misstated?

17 MS. ALEXANDER: I don't believe so.

18 CHAIR TEPPER: For the District?

19 MR. FAHEY: Just a couple of small points. I
20 haven't actually finished reading it yet. Shame
21 on me. But I do note two things, so I'll step up
22 here.

23 The first paragraph is just a housekeeping
24 point. We object to the reference to the
25 Applicants as a Charter School. Just refer to

1 them as Applicants exclusively or rather their
2 actual entity name.

3 CHAIR TEPPER: All right.

4 MR. FAHEY: Page 2, the last sentence of
5 paragraph 2A, we would ask that the arguments we
6 asserted here today also included the Renaissance
7 Charter School that did receive a grade of D the
8 prior year. So it wasn't only the innovative
9 learning methods issue being asserted here today.

10 CHAIR TEPPER: Okay.

11 MR. FAHEY: And then the final point, page 3,
12 paragraph C, the first paragraph, we would just
13 ask that instead of referring to the School
14 District shall vote to approve or deny, the
15 recommendation refer to the School Board.

16 CHAIR TEPPER: And where is that one? I
17 missed that.

18 MR. FAHEY: It's the last sentence of the
19 first paragraph, first full paragraph on the page.

20 CHAIR TEPPER: Oh, the School Board?

21 MR. FAHEY: Uh-huh.

22 CHAIR TEPPER: All right. I'm happy to make
23 that change.

24 MR. FAHEY: Okay. Thank you.

25 MS. ALEXANDER: Can we respond?

1 CHAIR TEPPER: Certainly.

2 MS. ALEXANDER: Just with respect to the
3 school grade, the D school, that was not an FCEF
4 school. It's beyond the scope. It was a
5 Renaissance School and this is the FCEF appeal.
6 They raised the argument, but it's not relevant to
7 this proceeding.

8 CHAIR TEPPER: Okay. Based on what everybody
9 has said, I'm happy to refer to the Appellants as
10 Appellants/Applicants, and I'm happy to change
11 School District to School Board. Other than that,
12 unless Commission members have anything else, I
13 would like to have a motion to allow our staff to
14 make, as we reread it, any corrections to grammar,
15 scrivener's errors, and the like.

16 Could I have that motion?

17 MS. HODGENS: I'll make that motion.

18 MS. ESPOSITO: Second.

19 CHAIR TEPPER: All in favor.

20 (Chorus of ayes.)

21 CHAIR TEPPER: Okay. So that leaves us with
22 one final motion, to grant the appeal of the
23 Charter School.

24 Osvaldo.

25 MR. GARCIA: I move the Commission recommend

1 that the State Board of Education grant the
2 appeal.

3 CHAIR TEPPER: Second?

4 MR. MORENO: I'll second it.

5 CHAIR TEPPER: Richard.

6 Jackie.

7 MS. HITCHCOCK: Osvaldo Garcia.

8 MR. GARCIA: Yes.

9 MS. HITCHCOCK: Richard Moreno.

10 MR. MORENO: Yes.

11 MS. HITCHCOCK: Sonia Esposito.

12 MS. ESPOSITO: Yes.

13 MS. HITCHCOCK: And Jenna Hodgens.

14 MS. HODGENS: Yes.

15 CHAIR TEPPER: Thank you. So the
16 recommendation for this Charter School and the
17 second one will actually be heard on the July 18th
18 School Board meeting. That's in Orlando. As it
19 gets closer and we can tell where you are on the
20 agenda, Jackie will send you the agenda as soon as
21 it's ready and send you the materials that you
22 need, where to appear, where the meeting is and
23 like that, okay.

24 (Whereupon, proceedings were concluded at
25 11:15 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MICHELLE SUBIA, Registered Professional Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages, numbered 3 through 64, are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 24th day of June, 2018.



MICHELLE SUBIA, CCR, RPR
NOTARY PUBLIC
COMMISSION #GG224273
EXPIRES JUNE 7, 2022

South Palm Beach Charter vs. The School Board of Palm Beach County

Due Process

Whether the Charter School's due process rights were violated by the School Board:

I move that the Commission find that the School Board did or did not [pick one] violate the Charter School's due process rights because:

Motion:

Seconded:

Vote Yes_____

No_____

If the Commission finds that the School Board **did** violate the Charter School's due process rights, the Commission must determine whether such action was harmless error.

I move that the Commission find that the School Board's denial of due process was or was not harmless error.

Motion:

Seconded:

Vote: Yes_____

No_____

South Palm Beach Charter vs. The School Board of Palm Beach County

Educational Plan – Issue One

Whether the Applicant's Educational Plan failed to meet the following standard:

1. Mission, Guiding Principles and Purpose: Statutory Reference(s): s. 1002.33(2)(a); s. 1002.33(2)(b); s. 1002.33(2)(c); s. 1002.33(6)(a)1.; s. 1002.33(7)(a)1., Florida Statutes.	
A. A clear and compelling mission and vision statement that defines the guiding principles and values of the school.	
B. Adequate references to evidence that the application fulfills the statutory guiding principles and purposes for charter schools. (Note: the substance of each addressed principle and purpose will be evaluated within appropriate application sections.)	

I move that the Commission find that the School Board **did** or **did not** [pick one] have competent substantial evidence to support its denial of the application based on the Applicant's failure to meet the standards for the Educational Plan because:

Motion:

Seconded:

Vote Yes _____

No _____

If the Commission finds that the School Board did have competent substantial evidence to support its finding, a vote must be taken on whether that finding constitutes good cause for denial.

I move that the Commission find that the Applicant's failure to meet the standards for the Educational Plan, **was or was not** [pick one] statutory good cause for denial.

Motion:

Seconded:

Vote Yes _____

No _____

South Palm Beach Charter vs. The School Board of Palm Beach County

Final Motion

I move the Commission recommend that the State Board of Education **grant** or **deny** [pick one] the appeal.

Motion:

Seconded:

Vote Yes _____

No _____