

**STATE BOARD OF EDUCATION
CHARTER SCHOOL APPEAL COMMISSION**

PALM BEACH COLLEGIATE CORPORATION
and PALM BEACH COLLEGIATE,

Applicant/Appellant,

vs.

Case No.: _____

THE SCHOOL BOARD OF
PALM BEACH COUNTY, FLORIDA,

School Board/Appellee.

_____ /

**THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA'S RESPONSE TO
PALM BEACH COLLEGIATE CORPORATION'S APPEAL OF THE DENIAL OF AN
APPLICATION TO OPEN A CHARTER SCHOOL, PALM BEACH COLLEGIATE**

Appellee, the SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA ("School Board"), files this Response to the appeal¹ of the denial of PALM BEACH COLLEGIATE CORPORATION'S ("the Applicant") application ("Application") to open a charter school, PALM BEACH COLLEGIATE. As explained herein, the State Board of Education ("SBE") should uphold the School Board's denial of the Application, which was based upon good cause.

I. STATEMENT OF MATERIAL FACTS AND PROCEDURAL HISTORY

The Applicant submitted its Application to open Palm Beach Collegiate on July 28, 2015, which is attached to the Notice of Appeal as Exhibit 1. After District staff reviewed the Application, the Applicant was provided with the reviewers' comments and an interview was scheduled between the Applicant and the reviewers. (*See Attachments 1 and 1-A to Exhibit 5 to Notice of Appeal.*) The District then held the interview on October 9, 2015, in order to allow the Applicant to respond to questions and comments from District staff about the Application, a

¹ Hereinafter the written notice of appeal filed by the Applicant with the Agency Clerk for the Department of Education on December 10, 2015, with the attachments thereto, will be referred to as its "Notice of Appeal."

transcript of which is found at Exhibit 4 to the Notice of Appeal. The Applicant submitted written materials in response to reviewers' comments about deficiencies in the Application on October 11, 2015. (See Attachment 1-D to Exhibit 5 to Notice of Appeal.)

On October 28, 2015, James Pegg, the District's Director of the Department of Charter Schools, sent the Applicant a letter informing it that the School Board would consider the Application at its Special Meeting on November 4, 2015. (Exhibit 3 to Notice of Appeal.) In the letter, Mr. Pegg explained that "it was determined that *substantive changes* to the Application would be needed to cure the deficiencies in [the Application] and the School District does not accept *substantive changes*." (*Id.*) Specifically, four sections had been rated as "Partially Meets the Standard," while four others had been rated as "Does Not Meet the Standard." (*Id.*) Mr. Pegg also informed the Applicant of the date of the School Board Special Meeting and how the Applicant could exercise its right to speak at the meeting. (*Id.*) At the Special Meeting on November 4, 2015, Dr. Deokee Balliram and Mrs. Marsha Balliram, the Applicant's co-founders, spoke. (See Exhibit 6 to Notice of Appeal, Transcript of School Board Meeting, Agenda Speakers, at 3-5.) The School Board ultimately denied the Application unanimously. (Exhibit 6 to Notice of Appeal, Transcript of School Board Meeting, New Business, at 7.)

By letter dated November 13, 2015, the School Board notified the Applicant of the denial, and provided the specific reasons for the denial based upon good cause in compliance with section 1002.33(6)(b)3.a., Florida Statutes. (Exhibit 5 to Notice of Appeal.) The Applicant then filed its Notice of Appeal, which the District received on December 10, 2015. This Response follows.

II. STANDARD OF REVIEW

The Charter School Appeal Commission ("CSAC") and SBE review the School Board's decision for whether it was based on good cause and supported by competent substantial evidence.

See Sch. Bd. of Volusia Cty. v. Acads. of Excellence, Inc., 974 So. 2d 1186, 1189-92 (Fla. 5th DCA 2008) (reviewing decision by CSAC, which was adopted by SBE, that school board did not have competent substantial evidence and good cause for denying application). “[A] denial based on good cause contemplates a legally sufficient reason.” *Sch. Bd. of Osceola Cty. v. UCP of Cent. Florida*, 905 So. 2d 909, 914 (Fla. 5th DCA 2005). Competent substantial evidence, meanwhile, is “such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred; that is, such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.” *Washington v. State*, 162 So. 3d 284, 289 (Fla. 4th DCA 2015) (quoting *Pauline v. Lee*, 147 So. 2d 359, 362 (Fla. 2d DCA 1962)).

III. ARGUMENT

A. The School Board had good cause to deny the Application based on deficiencies in eight sections.

The School Board adopted the findings of District staff who reviewed the Application and concluded that it was deficient in **eight** sections under the Florida Charter School Application Evaluation Instrument (“Evaluation Instrument”)²: Mission, Guiding Principles & Purpose; Target Population and Student Body; Educational Program and Design; Curriculum Plan; Student Performance, Assessment and Evaluation; Management, Employment; and Financial Management and Oversight. As explained herein, the Application failed to fully satisfy all requirements of the Model Application or the Charter School Statute, meaning the School Board had good cause to deny the Application based on the deficiencies in eight sections. *Cf. Sch. Bd. of Volusia Cty. v. Acads. of Excellence, Inc.*, 974 So. 2d 1186, 1191 (Fla. 5th DCA 2008) (competent substantial

² The School Board was required to use the Evaluation Instrument. *See* Fla. Admin. Code R. 6A-6.0786.

evidence supported CSAC's conclusion that the school board lacked good cause to deny a charter application on a basis that was not required by the standard application or Charter School Statute).

Throughout its written arguments, the Applicant contends that it provided any information that was missing from its Application at or after its interview with District reviewers. The interview was only for clarifications, however, and the Applicant was not permitted to make *substantive changes* at or after the interview. *See* School Board Policy 2.57(3)(h) (Attachment 1-C to Exhibit 5 to Notice of Appeal) & § 1002.33(6)(b), Fla. Stat. (2015). Any substantive missing information that caused the Application to be deficient could not be added after the Application was submitted.

In short, the Applicant failed to demonstrate the capacity to operate a successful charter school and the School Board had good cause to deny the Application.

1. Mission, Guiding Principles & Purpose (Section 1) and Educational Program Design (Section 3)

Sections 1 and 3 will be addressed together because they concern similar issues and were reviewed by the same District staff member, James Pegg, Director of the Department of Charter Schools. As discussed below, the deficiencies in these sections of the Application were rooted in the Applicant's overly abstract and insufficiently detailed vision for its proposed charter school.

First, one of the requirements of Section 1 of the Model Application is to "[d]escribe how the school will utilize the guiding principles found in section 1002.33(2)(a), F.S." Fla. Admin. Code R. 6A-6.0786, Form IEPC-M1 (August 2015). One such guiding principle is that charter schools "[m]eet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state's public school system." *Id.* (quoting § 1002.33(2)(a), Fla. Stat.). Additionally, the applicant is required to "[d]escribe how the school will meet the prescribed purposes for charter schools found in section 1002.33(2)(b), F.S." *Id.* One such purpose is that charter schools "[e]ncourage the use of innovative learning methods."

Id. (quoting § 1002.33(2)(b), Fla. Stat.). Finally, section 1002.33(5)(b)e requires the School Board to “ensure that the charter is innovative[.]”

In the Policy,

[t]he School Board defines innovative as introducing or using new ideas or methods or having new ideas about how learning methods can be performed in this School District. Being innovative is about looking beyond what is currently done well, identifying the great ideas of yesterday and/or tomorrow and putting them into practice. True innovative learning methods are those products, processes, strategies and approaches that improve significantly upon the status quo within this geographical area of the School District, and result in heightened qualities and outcomes of teaching and learning.

School Board Policy 2.57(3)(d)(ii)(D) (Attachment 1-C to Exhibit 5 to Notice of Appeal). The Rubric, meanwhile, provides that an application that meets the standard will have evidence of “[t]he use of innovative teaching and learning goals and interventions targeting academic support to all students especially for historically low performing students” as well as being “[i]nclusive, deliberate, and a monitored process that measures innovative goals and practices within the school.” (Attachment 1-C to Exhibit 5 to Notice of Appeal).

School Board Policy 2.57 validly defines the term “innovative,” which is not defined in the Charter School Statute. Contrary to the Applicant’s assertion that “[t]he denial of a Charter is limited to failure to meet statutory requirements and not School Board Policies,” (Notice of Appeal at 4), such policies are valid and enforceable. *See Imhotep-Nguzo Saba Charter Sch. v. Department of Educ. and Palm Beach County Sch. Bd.*, 947 So. 2d 1279, 1284 (Fla. 4th DCA 2007) (upholding a School Board policy regarding criteria for charter applicants, and upholding the denial of a charter application based on requirements set forth in the School Board policy). The School Board’s definition of “innovative” is consistent with the Statute, as it tracks the dictionary

definition³: “innovative” means “introducing or using new ideas or methods; having new ideas about how something can be done.” See “Innovative” at *Merriam-Webster.com*. Merriam-Webster, n.d. Web. (last accessed Nov. 20, 2015). Policy 2.57 and the Rubric then provide specific illustrations of what is required for a proposed charter school to be innovative.

The fact that the information required by School Board Policy 2.57 and the attached Rubric is not expressly contained in the Model Application does not prohibit the School Board from asking for this information in the Application. The Charter School Statute plainly allows a district school board to require additional information in an application to open a charter school: an applicant “shall prepare and submit an application on a model application form prepared by the Department of Education which: . . . **Contains additional information a sponsor may require,** which shall be attached as an addendum to the charter school application described in this paragraph.”). § 1002.33(6)(a)6, Fla. Stat. (2015) (emphasis added (“e.a.”)). The information required to be in the Application by School Board Policy 2.57 and the Rubric is information the School Board may require as sponsor, in accordance with the Charter School Statute requirements that the school demonstrate how it will encourage the use of innovative learning methods and that the sponsor ensure the charter as a whole is innovative. See *id.* § 1002.33(2)(b) & (5)(b)e.

In short, the Applicant was required to describe how its proposed charter school would provide a choice to parents and to meaningfully explain how it would be innovative in accordance with the School Board’s valid Policy 2.57 and its attached Rubric.

The Applicant attempted to fulfill these requirements by explaining that its school would offer regular and honors courses, including Advanced Placement courses, that would fulfill the

³ See *Sieniarski v. State*, 756 So. 2d 68 (Fla. 2000) (in absence of a statutory definition, words of common usage are construed in their plain and ordinary sense and, if necessary, the plain and ordinary meaning of the word can be ascertained by reference to a dictionary).

requirements for college admissions for its students, as well as a Career/Technical Education Program (“CTE”), a Science, Technology, Engineering, and Math (“STEM”) program that was itself made up of five programs under the umbrella of Agriculture, Food and Natural Resources. (Application at 10.) Elsewhere in Section 1, the Applicant also described its proposed charter school as a Professional Learning Community (“PLC”) and provided several broadly described characteristics that made the school a PLC, such as having instructors act as collaborative teams to plan student goals and providing goal statements to students. (*Id.* at 8-9.)

The District reviewer pointed out that the Application did not indicate how parents would actually assess that the proposed charter school would be the most appropriate choice for their children. (*See* Exhibit 2 to Notice of Appeal.) This was because the Application did not meaningfully explain what was innovative about its program or what made it different from other schools with the same instructional focus. (*See id.*) Put another way, the Applicant broadly described aspects of its educational program, but did not explain how or why parents would choose the proposed charter school or the programs it offered over their other options within the School District of Palm Beach County. Instead, the Applicant simply asserted in a cursory manner that its educational programs would provide a choice to parents. The requirement that the Application describe how the proposed charter school will provide flexibility to parents to choose would be hollow if it could be fulfilled simply by offering one or more purportedly unique programs with no explanation about why parents of Palm Beach County students would choose such programs or how those programs will result in better outcomes of teaching and learning.

Further, these deficiencies were not cured at the interview. When asked the same questions by the District reviewer at the interview, the Applicant continued to rely on the broad descriptions of the proposed charter school itself, such as the fact that it was an 8-12 school and the STEM

program. (See Exhibit 4 to Notice of Appeal at 7.) The Applicant also asserted that its PLC was unique, but could not explain how its proposed charter school would be different in practice from a District school identified by the reviewer, John I. Leonard High School. (See *id.* at 8-9.)

The deficiencies in Section 1 were exacerbated by problems with Section 3 of the Application. The purpose of Section 3 is for the applicant to “describe the educational foundation of the school and the teaching and learning strategies that will be employed.” Fla. Admin. Code R. 6A-6.0786, Form IEPC-M2 (June 2012). A reviewer is directed to look for an educational program design that:

- Is clear and coherent;
- Is based on effective, research-based educational practices, teaching methods and high standards for student learning;
- Aligns with the school’s mission and responds to the needs of the school’s target population; and
- Presents evidence that the proposed approach will lead to improved student performance for the school’s target population.

Id.

The District reviewer noted that the Application did not sufficiently address how the differentiated instructional needs of low-performing students would be addressed, how individual student’s learning and innovative growth would be assessed, or how parents and families would be involved in sustaining home supported innovative practices. (See Exhibit 2 to Notice of Appeal.) The Applicant contends that it sufficiently addressed these concerns with the Eight-Step Instructional Process, which is detailed on pages 25 and 26 of its Application. While the Applicant recited this established Process, however, it failed to demonstrate the capacity to implement the Process. Simply listing a program without explaining how it will be implemented or apply in harmony with the various other aspects of the school’s educational program does not satisfy the requirements detailed above.

Further, the proposed charter school was going to serve grades 8 through 12. While the Applicant repeatedly indicated that its school would serve both eighth-grade students and high school students, however, the educational program design in the Application ignored the unique challenges of educating both groups of students within one school. (*See* Application at 20-31.) The District reviewer observed at the interview that there is an “immense difference in education between 8th grade and 9th grade, and it . . . really puts a strain on an educational system.” (Exhibit 4 to Notice of Appeal at 10.) The District reviewer thus asked the Applicant how it planned to accomplish educating both middle school and high school students within one school. (*Id.*)

The Applicant only explained that the proposed school would use eighth grade to better prepare the students for the high school curriculum. (*See id.*) With respect to the actual challenges of educating a unique student body of 8-12 students, however, the Applicant could only answer, “But that’s what we are here for, to face challenges and overcome them.” (*Id.*) The Applicant makes the same argument in the present appeal, asserting that the District reviewer “cannot assume that I cannot face and overcome this as a challenge.” (Notice of Appeal at 7.) Yet it was the Applicant that was required to provide an educational program design in the Application that “[a]lligns with the school’s mission and responds to the needs of the school’s target population[.]” Fla. Admin. Code R. 6A-6.0786, Form IEPC-M2 (June 2012). By not fully addressing the challenges of educating both middle and high school students in one school, the Applicant failed to fulfill this requirement.

This missing information contributed to the problems with Section 1, where the Applicant failed to sufficiently explain why a parent might actually choose the proposed charter school for his or her child and to meaningfully explain what made the school innovative. A school serving grades 8 through 12 and offering the programs offered by the Applicant could conceivably be a

unique and desirable option for Palm Beach County parents. But the Applicant's failure to fully address the challenges of educating the unique student body and addressing the individual needs of all students detracted from its ability to demonstrate its school would be one parents would actually choose for their children and that would produce better outcomes for students.

For the aforementioned reasons, Section 1 was appropriately rated as not meeting the standard, while Section 3 was appropriately rated as only partially meeting the standard.

2. Target Population and Student Body (Section 2)

In Section 2, the Model Application requires the Applicant, among other things, to "[p]rovide a description of how the student population projections were developed." Fla. Admin. Code R. 6A-6.0786, Form IEPC-M1 (August 2015). As explained in the Evaluation Instrument, one of the purposes of Section 2 is for the Applicant to "describe the anticipated target population of the school," and a response that meets the standard will present "[a]n understanding of the students of the charter school intends to serve." *Id.* Form IEPC-M2 (June 2012).

In the Application, the Applicant explained that the proposed charter school would serve grades 8 through 12. (Application at 17.) When explaining how it developed its student population projections, however, the Applicant only provided information about the total enrollment in all District-operated and charter schools in Palm Beach County, from grades Kindergarten through 12th, as well as asserting that "[p]rivate school transfers are forecast to continue to increase in some areas due to the economy." (*Id.* at 18-19.) From these figures, the Applicant asserted broadly that "there will be an increasing demand for Charter Schools." (*Id.* at 19.)

Because the information in the Application was so general, the District reviewer asked how specific enrollment projections for each grade were prepared for the proposed charter school. (*See* Exhibit 2 to Notice of Appeal.) At the interview, the reviewer explained that District reviewers

look for empirical data based on similar-themed charter schools, prior experience opening charter schools, or schools in the area surrounding the area where the proposed charter school will be opened. (See Exhibit 4 to Notice of Appeal at 3-4.) The Applicant then attempted to provide the *substantive information* that was missing from its Application by explaining that it had looked at Concurrency Service Area reports that showed that nearby schools were overcrowded. (See *id.* at 4.) From this, the Applicant deduced that “overcrowding will be a good indication that people may want to make a transfer to a charter school, if it is within their boundary.” (*Id.*)

The Applicant now asserts that by providing this information during the interview, as well as clarifying that its total enrollment was not a pure estimate, it believed it had convinced the reviewer that its Application met the standard for Section 2. As explained above, however, the Applicant was not actually permitted to supply this wholly new and clearly *substantive information* at the interview in order to change the rating. This is why the rating was not changed, regardless of the Applicant’s subjective, unspoken belief that it had “convinced” the reviewer to change the rating. Furthermore, simply assuming that students at overcrowded schools would necessarily choose the proposed charter school did not meaningfully demonstrate “[a]n understanding of the students of the charter school intends to serve.” Fla. Admin. Code R. 6A-6.0786, Form IEPC-M2 (June 2012). Section 2 was appropriately rated as only partially meeting the standard.

3. Curriculum Plan (Section 4)

The Applicant’s Curriculum Plan was riddled with inconsistencies and missing information. For Section 4, a response that meets the standard must present a curriculum plan that, among other things, “[p]rovides a clear and coherent framework for teaching and learning[.]” Fla. Admin. Code R. 6A-6.0786, Form IEPC-M2 (June 2012). The District reviewer noted numerous

deficiencies with the Curriculum Plan with respect to the requisite framework, the following of which remained unclarified after the interview and the Applicant's written submissions.

The first deficiency primarily related to struggling readers, including what reading courses would be offered to struggling readers at all grade levels. (Exhibit 2 to Notice of Appeal.) The Applicant relies on the Reading Plus program, which is a computer-based program that adjusts the level of difficulty of instruction based on the student's ability and progress. (See Application at 46-48.) While Reading Plus is a useful program, it is not guaranteed to do all of the heavy lifting for those readers with the most severe struggles. The Applicant's mere reliance on this program did not demonstrate the capacity to address the needs of all struggling readers. Furthermore, the District reviewer explained at the interview that the Application did not clearly describe how struggling readers would be identified so that the prescription for struggling readers could be implemented. (See Exhibit 4 to Notice of Appeal at 14.) While the Applicant addressed when such students would receive reading instruction, it did not fully address the reviewer's concern about identifying struggling readers. The Reading Plus program could not do all of the work of identifying readers who were struggling too much to benefit from the program.

Another glaring omission in the Applicant's curriculum plan, noted by the reviewer, was the failure to identify the platform that would be used for required online coursework. In the Application, one of the requirements for graduation from the proposed charter school was the completion of one online course, (Application at 90), which would be a "strict requirement" for the proposed charter school, (Exhibit 4 to Notice of Appeal at 15). Yet the Applicant did not identify the platform that would be used to complete these online courses.⁴

⁴ The Applicant argues in its Notice of Appeal that it provided this information for the first time at the interview by stating that it would either use Palm Beach Virtual School or the Florida Virtual School platform. (Notice of Appeal at 9.) But this information was clearly *substantive* and could not be provided at the interview or thereafter.

The reviewer next noted that there were not any details about how the Rotational Instructional Model would be implemented in “all subject areas,” though the Applicant indicated on page 65 that it was “[t]he Model of Instruction that will be used for all subject areas[.]” Though the Applicant described this as a “typo” and explained at the interview that this instructional model would only be used for reading (Exhibit 4 to Notice of Appeal at 14-15), this was another inconsistency in a section that required the Applicant to present “a clear and coherent framework for teaching and learning[.]” Fla. Admin. Code R. 6A-6.0786, Form IEPC-M2 (June 2012).

Finally, the reviewer noted that the school identified the Language Arts Florida Standards as its standard for mastery, yet on the very next page, listed the criteria for Palm Beach Writes and the Core K 12 Assessment Tests. (Application at 77-78.) The Applicant acknowledged that this “must have been a last year thing” that was carried over from a previous application. (Exhibit 4 to Notice of Appeal at 15.) At the interview, the reviewer also pointed out that the Applicant was using an out-of-date flow chart for placement of its students that needed to be updated. (*Id.* at 16.) The Applicant’s inconsistent use of standards and failure to fully update its Application further confirm that the Applicant did not provide the required “clear and coherent framework for teaching and learning[.]” Fla. Admin. Code R. 6A-6.0786, Form IEPC-M2 (June 2012).

The multiple errors and omissions in Section 4 of the Application make clear that the Applicant failed to provide “a clear and coherent framework for teaching and learning.” *Id.* Accordingly, Section 4 was appropriately rated as not meeting the standard.

4. Student Performance, Assessment and Evaluation (Section 5)

The Applicant’s failure to fully update its Application affected Section 5 as well. Two of the requirements of Section 5 are that the Application present “[e]vidence that a range of valid and reliable assessments will be used to measure student performance” and “[e]vidence that data will

inform decisions about adjustments to the educational program.” Fla. Admin. Code R. 6A-6.0786, Form IEPC-M2 (June 2012). The District reviewer found that Section 5 failed to satisfy these requirements because the Applicant demonstrated a “minimal understanding of assessment in Florida. Much of the content is taken from state documentation referencing old standards.” (Exhibit 2 to Notice of Appeal.) At the interview, the reviewer explained that the assessment portion of the Application “looked like it was brought down from the state website, as it existed, you know, a year and a half, two years ago,” while much of the section dedicated to progression and pupil placement “was kind of tied to older standards and older metrics[.]” (Exhibit 4 to Notice of Appeal at 17.) The Applicant conceded that these sections needed to be updated (*see id.*), confirming that the District reviewer properly rated Section 5 as not meeting the standard.

5. Management (Section 10)

Like the other deficient Sections, Section 10 contained numerous omissions and inconsistencies. Though some of the issues noted by the District reviewer were clarified at the interview, this Section was still appropriately rated as only partially meeting the standard because it was missing important information. The purpose of Section 10 is for the applicant to “describe how the day-to-day administration of the school’s operations will be structured and fulfilled.” Fla. Admin. Code R. 6A-6.0786, Form IEPC-M2 (June 2012). Additionally, the Evaluation Instrument requires “[a] management structure that includes clear delineation of the roles and responsibilities for administering the day-to-day activities of the school.” *Id.*

In the Application, the Applicant stated that the Academic Director would make “reappointment recommendations,” (Application at 215). The Applicant did not indicate, however, what was meant by “reappointment” or to whom reappointment recommendations would be made. The statement was also unclear because the Academic Director had the responsibility of coordinating “the recruitment, interview, hiring and termination of all staff based on school needs.”

(*Id.*) The District reviewer thus pointed out that this section of the Application was unclear at the interview. (See Exhibit 4 to Notice of Appeal at 28.) In response, the Applicant offered, for the *first time*, a definition of reappointment, which applies only when an employee has been terminated or left for personal reasons and then applies to work at the school again.⁵ (*Id.*) In these situations, the Academic Director would make a recommendation to the Governing Board. (*Id.*) The Applicant distinguished this reappointment from initial appointments, which were handled exclusively by the Academic Director. (*Id.*) But nowhere in the Application had the Applicant indicated that the Governing Board would handle reappointments. The Applicant attempted to provide *substantive* new information at the interview that was missing from its Application.

The Evaluation Instrument also required a “viable and adequate staffing plan” and a “sound plan for recruiting and retaining qualified and capable staff.” Fla. Admin. Code R. 6A-6.0786, Form IEPC-M2 (June 2012). The District reviewer noted, however, that the Applicant did not mention an ELL teacher in its staffing plan, found on page 228 of the Application. (Exhibit 2 to Notice of Appeal.) The Applicant contends in its Notice of Appeal that its “staffing chart shows a 0-2 ELL teacher for the 20% of the time the student may need exclusive ELL services” (Notice of Appeal at 15), but the Staffing Plan in the Application simply does not contain this information.

With respect to the qualifications of its staff, the Applicant merely stated, “Staff will be required to have at least the minimum qualifications required to qualify for the job.” (Application at 229.) As the District reviewer noted, the Applicant did not actually indicate what those “minimum qualifications” would be. (Exhibit 2 to Notice of Appeal.) The Applicant conceded at

⁵ The Applicant’s limited definition of “reappointment” needed to be provided in the Application, because reappointment could also conceivably apply to the retention of employees who have not voluntarily left employment or been terminated, but who are completing annual contracts like those referenced on page 233 of the Application.

the interview that it failed to provide this information in the Application, (*see* Exhibit 4 to Notice of Appeal at 31-32), and does not even address the missing qualifications in its Notice of Appeal.

Similarly, the District reviewer noted the Applicant did not describe how the Guidance Counselor would be evaluated in the Application. (Exhibit 2 to Notice of Appeal.) While the Applicant pointed out that the Guidance Counselor reported to the Academic Director, (Application at 214), that only potentially answered the question of *who* would evaluate the Guidance Counselor, not *how* the Guidance Counselor would be evaluated. Without information about what its “minimum qualifications” were or how the Guidance Counselor would be evaluated, the Applicant failed to satisfy the requirements of demonstrating an adequate staffing plan or a sound plan for recruiting and retaining qualified and capable staff. Accordingly, this Section was appropriately rated as only partially meeting the standard.

6. Human Resources and Employment (Section 12)

One of the requirements of Section 12 is that the Applicant describe its proposed personnel policies and procedures to which staff will be required to adhere. Fla. Admin. Code R. 6A-6.0786, Form IEPC-M1 (August 2015). If no policies and procedures have been developed, then the applicant is required to “provide a clear plan, including timeline, for the development and approval by the governing board.” *Id.*

In the relevant section of the Application, the Applicant discussed an Employee Handbook that would contain “all the personnel policies and procedures applicable to this Collegiate [school],” and a Faculty/Staff Handbook, which would also contain the “Policies and Procedures which the faculty and staff are expected to follow and abide by.” (Application at 234.) The Applicant also stated that employees would be expected to adhere to the Policies of the School Board of Palm Beach County. (*Id.*) But the Applicant did not describe the policies and procedures that would be in the handbooks in any detail. Accordingly, the Applicant was required to provide

a plan and timeline for the development and approval of the policies and procedures. Fla. Admin. Code R. 6A-6.0786, Form IEPC-M1 (August 2015). The Applicant did not do so in the Application and Section 12 was appropriately rated as only partially meeting the standard.

7. Financial Management and Oversight (Section 18)

Finally, Section 18 was appropriately rated as not meeting the standard because it was unquestionably missing information required to be in the Application. One of the requirements for Section 18 was “[a] clear description of how the school’s finances will be managed. **The description must include assurances that the governing board retains ultimate control over the school’s finances.**” Fla. Admin. Code R. 6A-6.0786, Form IEPC-M2 (June 2012) (e.a.). Accordingly, Section 18 was rated as not meeting the standard “because the narrative states Buchanan’s Accounting and Tax Service, Inc. is responsible for the financial management of the school rather than providing assurances that the governing board will retain ultimate control over the school’s finances.” (Exhibit 2 to Notice of Appeal.) Indeed, on page 279 of the Application, the Applicant stated, “Buchanan’s Accounting and Tax Service Inc[.] is responsible for the financial management of the school[.]”

The Applicant contends that there was information in a different section of the Application that provided the requisite assurance. Specifically, in the Section relating to Governance, the Applicant stated that “[t]he Board also bears ultimate responsibility for the school’s finances and physical plant.” (Application at 195.) The Governance Section also described additional responsibilities the governing board would have, such as approving annual budgets and “[m]onitoring budget implementation through periodic financial reports.” (*Id.* at 195-97.) As the reviewer observed at the interview, however, the actual narrative relating to financial management in Section 18 appeared to give virtually all responsibility for financial management to Buchanan’s rather than the Board. (Exhibit 4 to Notice of Appeal at 36.) At best, there was conflicting

information in the Application, which meant that there were no assurances about the role the governing board would play that would confirm that the governing board would have ultimate responsibility. Section 18 was appropriately rated as not meeting the standard.

B. The administrative appeal process in the Charter School Statute is unconstitutional.⁶

Section 1002.33(6)(c), Florida Statutes, is unconstitutional as it fails to include due process protections and allows the SBE to exceed its constitutional powers of oversight of the state system of education, and to infringe on the School Board's exclusive constitutional power to operate, control, and supervise public schools.

First, substantive due process protects against arbitrary government action. *See Chicago Title Ins. Co. v. Butler*, 770 So. 2d 1210, 1214-15 (Fla. 2000). Procedural due process requires reasonable notice and a fair and meaningful opportunity to be heard by an impartial decision-maker, *see Jennings v. Dade County*, 589 So. 2d 1337, 1340-41 (Fla. 3d DCA 1991), as well as a defensible rationale or justification. As a federal appellate judge has explained, a constitutional hearing must afford 11 aspects of due process, including a tribunal that issues "[a] written statement of reasons" for its decision, which is "almost essential if there is to be judicial review." Hon. Henry J. Friendly, *Some Kind of Hearing*, 123 U. Pa. L. Rev. 1267, 1292 (1975).

Section 1002.33(6)(c)3.a is vague as it provides no criteria or parameters for the SBE's decision. Although the SBE must "consider" a recommendation from the CSAC, it is not bound by that recommendation. § 1002.33(6)(e)2, Fla. Stat. The statute merely says: "The State Board of Education shall by majority vote accept or reject the decision of the sponsor." *Id.* § 1002.33(6)(c)3.a. It provides no criteria or standards for the vote, nor any guidance for evaluating

⁶Although it is not within the purview of the SBE to rule on the constitutionality of statutes, the SBE's exercise of its authority to reject the School Board's denial of the Application would also be unconstitutional and the SBE should decline to exercise it. The School Board also raises this argument to preserve the issue for further appellate review.

a recommendation from the CSAC. Although the “State Board of Education’s decision is a final action subject to judicial review in the district court of appeal,” *id.* § 1002.33(6)(d), this provision is illusory in light of the unconstitutionally flawed statutory process which fails to require any statement of any rationale or a procedure to demonstrate competent substantial evidence for the SBE’s decision. These flaws frustrate the guarantee of judicial recourse and render the administrative appeal process invalid.

Second, the Constitution limits the powers of the appointed SBE, which has a general supervisory role over the state educational system: “The state board of education shall be a body corporate and have such *supervision of the system of free public education* as is provided by law.” Art. IX, § 2, Fla. Const. (e.a.). It is anomalous that the SBE, which has general oversight of the statewide system of education under the Constitution, would be allowed to make binding decisions compelling local school boards to take on the substantial responsibility and impact of sponsoring a charter school whose application the school board has already determined to be deficient. The statute exceeds the SBE’s constitutional power under article IX, § 2, Fla. Const., which is focused on general oversight of the state system of education. Thus, the administrative appeal process in section 1002.33(6)(c) is unconstitutional.

Finally, the administrative appeal process in section 1002.33(6)(c), (d), Florida Statutes, allows the SBE to override the School Board’s denial of charter school applications, effectively allowing the SBE to authorize charter schools. This process undermines the School Board’s power to establish, authorize, and operate public schools under article IX § 4(b), Fla. Const.

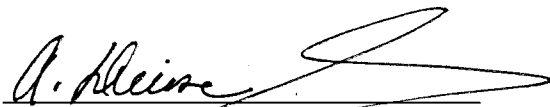
Article IX, Section 4 of the Florida Constitution provides that school boards “shall operate, control and supervise *all free public schools* within the district.” (e.a.). “All charter schools in Florida are *public schools*.” § 1002.33(1), Fla. Stat. (2015) (e.a.). In violation of article IX, the

administrative appeal process grants the authority to the SBE to accept a charter school application where the same application was previously denied by a school board exercising its “primary decision-making authority ... over these basic decisions.” *Cf. Imhotep-Nguzo Saba Charter Sch.*, 947 So. 2d at 1284. Thus, the administrative appeal process undermines a school board’s ability to determine and meet the needs of children within its own district. The application appeal statute conflicts with the School Board’s constitutional powers, as it allows the SBE to accept applications for Charter Schools over the authority of the School Board, which has the sole constitutional power under article IX § 4(b), Fla. Const., to authorize and operate public schools in this county.⁷ Further, the charter appeal statute conflicts with the SBE’s general powers, which are limited to “*recommend[ing]* that a district school board take action consistent with the state board’s decision relating to an appeal of a charter school application.” § 1001.02(2)(q), Fla. Stat. (2015) (e.a.).

IV. CONCLUSION

The SCHOOL BOARD respectfully requests the SBE uphold the decision of the SCHOOL BOARD based on good cause to deny the application and deny the Applicant’s appeal for reasons stated within this Response.

Respectfully submitted,



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⁷ The Applicant may argue that the Fifth District Court of Appeal in 2008 rejected an assertion “that, because the act of operating and controlling all free public schools in [the] County is conferred exclusively on the School Board, section 1002.33(6)(c) is unconstitutional because it permits the State Board to open a charter school.” *School Board of Volusia County*, 974 So. 2d at 1191. To save the statute, the Fifth District reasoned, *inter alia*, that “[g]ranting a charter application is not equivalent to opening a public school.” *Id.* at 1193. That reasoning is flawed, however, as approval of the application plainly begins the establishment of the school. With the statutory authority to overturn school board decisions and unilaterally direct school boards to approve charters, the SBE is ultimately in control of a charter school’s establishment and operation. Accordingly, the Fifth District’s decision in *Academies of Excellence* should not dissuade the SBE from recognizing that the administrative appeal process in the Charter School Statute is unconstitutional or declining to exercise its statutory authority to reject the School Board’s denial of the Application.