STATE OF FLORIDA
STATE BOARD OF EDUCATION

PARRISH CHARTER ACADEMY, INC.

Applicant/Appellant,

v.

CASE NO.: 2017-3470

SCHOOL BOARD OF MANATEE COUNTY, FLORIDA,

School Board/Appellee.
_____/

APPLICANT/APPELLANT PARRISH CHARTER ACADEMY, INC.'S MOTION TO STRIKE, OR IN THE ALTERNATIVE, RESPONSE TO SCHOOL BOARD/APPELLEE'S PROPOSED EXCEPTIONS TO THE RECOMMENDED ORDER

Applicant/Appellant, Parrish Charter Academy, Inc. ("Applicant"), through the undersigned counsel, pursuant to Rule 6A-6.0781(4), F.A.C., files this Motion to Strike or, in the Alternative, Response to the School Board/Appellee's ("School Board's") Proposed Exceptions to the Recommended Order, which was filed on October 3, 2017 ("Proposed Exceptions"). In support of the instant Motion and Response, the Applicant states:

MOTION TO STRIKE

1. The School Board's Proposed Exceptions state that they are submitted pursuant to the authority set forth in Rule 28-106.217, F.A.C. However, that rule pertains to the uniform administrative procedures for proceedings subject to Chapter 120 of the Florida Statutes. The instant proceeding is not subject to Chapter 120 of the Florida Statutes. Fla. Stat. ss. 1002.33(6)(c)3.a. & (e)2. The School Board will be afforded an opportunity to address the State Board regarding its concerns as set forth in Rule 6A-6.0781(2)(e), F.A.C. There is no procedure or protocol in State law or rule for the State Board to

consider the Proposed Exceptions. Therefore, the Proposed Exceptions should be stricken.

2. Moreover, the Proposed Exceptions include what amounts to a proposed recommended order. After the Appeal Commission hearing, the School Board objected to the parties' submitting proposed recommended orders, notably arguing that they were not authorized because the proceeding was not subject to Chapter 120, Florida Statutes. It should not be permitted an opportunity now to unilaterally engage in the very process that was the subject of its prior objection. Therefore, the portion of the Proposed Exceptions containing proposed findings should be stricken.

3. Even if the Commissioner of Education or the State Board of Education were inclined to construe the Proposed Exceptions as a motion filed pursuant to Rule 6A-6.0781(4), the Proposed Exceptions far exceed the three-page limit set forth therein and should be stricken for that reason as well.

RESPONSE TO SCHOOL BOARD/APPELLEE'S
PROPOSED EXCEPTIONS TO THE RECOMMENDED ORDER

4. In the event that the Commissioner of Education or the State Board of Education consider the Proposed Exceptions on their merits, Applicant should be afforded an opportunity to respond, and states the following in response.

5. The School Board bases its entire objection to the Recommended Order on four pieces of information that it alleges were not part of the record on appeal at all. They allege, without merit, that these four items were so impactful that they irreversibly influenced the Appeal Commission to determine unanimously that no evidence produced by the School Board to support its denial was competent and substantial, and that there was no good cause statutory basis for the School Board's denial.

6. The Appeal Commission's role is to assist the Commissioner and State Board of Education in the review of charter application appeals. Fla. Stat. s. 1002.33(6)(e)1. The recommendation of the Appeal Commission is not binding on the State Board. Fla. Stat. s. 1002.33(6)(e)2. It is the State Board's decision that is final agency action, not that of the Appeal Commission. Fla. Stat. s. 1002.33(6)(d). Nevertheless, the record in the instant case supports the unanimous decision by the Appeal Commission.

7. The School Board erroneously cites as authority to numerous cases regarding the standard for appellate review. However, these cases all deal with the standard of review for an appellate court. The process for review of a charter application denial is established by statute. During this statutorily-prescribed process, the Appeal Commission is specifically authorized by law to "request information to clarify the documentation presented to it." Fla. Stat. s. 1002.33(6)(e)5; Rule 6A-6.0781(2)(b), F.A.C. It may also question the parties. Rule 6A-6.0781, F.A.C. As discussed further below, the Appeal Commission did not exceed this express authority in the instant proceeding.

8. The School Board argues that the Appeals Commission committed "reversible error" when it considered the following four items of information: (1) That the curriculum in grades kindergarten through grades 2 is now complete. (2) That the curriculum that was supposed to be developed by teachers, FORZA, Principal or PLC teams, would now be developed by Dr. Sarria. (3) That the curriculum would be aligned to the Florida Standards by Dr. Sarria or the Principal. (4) That the school now has a plan to replace the item bank that is no longer in existence. Proposed Exceptions at 6-7.

9. While the School Board states that these items were considered over its objection, counsel for School Board only objected to the second and third items. Appeal Commission Transcript, Pg. 31, Lines 4-17.

10. The Appeal Commission followed well-established procedures, State law and applicable rules during the proceeding. However, even if these four items of information were improperly considered, it did not result in prejudice to the School Board, as discussed below. Moreover, these four items were not even necessary to support a conclusion that there was no competent or substantial evidence or a good cause basis to support the School Board's denial.

11. As to the first item of information cited by the School Board, the School Board was not prejudiced by the Appeal Commission learning that the K-2 English Language Arts ("ELA") Curriculum was now available. The relevant School Board denial was that the Applicant did not include the K-2 ELA Curriculum in the Application. As noted in the Applicant's appeal, as well as at the Appeal Commission hearing, the Applicant was not required to have a complete curriculum at the time the Application was submitted. Appeal at 10; Appeal Commission transcript at pg. 28, Lines 42-43. Thus, there was no good cause basis for the School Board to deny the Application for this reason, so it could not be prejudiced by facts that the K-2 Curriculum had subsequently been released. In other words, even if there was no finding by the Appeal Commission that the curriculum was available, its Recommended Order would be supported by the record and law. In addition, the record contained only speculation by the School Board that this small portion of the curriculum would not be available in time for opening the school, which cannot be considered competent and substantial evidence. Duval Util. Co. v. Florida Public Service Comm'n, 380 So. 2d 1028, 1031 (Fla. 1980); FL Rate Conf. v.

FL R.R. & Pub. Utilities Comm'n., 108 So. 2d 601, 607 (Fla. 1959); School Bd. of Volusia County v. Academies of Excellence, Inc., 974 So. 2d 1186, 1191 (Fla. 5th DCA 2008); City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc., 857 So. 2d 202, 204 (Fla. 3d DCA 2003).

12. As to the second and third items of information cited by the School Board, which relate to Dr. Sarria's role as a consultant at the school, this information was already before the School Board when it made its decision and was therefore part of the record. An Applicant board member testified directly to the School Board that the school had retained Dr. Sarria to "bring a new innovative approach to education," outlining her experience and the use of her to "help teachers develop effective strategies to help all student." Appeal Exh. 5:7. Dr. Sarria went on to describe her qualifications and experience, including writing curriculum and consulting on curriculum. Lines 11-16 and 5:12, Lines 8-18, Exh. 5:13, Lines 1-19. See Rule 6A-6.0781(1)(b), F.A.C. (providing that a transcript of all meetings before the school board in making its decision shall be part of the record on appeal). The Appeal Commission was well within its authority to ask questions of Dr. Sarria to clarify this information that was already in the record. Fla. Stat. s. 1002.33(6)(e)5. Rule 6A-6.0781(2)(b).

13. The School Board also alleges it was prejudiced because the Appeal Commission considered information about the Applicant's plans to find an alternative to a statewide test bank that was being discontinued by FDOE. However, the Applicant stated that it would find an alternative to the test bank in its Appeal. Appeal at 12. The School Board did not file any Motion to Strike or otherwise object to the Applicant's Appeal or the record contained therein, so it cannot now claim that consideration of this information was improper. In addition, the School Board admits that information about the

discontinuation of this test bank came out one week after the Application was submitted, so the Applicant was not aware of the change. School Board Response at 11. The School Board did not tell the Applicant about the test bank being discontinued or ask what alternative the Applicant would use. Appeal at Exh. 4:25, Lines 12-21 and 4:26, Lines 1-9. Instead, the School Board speculated in its Denial Notice that the Applicant would not replace the test bank with anything at all, which was not competent and substantial evidence. Appeal at Exh. 1:6. It is typical for there to be changes in assumptions between the time an application is submitted and school opening. Charter schools, like district schools, must adapt to changing conditions. This is not unusual or surprising, so eliciting of the fact that the Applicant had a plan to replace the test bank by the Appeal Commission was not prejudicial to the School Board. In addition, the Application contained a whole table of assessment resources, so there was no competent and substantial evidence or good cause basis to support the School Board's assertion that the student assessment standard was partially met. Appeal Exh. 2:049-054, 419-20. Therefore, even without considering an option to replace the test bank, there was support for the Appeal Commission's Recommended Order.

14. In short, the Appeal Commission conducted a nearly two-hour hearing to consider whether the School Board's basis for denial of the Education Plan in the Application was supported by competent and substantial evidence and a good cause statutory basis for denial. The Appeal Commission unanimously found that there was no such support or legal basis. It came to these conclusions after considering both the oral and written arguments of the parties and asking questions about items before them as allowed by law. Moreover, the four items that are the subject of the School Board's objection are not even necessary to support the Appeal Commission's Recommended Order. Therefore, even if

the Appeal Commission improperly considered the information, as the School Board alleges, it was not prejudiced, and any error should be considered harmless error.

WHEREFORE, the Applicant/Appellant requests that:

1) The Proposed Exceptions be stricken; or in the alternative,

2) The State Board accept the factual findings in the Recommended Order and adopt as legal conclusions that there was no competent and substantial evidence or good cause statutory basis to support the Denial Notice issued by the School Board.

Respectfully submitted this 5th day of October, 2017.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following this 5th day of October, 2017, via e-mail and U.S. Mail:

Mitchell Teitelbaum, General Counsel
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