

STATE BOARD OF EDUCATION

Action Item

July 18, 2018

SUBJECT: Florida Charter Educational Foundation, Inc. and South Palm Beach Charter School v. School Board of Palm Beach County, Florida

PROPOSED BOARD ACTION

Accept Recommendation of the Charter School Appeal Commission to Grant the Appeal

AUTHORITY FOR STATE BOARD ACTION

Section 1002.33, Florida Statutes

EXECUTIVE SUMMARY

This is an appeal by Florida Charter Educational Foundation, Inc., and South Palm Beach Charter School of the decision of the School Board of Palm Beach County to deny the charter application submitted by the Applicants. This Action Item was previously before the State Board and was appealed; the Fourth District Court of Appeal remanded the case back to the Charter School Appeal Commission to make factual justifications supporting its recommendation.

ISSUE:

Whether the School Board had good cause to deny the application based on the Applicants' failure to comply with section 1002.33, Florida Statutes.

STANDARD OF REVIEW:

The School Board's determination must be based on good cause. The standard by which the State Board is to review the School Board's decision is whether the School Board had competent substantial evidence to make that determination. The question, therefore, is whether the evidence upon which the School Board based its determination is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. If so, the School Board's decision must be upheld.

SCHOOL BOARD'S GROUNDS FOR DENIAL:

The School Board of Palm Beach County based its denial on the following pursuant to section 1002.33, Florida Statutes:

- Application failed to meet the requirements of the Educational Plan
 - Mission, Guiding Principles and Purpose: Sections 1002.33(2)(a); 1002.33(2)(b); 1002.33(2)(c); 1002.33(6)(a)1.; 1002.33(7)(a)1., Florida Statutes.

CSAC CONCLUSION:

The School Board did not have good cause to determine that the Applicants failed to meet the requirements of section 1002.33, Florida Statutes, for failure to meet the requirements of the Educational Plan.

CSAC RECOMMENDATION:

The Charter School Appeal Commission recommends overturning the decision of the School Board of Palm Beach County by granting the appeal of Florida Charter Educational Foundation, Inc., and South Palm Beach Charter School.

Supporting Documentation Included: Charter School Appeal Commission Recommendation. Appeal of Charter School, Response, CSAC Transcript, Fourth District Court of Appeal Mandate (under separate cover)

Facilitator/Presenter: Adam Miller, Executive Director, Office of Independent Education and Parental Choice

**STATE OF FLORIDA
CHARTER SCHOOL APPEAL COMMISSION**

FLORIDA CHARTER EDUCATIONAL FOUNDATION, INC.,
and SOUTH PALM BEACH CHARTER SCHOOL,

Appellants/Applicants,

v.

DOE No. 2015-3112

SCHOOL BOARD OF PALM BEACH COUNTY,
FLORIDA,

Appellee/School Board.

RECOMMENDATION OF THE CHARTER SCHOOL APPEAL COMMISSION

This is an appeal regarding the denial by the School Board of Palm Beach County (“School Board”) of an Application by Florida Charter Educational Foundation, Inc. and South Palm Beach Charter School (“Applicants”), to establish and operate a new charter school. For such appeals, section 1002.33(6)(e)1., Florida Statutes, directs the Charter School Appeal Commission (“Commission”) “to assist the Commissioner and the State Board of Education with a fair and impartial review of appeals by applicants whose charter applications have been denied.” The Commission “may receive copies of the appeal documents forwarded to the State Board of Education, review the documents, [and] gather other applicable information regarding the appeal.” § 1002.33(6)(e)2., Fla. Stat. The Commission must include a fact-based justification in this recommendation to the State Board. Sch. Bd. of Palm Beach County v. Fla. Charter Ed. Found., Inc., 213 So. 3d 356 (Fla. 4th DCA 2017).

The Commission held a hearing on June 13, 2018, in Tallahassee, Florida. After review of the Application, the appeal brief filed by the Applicants, the response brief filed by the School Board, other documents submitted by the parties, argument by the parties, and other applicable information regarding the Application gathered by the Commission, the Commission makes the following recommendation regarding this appeal of the School Board’s denial of the Application.

I. Standard of Review

Section 1002.33(6)(b)3.a., Florida Statutes, provides that if a school board denies a charter school application, the school board “shall . . . articulate in writing the specific reasons, based upon good cause, supporting its denial of the application.” The specific reasons for denial must be based upon the statutory requirements for charter school applications, Sch. Bd. of Osceola County v. UCP of Central Fla., 905 So. 2d 909 (Fla. 5th DCA 2005), and must constitute good cause for denial. Sch. Bd. of Volusia County v. Academies of Excellence, Inc., 974 So. 2d 1186 (Fla. 5th DCA 2008). The decision of the State Board, and this recommendation by the

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Commission, must be based upon competent, substantial evidence. Imhotep-Nguzo Saba Charter Sch. v. Dept. of Ed., 947 So. 2d 1279 (Fla. 4th DCA 2007). The Commission “may receive copies of the appeal documents forwarded to the State Board of Education, review the documents, [and] gather other applicable information regarding the appeal.” § 1002.33(6)(e)2., Fla. Stat. The Commission must include a fact-based justification in this recommendation to the State Board. Sch. Bd. of Palm Beach County v. Fla. Charter Ed. Found., Inc., 213 So. 3d 356 (Fla. 4th DCA 2017).

II. Fact-Finding and Analysis

a. Brief Background

In a letter dated December 2, 2014, the Director of the School Board advised the Applicants that the School Board’s evaluators determined that all 19 sections of the Application met the statutory standards based on the Florida Charter School Application Evaluation Instrument (“Evaluation Instrument”) and that the School Board would take action on the Superintendent’s recommendation to approve the Application at the December 10, 2014 School Board meeting. The letter provided further instructions regarding attendance and speaking at the meeting. At the School Board meeting, a School Board member pulled the Application from the consent agenda, and after discussion, the School Board voted to deny the Application. It subsequently transmitted a letter to the Applicants on December 18, 2014, stating that the School Board denied the Application, for reasons explained more fully in the following sections. The Applicants timely filed this appeal. The Applicants contend that the School Board improperly denied the Application without a formal due process hearing or notice, that the Application contained all statutorily required information, and that the School Board’s reason for denial was not based on legally sufficient grounds. The School Board asserts that the Applicants were provided due process and notice and that it had good cause to deny the Application because the Application failed to articulate innovative learning methods.

b. Due Process

Due process is a flexible concept that requires certain procedural protections depending upon the time, place, and circumstance of the particular proceeding. Keys Citizens for Responsible Govt., Inc. v. Fla. Keys Aquaduct Auth., 795 So. 2d 940 (Fla. 2001). The School Board has a policy regarding the School Board meetings, which is posted online. School Board Policies 1.03(A)(17) and (18) provide that the School Board may use a “consent agenda” to increase the efficiency of the agenda items where the approval is for a large number of items or concerns non-controversial items. Consent agenda items may be approved *in toto* and without debate; however, this does not include items that were pulled by Board members from the consent agenda. Here, eight days before the scheduled School Board meeting, the Applicants were provided, via email, a letter alerting them to the School Board’s meeting in which the School Board would “take action” upon the Application, based on the Superintendent’s recommendation for approval. The letter specified when and where the meeting would be held and gave instructions for how the Applicants could speak at the meeting. The Application was pulled from the consent agenda and was discussed at the School Board meeting where the Applicant was

aware of the ability to sign a speaker's card and address anything in the Application. Accordingly, adequate due process was afforded.

c. Issue One: Educational Plan

Section 1002.33(6)(b) requires a school board to review all charter school applications that were timely submitted to it by using the Evaluation Instrument that was developed by the Department. The Evaluation Instrument was adopted by Florida Administrative Code Rule 6A-6.0786. The Evaluation Instrument incorporates the statutory requirements for a charter school application and provides three main issues for evaluation of a charter school application: Education Plan, Organizational Plan, and Business Plan. Once the Evaluation Instrument is complete, the school board shall vote to approve or deny the application and then, if denied, articulate in writing the specific reasons, based upon good cause, for the denial, which writing is provided to the applicant and the Department along with the supporting documentation.

The School Board's denial letter stated that the Application failed to meet sections 1002.33(2) and 1002.33(6)(a), Florida Statutes, because it determined that (1) the proposed "learning methods were not using new ideas or methods or new ideas about how learning can be done in this District"; and (2) the programs were "not sufficiently innovative and one Renaissance school this past year earned a grade of 'D.'" Although not specifically cited in the letter, these reasons for denial are subsumed in the Evaluation Instrument's Educational Plan subsection regarding "Mission, Guiding Principles, and Purpose."

Section 1002.33(6)(a)1. requires charter school applications to demonstrate how the charter school will use the statutory guiding principles and meet the statutory purpose of a charter school. Section 1002.33(2), Florida Statutes, describes the guiding principles and purpose applicable to charter schools. Pertinent to the present appeal, the statute provides that charter schools **shall** encourage the use of innovative learning methods. § 1002.33(2)(b)3., Fla. Stat. (emphasis supplied).

Here, the Application states that "the School will encourage the use of innovative learning methods and deliver educational best practices to students within the framework of a research-based education model." It asserts that the education model itself is innovative based on its data analysis for individual student learning. The Application also enumerates innovative components that will complement its education model, which include:

- Research-based instructional strategies;
- Technology support for data-driven instruction and individual goal setting;
- Personalized learning plans; and
- An integrated character education model.

The professionals on the review committee found that all sections of the Application "meets the standard," including the section regarding "Mission, Guiding Principles, and Purpose." Since the Application provides information regarding how the Applicants will encourage the use of innovative learning methods, the Application has met the requirements for approval based on sections 1002.33(6)(a)1. and 1002.33(2)(b)2., Florida Statutes.

Additionally, section 1002.33(2) lists the creation of innovative tools as a purpose the charter school may fulfill. § 1002.33(2)(c)1., Fla. Stat. The Application at issue here states that the Applicants will implement innovative measurement tools, including an electronic grade book and report card, which will allow the school and parents to monitor student progress and ensure academic improvement, as well as personalized learning plans. Accordingly, though not required, the Application also demonstrates the creation of innovative tools.

Based on the favorable evaluation of the Application by the School Board’s review committee, the Application and information presented in response to questions by the members of the Appeal Commission, the Application addresses areas of innovation and encourages the use of innovative learning methods. Therefore, the Commission finds that the Application met the criteria for the “Mission, Guiding Principles and Purpose” section of the Evaluation Instrument (and the related statutory provision), and the School Board did not have good cause to deny the Application based on the Applicants’ alleged failure to meet the standards for the Educational Plan pursuant to sections 1002.33(2) and 1002.33(6)(a), Florida Statutes.


III. Recommendation

The Commission recommends that the State Board of Education find that: (1) the Application meets the requirements of the Mission, Guiding Principles and Purpose section of the Evaluation Instrument; (2) the Application meets the requirements of sections 1002.33(2) and 1002.33(6)(a), Florida Statutes; and (3) the School Board did not have good cause to deny the Application based on the Applicants’ alleged failure to meet the standards for the Educational Plan pursuant to sections 1002.33(2) and 1002.33(6)(a), Florida Statutes.

IV. Overall Recommendation

Based on the foregoing, the Charter School Appeal Commission recommends that the State Board issue a final order overturning the School Board’s denial of the Application by granting the appeal of Florida Charter Educational Foundation, Inc., and South Palm Beach Charter School.

June 26, 2018


Lois Tepper, Chair
Charter School Appeal Commission

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