STATE BOARD OF EDUCATION
CHARTER SCHOOL APPEAL COMMISSION

RENAISSANCE CHARTER SCHOOL, INC.,
and RENAISSANCE CHARTER HIGH
SCHOOL OF PALM BEACH,

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 RENAISSANCE CHARTER SCHOOL, INC.'S APPEAL OF THE DENIAL OF AN APPLICATION TO OPEN A CHARTER SCHOOL, RENAISSANCE CHARTER HIGH SCHOOL OF PALM BEACH

Appellee, the SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA ("School Board"), files this Response to the appeal[1] of the denial of RENAISSANCE CHARTER SCHOOL, INC.'s ("the Applicant") application ("Application") to open a charter school, RENAISSANCE CHARTER HIGH SCHOOL OF PALM BEACH. 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

On August 3, 2015, the District's Department of Charter Schools received the Application. (Exhibit 2 to Notice of Appeal.) After District staff reviewed the Application, the Applicant was provided with the reviewers' comments and an interview was scheduled between the Applicant

[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."

and the reviewers. (Exhibit "A" at 2-12.[2]) The District then held an interview with the Applicant on September 22, 2015, in order to allow the Applicant to respond to questions and comments from District staff about the Application, a transcript of which is found at Exhibit 4 to the Notice of Appeal. After the interview, on September 24, 2015, James Pegg, Director of the Department of Charter Schools, sent the Applicant a letter providing seven days notification and the opportunity for the Applicant to provide *non-substantive* clarifications. (*Id.* at 33.)

Next, on October 28, 2015, Mr. Pegg sent the Applicant a letter informing it that the School Board would consider the Application at its Special Meeting on November 4, 2015. (*Id.* at 44-45.) 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, the Section relating to Mission, Guiding Principles & Purpose was rated as "Does Not Meet the Standard," while five other Sections (Exceptional Students ("ESE"); English Language Learners ("ELL"); Student Recruitment and Enrollment; Budget; and Action Plan) were rated as "Partially Meets the Standard." 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, several people spoke on behalf of the Applicant, including a member of the Applicant's governing board, parents of students currently attending Renaissance-operated schools in Palm Beach County, and a student and teacher at a Renaissance school. (Exhibit 5 to Notice of Appeal at 7-31.) Several of the speakers discussed programs and practices at Renaissance schools that they believed were "innovative." (*See id.*)

[2] While the Applicant provided the November 13, 2015 denial letter as an exhibit, it did not include the attachments. Accordingly, the School Board has included the attachments as a composite exhibit to this response, Exhibit "A."

Several Board Members spoke about the issues raised by the speakers before a vote was taken. (*See id.* at 49-53.) The Applicant asserts that these Members "acknowledged that RCS' charter schools were, in fact, more innovative than their own district schools[.]" (Notice of Appeal at 5.) This is a mischaracterization of their comments. Rather, with respect to communication between school staff and parents and smaller school sizes, Board Member Dr. Debra Robinson stated that "of course, we want those things," and District-operated schools "have to do better." (*Id.* at 50.) Board Member Karen Brill simply "mirror[ed] Dr. Robinson's comments," while explaining that, for things like "personal learning plans, the daily reports to parents, I think the things that you're getting, yes, we do need to do better in our District as well." (*Id.* at 50.) These Members did not say that Renaissance schools were innovative, much less "more innovative" than District-operated schools. Instead, they said that the District needed to do a better job with respect to the programs and practices that parents enjoyed at Renaissance schools. (*Id.* at 49.)

The School Board unanimously denied the Application.[3] (*Id.* at 55.) 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 1 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

[3] Of note, the Applicant's incorporation of a newspaper article about the Board Meeting is inappropriate, as it is not properly part of the record on appeal. *See* Fla. Admin. Code R. 6A-6.0781(1)(b). The Applicant may offer its opinion about what occurred at the Board Meeting in its written arguments; the article has no place in these proceedings.

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 five sections.

The School Board adopted the findings of District staff who reviewed the Application and concluded that it was deficient in six sections: Mission, Guiding Principles & Purpose; ESE; ELL; Student Recruitment and Enrollment; Budget; and Action Plan. The first of these was rated "Does Not Meet the Standard" under the Florida Charter School Application Evaluation Instrument ("Evaluation Instrument"),[4] while the others were rated as "Partially Meets the Standard."

The Applicant does not specifically address the deficiencies in the sections that were rated as partially meeting the standard. Instead, the Applicant contends, without any citation to legal authority, that "the School Board cannot deny a charter application on grounds that it only partially meets a certain required legal standard[.]" (Notice of Appeal at 18.) The Evaluation Instrument, however, defines "Partially Meets the Standard" as a response that "addresses **most**" – and therefore not all – "of the criteria," but for which "the responses **lack** meaningful detail and

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

require important additional information." Fla. Admin. Code R. 6A-6.0786, Form IEPC-M2 (June 2012) (emphasis added ("e.a.")). In other words, it is deficient. As explained herein, the sections of the Application which only partially met the standard failed to 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 deficiencies in those sections.[5] *Cf. Sch. Bd. of Volusia Cty.*, 974 So. 2d at 1191 (a district school board would have had good cause to deny an application on basis that is required by the application template, the standard application, or the Charter School Statute).

The Applicant also contends that issues with the sections that were rated as partially meeting the standard were clarified or refuted during the Applicant interview. While some issues were clarified at the interview, the majority were not clarified or would require *substantive changes* to the Application.[6] The issues discussed below were not clarified during the interview and fully supported the reviewers' ratings and the School Board's denial of the Application.

1. Mission, Guiding Principles & Purpose (Section 1)

Reviewer James Pegg found that Section 1 did not meet the standard because the Applicant failed to satisfy School Board Policy 2.57, specifically the Rubric for Charter School Application Review of Innovative Methods which is attached to the Policy. The Applicant contends that this basis for denial did not constitute good cause for several reasons, all of which lack merit.

[5] This fact is consistent with the Charter School Statute, which only permits an applicant to make "technical or *nonsubstantive* corrections or clarifications," such as grammatical or typographical errors, before a district school board approves or denies the final application. § 1002.33(6)(b), Fla. Stat. (2015); *cf. Sch. Bd. of Volusia Cty.*, 974 So. 2d at 1191 (school board lacked good cause to deny application based on typographical error that applicant had indicated it was willing to correct). Accordingly, any missing "important additional information" that would cause an application to only partially meet the standard could not be added after the application was submitted.

[6] The School Board acknowledges that the issues in Section 19, Action Plan, were clarified at the interview and that that one Section should have been rated as meeting the standard.

First, the Applicant contends that the School Board adopted a definition of "innovation" (or "innovative") that contravenes the requirements of the Charter School Statute.[7] The School Board's definition of the term "innovative" in School Board Policy 2.57 and the attached Rubric do not contravene the requirements of the Charter School Statute. Section 1002.33(2)(b), Florida Statutes, sets forth one of the mandatory purposes of a charter school as "[e]ncourag[ing] the use of innovative learning methods." In Section 1 of the Model Application, 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.**" Fla. Admin. Code R. 6A-6.0786, Form IEPC-M1 (August 2015) (e.a.). The Model Application then quotes from section 1002.33(2)(b), which provides that "charter schools shall fulfill the following purposes . . . Encourage the use of innovative learning methods." *Id.* (quoting § 1002.33(2)(b), Fla. Stat.). Additionally, section 1002.33(5)(b)e requires the School Board to "ensure that the charter is innovative[.]"[8]

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

[7] Notably, the prescribed method for asserting that an agency rule is an invalid exercise of delegated legislative authority is found in section 120.56, Florida Statutes, as part of the Administrative Procedure Act.

[8] The Applicant's argument that the duty to ensure the charter is innovative applies to the charter contract and not to the charter school itself is specious. The charter governs how the charter school will operate. The term "charter" in that context clearly encompasses the instructional program of the charter school, which is the charter school's duty to implement. That is why the sponsor is also required to ensure that the charter is consistent with the state educational goals in section 1000.03(5), Florida Statutes, which sets forth "[t]he priorities of Florida's K-20 education system[.]"

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) (Exhibit "A" at 14-28). 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." Rubric for Charter School Application Review of Innovative Methods (Exhibit "A" at 26-28).

School Board Policy 2.57 validly defines the term "innovative," which is not defined in the Charter School Statute. 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 definition[9]: "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

[9] *See Sieniarecki 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).

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.").[10] § 1002.33(6)(a)6, Fla. Stat. (2015) (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.[11] *See id.* § 1002.33(2)(b) & (5)(b)e.

The courts have upheld such policies. For example, in *Imhotep-Nguzo Saba*, the applicants challenged the application of a School Board policy that looked to the academic and financial success of the applicant's existing school as a requirement for starting a new school, when that criteria was not required by the statute. The applicants argued that the School Board's adoption of the policy was *ultra vires* because the Charter School Statute generally exempts charter schools from School Board policies. 947 So. 2d at 1281. The court concluded that the challenged policy was valid and affirmed the denial of the applications. *Id.* at 1285. The court explained that the exemption then in § 1002.33(5)(b)4 stating the "sponsor's policies shall not apply to a charter

[10] Section 1002.33(6)(a)6 does not require that the Applicant "agree" to providing such information.

[11] The Applicant also argues that the CSAC and SBE "specifically rejected the 'lack of innovation' argument" in an appeal last year. (Notice of Appeal at 7.) Notably, the CSAC did not expressly comment on the School Board's innovation argument in its recommendation (CSAC Recommendation, *Fla. Charter Ed. Found. v. Sch. Bd. of Palm Beach Cty.*, Case No. 2015-3112, Apr. 15, 2015), nor did the SBE in its Order (SBE Final Order, *Fla. Charter Ed. Found. v. Sch. Bd. of Palm Beach Cty.*, Case No. 2015-3112, Apr. 23, 2015). Accordingly, neither the CSAC recommendation nor the DOE's final order from that appeal constitute precedent on the issue of innovation. Furthermore, the School Board has appealed the SBE's ruling to the Fourth District Court of Appeal, and the appeal involves the meaning of the term "innovative" in the Charter School Statute. *See Sch. Bd. of Palm Bch. Cnty. v. Fla. Charter Ed. Found., Inc.*, No. 4D15-2032 (Fla. 4th DCA, initial brief filed Sep. 28, 2015).