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CHARTER SCHOOL APPEAL COMMISSION  
FLORIDA DEPARTMENT OF EDUCATION

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DATE: Friday, October 11th, 2019  
TIME: Commenced at 9:00 a.m.  
Concluded at 10:00 a.m.  
LOCATION: 325 West Gaines Street  
Room 1706  
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

TIFFANIE PAULINE

OSVALDO GARCIA

RICHARD MORENO

## P R O C E E D I N G S

1  
2 CHAIR TEPPER: We're going to go ahead and  
3 get started. This is the Charter School Appeal  
4 Commission. My name is Lois Tepper, I'm the  
5 Commissioner's designee.

6 We have new counsel for our Commission, Jamie  
7 Braun is with us today. Amanda Gay, who is  
8 usually our counsel, had twins and she's out on  
9 leave.

10 Adam Emerson, the Director of the Choice  
11 Office -- or the Charter School Office, may be  
12 joining us later, as well as the Chief of Staff  
13 and perhaps our new Chancellor for Innovation,  
14 Eric Hall.

15 As required by statute, we have a balanced  
16 panel this morning, two members from the  
17 districts, two members from charter schools.

18 The procedure today is, as always, each side  
19 we have ten minutes to tell us the story about  
20 their school and why they're here today. We'll  
21 always start with the school, and then we'll go to  
22 the district.

23 Then I'll read the first issue. Each side  
24 will have three minutes on that issue. Then we'll  
25 go to questions. The members will ask you

1 questions until they're satisfied that everything  
2 that they noticed when they went through the  
3 application is satisfied.

4 You should know, you may not get a ton of  
5 questions, because they have read all of this,  
6 they've had it for a long time, because, as you  
7 know, we've postponed this before.

8 The charter school must prevail on all  
9 issues. There are two today. In order to  
10 prevail, the district only needs to prevail on one  
11 issue to establish the fact that they had good  
12 cause for their denial.

13 For the members, we are again doing the  
14 motion and filling in the part of "because" so we  
15 have a good record and we have a good  
16 recommendation for the State Board.

17 There's a court reporter with us today. She  
18 can only hear one of you at a time. If you talk  
19 over each other, I'll ask you to stop. If you go  
20 to the microphone and are reading from your  
21 documents, sometimes you start to pick up speed.  
22 I'm going to ask you to slow down so that she can  
23 get a good transcript.

24 We also ask that you not talk from your  
25 chair. It helps a lot if you do go to the

1 microphone.

2 The members will ask you questions, and  
3 they'll say, this is for the school or this is for  
4 the district. Whoever they ask a question of,  
5 I'll give the other side an opportunity to talk  
6 about that so that we get a balanced side, okay?

7 Anything before we start, members?

8 MS. HODGENS: No.

9 CHAIR TEPPER: Karen, would you call the  
10 roll.

11 MS. HINES: Osvaldo Garcia.

12 MR. GARCIA: Here.

13 MS. HINES: Jenna Hodgens.

14 MS. HODGENS: Here.

15 MS. HINES: Richard Moreno.

16 MR. MORENO: Here.

17 MS. HINES: Tiffanie Pauline.

18 MS. PAULINE: Here.

19 CHAIR TEPPER: So ten minutes for the charter  
20 school. Mr. Arnold.

21 MR. ARNOLD: Thank you, Ms. Tepper. Good  
22 morning members of the Commission.

23 My name is Shawn Arnold, and I represent  
24 Florida East Coast Charter School in appealing the  
25 School District of Volusia County's denial of the

1 charter application. With me today from my firm  
2 is Braxton Padgett. We also have Lindsey Granger  
3 from Collaborative Education. We have Keith  
4 Spence from School Financial Services. And we  
5 have Brian Seeber, who is an attorney. And also a  
6 governing board member of the school who will be  
7 here to address some of the issues that may come  
8 up.

9 Florida East Coast submitted a charter  
10 application proposing to open a K-5 charter school  
11 in Volusia County with a Whole Child Project Based  
12 Delivery Model. After holding a capacity  
13 interview and a quasi-judicial hearing, the school  
14 board voted to deny the application.

15 You should find that this denial was unlawful  
16 and that the Florida East Coast Appeal should be  
17 granted. The school board did not have competent  
18 substantial evidence to base its denial, nor were  
19 any of the -- nor at the end is there good cause.

20 So what should this Commission consider? The  
21 school board has repeatedly argued that the  
22 statements made at the quasi-judicial hearing  
23 should not be considered. At the same time, the  
24 school board has relied upon comments at the  
25 capacity interview to support its denial.

1           In this matter, the school board is being  
2 inconsistent and is unlawful. The applicable rule  
3 says that the record on appeal includes the  
4 application, all documents considered by the  
5 school board, and the transcript of all meetings  
6 at which a decision was considered. Clearly the  
7 quasi-judicial hearing was where the matter was  
8 considered.

9           I further want to emphasize what competent  
10 substantial evidence is. And it must not be that  
11 which is based on speculation and conjecture or  
12 opinion testimony.

13           So let's look at the two issues that are here  
14 today. The first is the education plan. The  
15 school board erroneously uses as a reason for  
16 denial that Florida East Coast failed to identify  
17 the curriculum that it would use. The curriculum  
18 plan section in this matter was created by  
19 Collaborative Education. And if you have any  
20 questions on that, Ms. Granger will be able to  
21 answer them.

22           However, as a threshold matter, the model  
23 charter application does not require the charter  
24 school to identify all of the curriculum that will  
25 be used; rather, it says that, quote, if the

1 curriculum is not fully developed, describe any  
2 curricular choices made to date and the proposed  
3 curricular choices, such as textbooks, and explain  
4 a plan for how the curriculum will be completed  
5 between the approval application and the opening  
6 of the school.

7 The school satisfied these requirements. The  
8 school identified a number of specific  
9 instructional materials that it had chosen to that  
10 time. In fact, much of the instructional  
11 materials that were identified are used by Volusia  
12 County or come from FDOE lists of adopted  
13 curriculum materials.

14 The school also developed a clear plan  
15 involving the to be hired later principal for the  
16 development of the -- the final development  
17 utilizing the district's curriculum maps that  
18 align with the education program. The district  
19 even acknowledges this. It says the school  
20 pledged to develop its curriculum to Florida  
21 Standards and that it will focus on writing and  
22 reading and instruction.

23 The materials identified demonstrate to these  
24 guidelines: Failure to spell out the final  
25 curriculum is not good cause, nor is it competent

1 substantial evidence to deny it and, therefore,  
2 the district's finding of a partially meets is  
3 improper.

4 Additionally, the partially meets portion of  
5 the education plan stems from a misstatement of  
6 Florida Statute 1003.455, which says it clearly  
7 allows any instructional personnel in K-5 to  
8 deliver PE instruction. The curriculum need only  
9 be reviewed by an individual who is certified.

10 And the statement by the school board, again,  
11 was going to the partially meets standard, it's  
12 not based on competent substantial evidence, and  
13 does not meet good cause.

14 The second issue that you're going to take up  
15 today is the business plan. Likewise, the  
16 business plan -- on the business plan, the school  
17 board lacked competent substantial evidence.

18 As to the budget, the school board contends  
19 that the school did not provide a viable budget  
20 that accounts for contingent expenses. But here  
21 the school board clearly missed the first line on  
22 the budget, which was a reservation of 3 percent  
23 for contingencies. Even after accounting for the  
24 contingent expenses, the school board -- I'm  
25 sorry -- the school presented a viable budget.

1           The school board cites that this was an  
2 allegedly inadequate budget for things to do, such  
3 as purchasing computers. But the school  
4 repeatedly said they're not planning on  
5 purchasing, rather they're going to lease the  
6 computers.

7           In addition, because the school is taking  
8 over in a facility where a school was previously  
9 located, the school was able to have very minimal  
10 expenses in its opening budget and, therefore, the  
11 start-up budget is smaller than normal. This  
12 explains why the start-up loan is of such a small  
13 amount. And it should be considered a strength of  
14 the school. The start-up budget also contains a  
15 generous budget for marketing, some of which could  
16 account for contingent expenses that might arise.

17           The loan commitment, there's confusion about  
18 that as well, which Mr. Seeber is here to discuss,  
19 where the school board erroneously comes to the  
20 assumption that when there are certain things such  
21 as furniture, fixtures, and equipment that are  
22 pledged as collateral, it says that we're pledging  
23 the landlord's items when in fact we're not.

24           Finally, there are several partially meets,  
25 which, again, do not -- which are not based upon

1 competent substantial evidence nor are good cause  
2 for denial. This includes facilities, food  
3 service, financial management. The school  
4 presented an excellent facility where the school  
5 will be held and it also presented a plan for an  
6 alternative facility in case that doesn't occur.

7 They also put forth a clear plan to select a  
8 food vendor under the National School Lunch  
9 Program and planned for continued financial  
10 oversight once the beginning -- once the charter  
11 contract is signed. And Mr. Spence is able to  
12 answer any questions you have on that.

13 In total, Members of the Commission, there's  
14 simply not competent substantial evidence to  
15 support the denial by the school board in this  
16 instance. And, moreover, even if you, after  
17 weighing the facts, maybe want to side with the  
18 district on one or two issues, there's not good  
19 cause. There's nothing in this denial notice that  
20 rises to the level of good cause. So when you  
21 vote on the education plan, when you vote on the  
22 business plan, we ask that you grant the appeal.  
23 Thank you.

24 CHAIR TEPPER: Thank you.

25 And for the district.

1 MS. YOON: Good morning, Members of the  
2 Appeal Commission. My name is Carol Yoon, and I'm  
3 here on behalf of Volusia County School Board. I  
4 have here with me Mr. Doran, who is also a school  
5 board attorney, and Stacey Manning, General  
6 Counsel; Debra Muller, Chief Financial Officer;  
7 Rachel Hazel, Chief Academic Officer; Robenson  
8 Prime, Coordinator of Training Systems Operations  
9 & Marketing for School Way Cafe, and Food and  
10 Nutrition Services, and also Florida School  
11 Nutrition Association Region III Director. He's  
12 got quite a long title.

13 We are here today to ask you to uphold the  
14 school board's decision to deny and give deference  
15 to the school board's factual findings on denying  
16 Florida East Coast Charter School's application.  
17 Some of you here have been at successful charter  
18 schools so are very aware of what it takes to be a  
19 successful, quality charter school.

20 A charter school has not only to be  
21 academically strong, but also strong in areas  
22 management, governance, finances, student  
23 recruitment, facilities, among others, to be a  
24 quality charter school.

25 And one of the four principles authorizing a

1 charter school as set forth by the Florida  
2 Department of Education in its handbook is that  
3 the school board sets high standards for approving  
4 charter applicants and maintain high standards for  
5 the charter schools it approves. Even under the  
6 Florida Statutes, charter schools must meet high  
7 standards of student achievement and financial  
8 feasibility. I just want to reiterate these  
9 standards are -- once again, these are high  
10 standards.

11 The purpose of a charter school in the  
12 Florida Statutes is to give students the  
13 opportunity to gain ground that they otherwise  
14 would not have at a public school through  
15 innovative learning methods. It is the obligation  
16 of the charter school to present an application  
17 that exhibits their understanding of these  
18 requirements and the school board to measure the  
19 application against those high standards and grant  
20 only those applications that demonstrate a strong  
21 capacity to establish and operate a quality  
22 charter school. I reiterate again, these are high  
23 standards, because we want quality charter  
24 schools.

25 Florida East Coast Charter School failed to

1 meet any of the statutory requirements in some of  
2 these areas. At the end of the day, you and I  
3 know that the only persons most affected by a  
4 charter school that fails are the students of the  
5 charter school -- at the charter school. And it  
6 is our duty today to prevent that from happening.

7 Florida East Coast Charter School's  
8 application only partially meets the requirement  
9 under facility food service, financial management  
10 and oversight and curriculum and instructional  
11 design. It did not meet the standards in two  
12 areas, budget and start-up plan.

13 Specifically, Florida East Coast Charter  
14 School provided documents that were in conflict  
15 with each other and provided inconsistent  
16 statements when asked to elaborate and explain on  
17 some of the areas of the application.

18 The start-up loan, for example, requires that  
19 there be a perfected lien on furniture, fixtures,  
20 and equipment as collateral for the loan.

21 However, the lease agreement that Florida East  
22 Coast School provided to the school board for the  
23 facility prohibits liens to be placed on a  
24 landlord's interest and actually provides that the  
25 landlord has a lien on the furniture, fixtures,

1 and equipment that the charter school places on  
2 the premises. So there's a direct conflict there  
3 in both the documents presented.

4 In the start-up budget for year one, they are  
5 grossly insufficient to account for any  
6 contingencies. At the end of the start-up, the  
7 school is left with \$136. At the end of year one,  
8 the ending fund balance is less than 1 percent.

9 Interesting when the school was questioned  
10 about where the furniture, fixtures, and equipment  
11 necessary to have the collateral for the loan  
12 would come from, they said they would purchase it  
13 in year one. However, there is no evidence of  
14 this in the budget. And less than 1 percent fund  
15 balance in year one would be insufficient to  
16 provide the school the funds to purchase any  
17 furniture, fixtures, or equipment.

18 Significantly, Florida Department of  
19 Education requires a minimum of 3 percent of  
20 revenues for any fund balances. Not less than  
21 1 percent. That's unacceptable under the Florida  
22 state laws.

23 As for specific line items in their budget,  
24 they only account for .5 FTE school guidance under  
25 the 50 percent enrollment plan. This is

1 insufficient to meet the statutory standards as a  
2 school guidance is required by law.

3 Their application states it plans on working  
4 with the district also to verify eligibility for  
5 free and reduced lunch. However, the district  
6 does not approve free and reduced lunch meal  
7 applications if an outside vendor was used. And  
8 that is what the application proposes, that they  
9 would use an outside vendor.

10 At the capacity interview and at the  
11 quasi-judicial hearing, it says they would use  
12 a -- they would have their own vendor. However,  
13 there is nothing to account for this in the  
14 application itself. There's no evidence of this  
15 at all, not either in the budget or in the  
16 application.

17 The charter school application also fails to  
18 meet standards and doesn't align with USDA  
19 Guidelines and reimbursable rates for our paid,  
20 reduced, and free meals. It also did not properly  
21 account for insurance policy limits required by  
22 the school board. They have provided for a limit  
23 that was less than what the school board policy  
24 provides, which is a \$500,000 limit for funds.

25 The application also failed to provide

1 sufficient details on its school's curriculum and  
2 instructional materials, leaving a lot of the  
3 decision making to the principal that has not been  
4 hired yet. And that was a problem in assessing  
5 the application is that there's not enough  
6 sufficient details and that you're leaving a lot  
7 of the decision making to the principal who is not  
8 hired, leaving the school board to determine  
9 whether they meet the statutory standards. All  
10 these reasons support a legally sufficient reason  
11 for good cause for the school board to deny the  
12 application.

13 Lastly, the school relies on the school board  
14 vs -- Volusia County vs. Academy of Excellence  
15 case to assert that the school board cannot deny  
16 their application if they are willing to amend  
17 their application. Now, in the Academy's case, it  
18 was dealing with a typographical error and not a  
19 substantive change.

20 Now, significantly after that case came out,  
21 the Legislature had to amend the statute and  
22 specifically include that, that you can only  
23 change nonsubstantive or typographical errors, not  
24 a substantive change. And all of these errors  
25 that I'm pointing out to you in the application

1 are substantive changes, not a simple, simple  
2 typographical error.

3 If you were to adopt the argument of the  
4 charter school, you would basically be finding the  
5 statute meaningless, and that's not what we're  
6 here to do. So I ask that the appeal -- Members  
7 of the Appeal Commission uphold the decision of  
8 the school board in denying the charter school  
9 application because there was sufficient competent  
10 evidence and good cause for the denial.

11 CHAIR TEPPER: Thank you.

12 So that takes us to issue one. Issue one is  
13 whether the applicant's educational plan failed to  
14 meet any of the following standards. And the  
15 standard we're discussing today is curriculum and  
16 instructional design.

17 Mr. Arnold, three minutes.

18 MR. ARNOLD: Thanks, Ms. Tepper.

19 The school district doubled down on its  
20 misreading of the Florida Administrative Code as  
21 well as the -- and in doing so in the application  
22 as to what the application says about curriculum.  
23 It says if the curriculum is not fully developed,  
24 then explain the plan for how the curriculum will  
25 be completed between the approval of the

1 application and the opening of the school. Again,  
2 it's right there in the -- it's in the prompt,  
3 it's in front of the materials with you today.

4 And the school district again doubled down on  
5 something that they're just simply reading what  
6 the prompt says. It is totally allowable that the  
7 school is allowed to further come out with a  
8 curriculum as the process goes along.

9 Moreover, I would like to address the Volusia  
10 County vs. Academy case, which was something the  
11 school district was involved in. They continue to  
12 misstate the holding of that, and they've done it  
13 in other proceedings which we've been involved  
14 with. It was what was the purpose of the capacity  
15 interview, what is the purpose of asking questions  
16 at the quasi-judicial hearing if it's not to  
17 elicit the school's response to it? And if the  
18 school clarifies the information that's in there,  
19 then that is an allowable response.

20 The school district wants to have it both  
21 ways. It wants to have the responses that are in  
22 there and hold it against the school. But then in  
23 other circumstances where they get clarifying  
24 information, they say, well, we're not going to  
25 consider this. This is a consistent problem we've

1 had with this district and we would ask that you  
2 remedy this situation.

3 Again, I think that this is very  
4 straightforward. They did not read the prompt.  
5 They didn't address the PE issue, so I'm assuming  
6 that they're abandoning that issue. But if it's  
7 something that would be addressed, the PE, again,  
8 the Statute 1003.455 says that it can be given by  
9 any instructional personnel.

10 So for the two reasons that they put -- and,  
11 again, this was a partially meets, this wasn't a  
12 not meets. The curriculum piece is very  
13 straightforward. They're not reading the prompt  
14 correctly. And Florida law says that  
15 instructional -- any instructional personnel can  
16 give PE.

17 We would ask that you deny -- or that you  
18 would grant the school's appeal and, again, say  
19 that there wasn't a good cause by the school  
20 district.

21 CHAIR TEPPER: Thank you.

22 And for the district, three minutes on the  
23 educational plan.

24 MS. YOON: First of all, we're not -- all  
25 issues are still on the table. We did not take

1 off any issue on the table.

2 I would like to call Rachel Hazel to come and  
3 address this.

4 MS. HAZEL: Hello. As far as the curriculum  
5 and the standards goes, there were standards  
6 listed as the curriculum followed the standards.  
7 We did cite two specific materials that were  
8 listed in the plan that are not the latest  
9 edition, specifically the Science Fusion on page  
10 132, and McGraw-Hill Wonders -- I'm sorry,  
11 McGraw-Hill Wonders was on page 132. Page 23 was  
12 the Science Fusion. Those were not the most  
13 current versions available.

14 For the PE instruction, he is correct that  
15 anyone can deliver PE instruction as long as  
16 you're a certified educator. And there's a  
17 150-minute requirement. However, that curriculum  
18 must be reviewed and must be overseen by a  
19 certified PE instructor, which we do not have at  
20 our district level. That is why each of our  
21 schools have a PE certified person at their  
22 schools. We don't have someone at our district  
23 level that reviews and oversees that, nor did we  
24 see it budgeted to be reviewed.

25 CHAIR TEPPER: Thank you.

1 Questions?

2 MS. HODGENS: I do have a question. I have a  
3 question for the school district. I want to  
4 understand what the process is for an applicant,  
5 because as I read it and as I heard today, there  
6 were meetings and interviews and things, and I  
7 want to understand what information -- what do you  
8 provide applicants before they apply and then what  
9 is the process once they do apply? What  
10 information do you use in your decision making?

11 MS. YOON: They are given quite a few things  
12 in the model application. A lot of it is modeled,  
13 so they can follow (inaudible) so they are  
14 provided that.

15 I think what you're also referring to is the  
16 capacity interview that takes place after the  
17 applications are filed. But that capacity  
18 interview is only to the extent that there is some  
19 confusion in the application that they want  
20 elaboration on, so that's an opportunity for  
21 elaboration. It is to make changes to the  
22 application. You cannot make substantive changes.

23 So if they at the capacity interview attempt  
24 to do that, we cannot -- the school board cannot  
25 consider that, and just based on statute. And

1 then after that, there's a quasi-judicial hearing  
2 before the school board where both parties are  
3 present and in front of the school board to make  
4 the decision.

5 MS. HODGENS: And is information from the  
6 capacity interview and the quasi-judicial hearing,  
7 is the information from there utilized in the  
8 decision making of the application?

9 MS. YOON: Really the only thing that we can  
10 rely on is the application. If to the degree that  
11 there's anything in the capacity review and  
12 quasi-judicial hearing is if there's an  
13 elaboration that's not a substantive change to the  
14 application.

15 MS. HODGENS: Thank you.

16 CHAIR TEPPER: Okay. Any other questions  
17 from Commission Members?

18 MS. PAULINE: Yeah, I have a follow-up  
19 because of that.

20 CHAIR TEPPER: Okay.

21 MS. PAULINE: For the district. I didn't  
22 understand the last response. For the district, I  
23 didn't understand your last response regarding you  
24 said that it's only considered if it's not  
25 substantial.

1 MS. YOON: Substantive.

2 MS. PAULINE: Substantive, I'm sorry.

3 MS. YOON: Yes. I'll go to the podium.

4 CHAIR TEPPER: Thank you.

5 MS. PAULINE: It is or it is not?

6 MS. YOON: If it is not substantive.

7 MS. PAULINE: Okay.

8 MS. YOON: Because you cannot change -- you  
9 can't make substantive changes to your  
10 application, but you can make nonsubstantive. For  
11 example, if you put in there a number and it's a  
12 typographical error and you want to change that,  
13 that would be a nonsubstantive change that you can  
14 consider.

15 MS. PAULINE: You also stated that during the  
16 capacity interview and through the quasi-process,  
17 you seek clarification or elaboration on anything  
18 that requires, but I'm not clear as to whether  
19 that is considered and evaluated as part of the  
20 final decision by the school board.

21 MS. YOON: I guess my -- it's only  
22 considered -- once again, we just have -- the  
23 school board is only considering the application  
24 itself. To the extent that anything in addition  
25 from the capacity interview and quasi-judicial is

1           considered, it's -- for example -- I'm trying to  
2           think of an example.

3           MS. PAULINE: Let me reask my question, maybe  
4           that will help. When I was reading the  
5           transcript, it seemed the quasi-judicial process,  
6           which I'm familiar with at this level, a review,  
7           things were submitted to the board as exhibits,  
8           and that included the transcript from the capacity  
9           interview, and then there were additional  
10          documents. So I'm just trying to understand was  
11          it officially a part of the evaluative process and  
12          taken into consideration to make the final  
13          decision or was it just supplementary, additional  
14          information that had no bearing on the final  
15          decision?

16          MS. YOON: Yes. So the transcript from the  
17          capacity interview was submitted and taken into  
18          consideration --

19          MS. PAULINE: Okay.

20          MS. YOON: -- to make the decision. But once  
21          again, that decision has to be just based on if  
22          there is any elaboration that's not going to be a  
23          substantive change, if that makes sense.

24          MS. PAULINE: Okay.

25          CHAIR TEPPER: Any other questions from

1 members?

2 (No response.)

3 CHAIR TEPPER: Then would someone please make  
4 the motion and then we'll work together to fill in  
5 the "because" part.

6 Jenna.

7 MS. HODGENS: Okay. I move that the  
8 Commission find that the school board did not have  
9 competent substantial evidence to support its  
10 denial of the application based on the applicant's  
11 failure to meet the standards for the educational  
12 plan because -- I need help on this "because."

13 CHAIR TEPPER: So the two issues I think we  
14 need to address from the letter of denial are the  
15 PE issue and the curriculum issue.

16 MS. HODGENS: Okay.

17 CHAIR TEPPER: Because.

18 MS. HODGENS: Because the curriculum section  
19 may be developed --

20 MS. PAULINE: At a later date.

21 MS. HODGENS: Say it again.

22 MS. PAULINE: At a later date.

23 MS. HODGENS: -- at a later date. Thank you.  
24 May be developed at a later date, and physical  
25 education may be provided by any teacher that is

1 certified at the school with review of curriculum.

2 MR. GARCIA: By a certified PE coach.

3 MS. HODGENS: Say again.

4 MR. GARCIA: By a certified PE coach.

5 MS. HODGENS: With review by a certified PE  
6 coach, certified PE teacher.

7 MR. MORENO: Maybe add a little bit, that the  
8 application did have enough description of what  
9 the curriculum plan would be. It wasn't completed  
10 but it was --

11 MS. PAULINE: Adequate framework.

12 MR. MORENO: Correct, it was an adequate  
13 framework for --

14 MS. PAULINE: For the curriculum.

15 CHAIR TEPPER: Okay. So the motion is I move  
16 the Commission find that the school board did not  
17 have competent substantial evidence to support its  
18 denial of the application based on the applicant's  
19 failure to meet the standards for the educational  
20 plan because the curriculum section may be  
21 developed at a later date, the application did  
22 have an adequate framework for the curriculum, and  
23 PE instruction is only required to be reviewed by  
24 a certified PE teacher.

25 MS. HODGENS: Yes.

1 MR. GARCIA: And it can be by any certified  
2 teacher.

3 CHAIR TEPPER: And instruction can be by any  
4 certified teacher.

5 MR. GARCIA: Correct.

6 MS. PAULINE: I second.

7 CHAIR TEPPER: Second by Tiffanie. So we  
8 have a motion by Jenna and a second by Tiffanie.  
9 If you vote yes, you are voting for the charter  
10 school. If you vote no, you are voting for the  
11 district.

12 Karen.

13 MS. HINES: Jenna Hodgens.

14 MS. HODGENS: Yes.

15 MS. HINES: Tiffanie Pauline.

16 MS. PAULINE: Yes.

17 MS. HINES: Osvaldo Garcia.

18 MR. GARCIA: Yes.

19 MS. HINES: Richard Moreno.

20 MR. MORENO: Yes.

21 CHAIR TEPPER: So we do not have to do  
22 Section 2.

23 That will take us to the business plan. The  
24 issue is whether the applicant's business plan  
25 failed to meet any of the following standards.

1 And we have facilities, food service, the budget,  
2 financial management and oversight, and the  
3 start-up plan.

4 Mr. Arnold, three minutes on the business  
5 plan.

6 MR. ARNOLD: Mr. Padgett is going to take  
7 this one.

8 CHAIR TEPPER: Okay. If you'll just state  
9 your name the first time for the court reporter.

10 MR. PADGETT: Yes. Hi. Good morning. My  
11 name is Braxton Padgett. I'm also with the Arnold  
12 Law Firm. We represent Florida East Coast Charter  
13 School.

14 Right now we're going to be focusing on the  
15 business plan portion. We have two individuals  
16 that we have available if you guys have questions.  
17 One is Keith Spence, he is a certified public  
18 accountant with School Financial Services. He  
19 assisted in the preparation of these budgets that  
20 are at issue today. We also have Brian Seeber,  
21 who is a practicing attorney, and he is going to  
22 be serving on the Florida East Coast Board, and he  
23 can answer some of your questions related to the  
24 start-up loan.

25 There's a number of issues the school board

1 identified the business plan as partially meeting  
2 the standard. Due to time constraints, I'm not  
3 going to address those specifically right now  
4 except to say that we did not believe that the  
5 school board had competent substantial evidence or  
6 a good cause basis for denying the application  
7 based on those components.

8 I'm going to focus my attention instead on  
9 the two areas that were found to not meet the  
10 standard for approval, and those are the areas of  
11 the start-up plan and the budget.

12 In regards to the start-up plan, the school  
13 board alleges that the start-up budget fails to  
14 account for contingencies and that it's unclear  
15 what would serve as collateral for the start-up  
16 loan.

17 Mr. Spence will be happy to explain to you  
18 how the start-up loan was sufficient to cover the  
19 expenses of the school. This school had  
20 exceptionally low costs that would be lower than a  
21 typical charter school. And he can explain a  
22 little bit to you about why that is.

23 Mr. Seeber will also explain to you that the  
24 collateral that would serve -- that the property  
25 that would service as the collateral for the

1 start-up loan would be the furniture, fixtures,  
2 and equipment that the school was going to acquire  
3 in the future, something that's perfectly  
4 allowable and standard and secured transactions.  
5 It is not going to be the furniture, fixtures, and  
6 equipment of the landlord, as the school board has  
7 alleged. And this was clarified multiple times,  
8 including during the quasi-judicial hearing.

9 In regards to the budgets, the school board  
10 alleges that the budgets did not have adequate  
11 ending fund balances to account for contingent  
12 expenses. Mr. Spence, will be happy to explain  
13 that this determination was based in part on some  
14 clear calculation errors on which the school board  
15 based its determination.

16 Further, each of the budgets contains a line  
17 items for contingent expenses equaling 3 percent  
18 of net FEFP proceeds. So the district would have  
19 preferred that there be a larger fund balance, but  
20 School Financial Services made a stylistic  
21 decision to instead include a 3 percent  
22 contingency as a line item.

23 While maybe the school board does not prefer  
24 this method, stylistic decisions over how to draft  
25 the budget simply is not good cause to deny a

1 charter school application.

2 For these reasons, I'm asking that you find  
3 -- I'm asking that you find the school board has  
4 failed to present competent substantial evidence  
5 or establish a good cause basis for denying the  
6 charter application based on the business plan.  
7 Thank you.

8 CHAIR TEPPER: Thank you.

9 And for the district, three minutes on the  
10 business plan.

11 MS. YOON: One of the things that he  
12 discussed and it keeps getting clarification,  
13 again, they're trying to make changes that are  
14 substantive. Even today they're trying to make  
15 changes. And that is not permitted under the  
16 statute.

17 I wanted to also address their argument that  
18 the collateral loan, the collateral is coming from  
19 furniture, fixtures, and equipment that the school  
20 will purchase. However, if you will look at the  
21 lease, on page seven of the lease it provides a  
22 landlord's lien on the furniture -- property,  
23 furniture, fixtures, and merchandise which the  
24 school purchases and places on the premises, so,  
25 again, there's another conflict there.

1 I do have the Chief Financial Officer here to  
2 address the budget with you.

3 MS. MULLER: Good morning. The budget --

4 CHAIR TEPPER: Could you state your name for  
5 court reporter, please.

6 MS. MULLER: Yes. Good morning. Debra  
7 Muller, Chief Financial Officer.

8 The budget does include, as the charter  
9 school states, that there is a contingency  
10 included in the budget. However, a line item in  
11 the budget designated as contingency to us would  
12 indicate that that would be spent, they just  
13 haven't identified what the expenditures would be.

14 What the statute requires for ending fund  
15 balance is that they have 3 percent of the ending  
16 fund balance. And their ending fund balance does  
17 not meet the 3 percent requirement.

18 There are -- again, there is a contingency  
19 line. We had a concern in the 50 percent  
20 enrollment area for the budget where they  
21 indicated that they would have a .5 percent -- or  
22 a .5 FTE for security.

23 The newest statute that requires a law  
24 enforcement officer at the school is that someone  
25 is present, either a guardian, a law enforcement

1 officer, or a security guard the entire time that  
2 students are in session. So they would have to  
3 make that adjustment, and they only included the  
4 .5.

5 I don't know, do you need me to address the  
6 start-up piece while I'm here?

7 CHAIR TEPPER: You have one minute left if  
8 you would like to do that.

9 MS. MULLER: Okay. With the start-up plan,  
10 they did say during the capacity interview -- when  
11 you asked if we take the capacity interview in  
12 consideration -- and, yes, we did -- they made the  
13 statement that they could adjust the advertising  
14 budget, which would decrease the amount of money  
15 needed. But it goes back to the loan letter that  
16 they had shown as their start-up source of  
17 funding, again, to the fact that they said in the  
18 capacity interview they intended to use the  
19 furniture, fixtures, and equipment that were in  
20 the lease -- the proposed lease building, which  
21 they don't have entitlement to.

22 But they also did not provide any inventory  
23 of that building, nor any associated value. So  
24 even if they did have the right to use that  
25 furniture, fixtures, and equipment against -- as

1 collateral for that loan, they did not present any  
2 evidence in the application of the cost or the  
3 value of that furniture, fixtures, and equipment,  
4 so we could not even ascertain that that was  
5 sufficient for collateral for the loan. Thank  
6 you.

7 CHAIR TEPPER: Thank you.

8 And so questions from Commission Members on  
9 anything in the business plan?

10 Tiffanie.

11 MS. PAULINE: Yes. This is to the school.  
12 So the comment was made that costs are lower than,  
13 I guess in this school than for a typical school.  
14 Can you expound on that?

15 CHAIR TEPPER: If you could state your name,  
16 please.

17 MR. SPENCE: Yes. Keith Spence, School  
18 Financial.

19 Just what Mr. Padgett and Mr. Arnold both  
20 alluded to, at first look, \$40,000 does seem  
21 extremely low for start-up costs, obviously. It  
22 was noted on our part also. With some little  
23 information, background information, we were able  
24 to start building around this.

25 Obviously the school is being donated a

1 building. The building will be -- we'll be  
2 allowed to move in four or five months earlier,  
3 which could easily be equivalent to, you know,  
4 \$100,000 worth of rent anywhere else. They have  
5 the facilities for open houses, meetings, so forth  
6 and so forth. So that would explain a lot of the  
7 gap that you normally would see where a school  
8 would need to -- with preopening activities, would  
9 need to acquire a building ahead of time.

10 Obviously this building is ready to go.

11 The other issue that we noted was there was  
12 sufficient money left to pay a principal, which  
13 you would need in those preopening months and  
14 everything.

15 And there was a healthy balance of \$20,000 in  
16 advertising. And after working with  
17 collaboratively and talking to the board, they  
18 feel like that is a very healthy advertising  
19 budget for the demographic area they hope to  
20 attract their students from, that they expect to  
21 have with signage, have with social media. With  
22 open houses at the building that they don't have  
23 to pay rent for, they should be able to attract a  
24 marketing campaign at a low cost.

25 So, yes, on the initial plans, \$40,000 does

1           seem awful low. But when you add in the outside  
2           factors, it does come in to be a more reasonable  
3           figure when you add the donated activities.

4           MS. PAULINE: So a follow-up question.

5           MR. SPENCE: Yes, ma'am.

6           MS. PAULINE: So you mentioned that the  
7           principal will be brought on as a part of the  
8           start-up. And I see on page, it looks like -- I  
9           don't know which number we use -- maybe 298 of the  
10          document, the cash flow for the start-up, it has  
11          the principal starting in February. But in the  
12          narrative in the application, it has the principal  
13          starting in January.

14          And I'm asking this question because it's a  
15          concern, not only to match with the cash flow  
16          statement that you provided, but there was also an  
17          indication made that to build out the curriculum,  
18          the principal would come on board to complete that  
19          work.

20          So can you talk to me about the discrepancy  
21          there?

22          MR. SPENCE: As far as the -- I believe it is  
23          the February date. If January was mentioned, that  
24          was inadvertent because I believe February is the  
25          date that I have.

1 CHAIR TEPPER: Other questions?

2 MR. MORENO: I guess to the district. One of  
3 the things on the denial or the recommendation is  
4 the 3 percent. Do you know where in the statute  
5 that is?

6 MR. DORAN: For the district, for the record,  
7 we want to object to anything that was stated by  
8 the speaker that would be considered a  
9 modification, substantive modification of  
10 information and ask that you not consider any of  
11 this.

12 CHAIR TEPPER: Mr. Arnold.

13 MR. ARNOLD: I would ask you to overrule the  
14 objection. There was nothing that he said that  
15 was a substantive change.

16 CHAIR TEPPER: Just for all the attorneys  
17 presenting, the statute allows these Commission  
18 Members to glean new information at this hearing.

19 THE COURT REPORTER: Who was that speaker,  
20 please?

21 MS. HINES: Theodore Doran.

22 CHAIR TEPPER: All right. Go ahead and ask  
23 your question.

24 MR. MORENO: Just one of the comments that  
25 they have is that the statute requires a 3 percent

1           reserve. I just wanted to see where that  
2           statutory reference is. I think I've read that a  
3           few times and haven't found it.

4           MS. HODGENS: Right.

5           MS. YOON: We might need a minute to look it  
6           up.

7           MR. MORENO: Okay. In the meantime, to the  
8           school, the point of contention is the loan. And  
9           in reading the loan that you have, the loan is  
10          coming ahead of time so there's no asset for the  
11          loan to be drawn on.

12          So maybe talk about what the bank is looking  
13          at to really see what's backing up that loan,  
14          because it's not really assets because it's being  
15          funded ahead of time. So maybe you can talk about  
16          how that is and give us some more.

17          MR. SPENCE: Yes. Our board member, Brian  
18          Seeber, has prepared that.

19          MR. SEEBER: Good morning. My name is Brian  
20          Seeber. I'm a member of the governing board. I  
21          was asked to be on the governing board because I'm  
22          on other boards and I'm the Chair of the Salvation  
23          Army for Volusia and Flagler County and the Chair  
24          of the Disability Solution for Independent Living.  
25          So my experience in being involved in boards led

1           them to invite me to be on this board.

2           It so happens that one of the issues that  
3           fronts this school has to do with secured  
4           transactions. I'm an attorney. I will be in  
5           December practicing for 40 years. My specialty  
6           during that time has been the law of  
7           creditor-debtor relations, so I'm well versed in  
8           the law about secured transactions.

9           Your point is actually right on point, that  
10          the commitment letter, which is one page, will  
11          turn into probably 40 or 50 pages so that lawyers  
12          like me can make a living to document what the  
13          loan would be and what the collateral would be.  
14          So it's very common at the commitment period in  
15          the process that the borrower would represent that  
16          there will be furniture, fixtures, and equipment  
17          that will be used as collateral. Usually those  
18          furniture, fixtures, and equipment are purchased  
19          with the proceeds of the loan.

20          So it would be impossible at the commitment  
21          level to say what's going to be used as collateral  
22          because it is yet to be purchased. The proceeds  
23          of the loan will, at least in part, be used for  
24          that purpose.

25          So the commitment letter, which was page 301

1 in the original submission, includes a reference  
2 to the fact that there will be further  
3 documentation prepared. And in that process, in  
4 that context, by then there would be identified  
5 purposes and uses of the loan. And at that time,  
6 we will be able to say what equipment would be  
7 there to serve as the collateral. At this early  
8 preliminary state, that would almost never be the  
9 case.

10 The issue so far has been that there are --  
11 unlike many new businesses, there are two kinds of  
12 furniture, fixtures, and equipment. One already  
13 exists at those premises that the landlord is  
14 permitting the school to use.

15 The other category will be those items that  
16 are going to be purchased. And the loan  
17 commitment requires a lien against that which is  
18 going to be purchased. It does not require a lien  
19 against the equipment, furniture, fixtures that is  
20 already on the premises.

21 And the language of the lease that the  
22 district has cited which says the lease prohibits  
23 the tenant from encumbering the landlord's  
24 interest in the premises -- from encumbering the  
25 landlord's interest is obvious. The bank is only

1 looking to the collateral owned by the borrower in  
2 order to support the loan.

3 So it's just obvious to say we're just not  
4 reading the words that are clearly there. No one  
5 is offering to give a lien against the landlord's  
6 assets. It would be like going and offering to  
7 use that building over there as collateral. If  
8 the borrower doesn't own it, you can't use it as  
9 collateral.

10 The lease does say on page seven, as was  
11 cited, that the landlord wants to have a lien.  
12 And the district is reading that language to be in  
13 conflict with the commitment letter. But they do  
14 not conflict. What the commitment letter requires  
15 is a first priority lien. The language in the  
16 lease at page seven mentions a lien, but it would  
17 be subsidiary. It would be secondary to the bank,  
18 so there's no conflict -- no contest there.

19 MR. MORENO: Just following up, because in  
20 looking at the loan that you have, the proceeds of  
21 the loan would be expense for start-up expenses so  
22 there's no assets to purchase with that. So is  
23 the bank looking to other guarantors or something  
24 else beyond that or is it -- because the proceeds  
25 aren't going to buy anything. I mean, down the

1 road with FEFP money, once you start going there,  
2 there will be some revenue, but in the first four  
3 months it's basically for expenses.

4 MR. SEEBER: My recollection was that there  
5 was about \$1,500 that was mentioned in the budget  
6 that would be purchased with proceeds of the loan.  
7 But whether I'm correct about that or not, the  
8 answer is that, yes, there would be -- the  
9 documentation would provide for a lien as of the  
10 time of borrowing.

11 But the collateral is fungible. It changes  
12 as the days and months and years go by. The bank  
13 has a lien against that which the borrower will  
14 own. And that will increase as the time goes by  
15 because the bank knows that that's the typical  
16 pattern. The bank recognizes that there will be  
17 additional collateral as the months and years go  
18 by because further equipment would be purchased.  
19 And to the degree the borrower does that, the lien  
20 would attach to that, not the landlord's interest  
21 in anything.

22 MR. MORENO: Okay.

23 CHAIR TEPPER: I'm going to let the district  
24 have a moment.

25 MS. YOON: We have the -- the Chief Financial

1           Officer will tell you the statute that you were  
2           looking for.

3           MR. DORAN: And for the record, again, the  
4           district objects to any information that was  
5           presented to this Commission that was not  
6           previously presented to the school board at the  
7           time it made its decision.

8           CHAIR TEPPER: Go ahead.

9           MS. MULLER: To the furniture, fixtures, and  
10          equipment on the lien, they did state -- we asked  
11          for clarification at the capacity interview, and  
12          they did state at that time that they were relying  
13          on the assets that were in the building to secure  
14          the loan. That is what -- you asked about the  
15          clarifications in the capacity interview. That is  
16          what we relied on to clarify where that equipment  
17          was coming from.

18          The guidelines -- the statute that refers to  
19          the ending fund balance is 1011.051. And it says,  
20          "If at any time the portion of the general fund's  
21          ending fund balance not classified as restricted,  
22          committed, or nonspendable in the district's  
23          approved operating budget is projected to fall  
24          below 3 percent of the projected general fund  
25          revenues during the current fiscal year, the

1 superintendent shall provide written notification  
2 to the district school board and the Commissioner  
3 of Education."

4 MR. MORENO: That just applies to school  
5 districts, right? It doesn't apply to charter  
6 schools?

7 MS. MULLER: Well, when we are reviewing  
8 financial statements for charter schools, we would  
9 also review -- looking at using that as a  
10 guideline to verify their financial condition as  
11 well.

12 CHAIR TEPPER: Mr. Arnold.

13 MR. ARNOLD: Just to highlight Mr. Moreno's  
14 point, the statute is labeled "The district school  
15 board shall maintain a general fund balance."  
16 This is not included in 1002.33 Subsection 16 as  
17 one of the things that charter schools must do.  
18 It must only maintain a -- it has to maintain a  
19 fund balance. It's not required to maintain a  
20 fund balance of 3 percent.

21 And it's very clear knowing the first line of  
22 this. But there is a long list of all of the  
23 things that happen to districts if they don't  
24 maintain a 3 percent fund balance. None of this  
25 applies to charter schools, so the district is

1 just flat wrong on that issue.

2 CHAIR TEPPER: Thank you.

3 Tiffanie, a follow-up.

4 MS. PAULINE: Yes. I have a question for the  
5 school district, Ms. Muller, the CFO.

6 MS. MULLER: Yes.

7 MS. PAULINE: So you indicated because of  
8 what was stated in the capacity interview  
9 regarding the loan and the assets that were  
10 already in the school site, that is where you  
11 addressed -- or pointed to for your decision.

12 However, if that had not been pointed out,  
13 what would you have anticipated to see in the  
14 start-up budget as it relates to this loan? Would  
15 you expect to see more or less of anything other  
16 than that tier or --

17 MS. MULLER: Well, some type of guarantee  
18 that they would be able to perfect that loan and  
19 have the money for the start-up.

20 MS. PAULINE: Okay.

21 MS. MULLER: And that was not what we saw.  
22 And, again, as our attorney stated, the lease  
23 agreement seemed to be in direct conflict with  
24 using those assets for that. And they have a  
25 budget in the start-up of \$1,500 for furniture,

1 fixtures, and equipment, but I believe that -- I'm  
2 not sure if that -- if they stated it this time if  
3 that was for leasing or that was for purchasing,  
4 but it was only \$1,500.

5 MR. MORENO: So was the concern that they  
6 wouldn't get the loan?

7 MS. MULLER: Yes.

8 MR. MORENO: Okay.

9 MS. MULLER: The concern was they did not  
10 have furniture, fixtures, and equipment to pledge  
11 as collateral against the loan.

12 MR. MORENO: So you're basically discounting  
13 the loan itself, saying that the \$40,000 loan  
14 could not be attained if they didn't have assets?

15 MS. MULLER: They didn't provide sufficient  
16 evidence that we could -- that would ensure they  
17 could obtain that loan, yes.

18 MR. MORENO: Okay. So then going back to the  
19 board chair, is what's the confidence that you  
20 would have that loan? I mean, you have a  
21 commitment from the bank. What are the bank's  
22 expectations for that loan?

23 MR. SEEBER: Well, I would say two things to  
24 that. First of all, the landlord is very  
25 supportive of having the school open, and the

1 landlord is the one who has to approach the bank  
2 to get the loan. The loan document refers to  
3 guarantors to be determined. And there's no doubt  
4 that the landlord is anxious to see this go  
5 forward and would guarantee the loan, number one.

6 Number two, the point is that to say there  
7 would be no equipment that could be used as  
8 collateral asks you believe that there's going to  
9 be a school operating with X dozens of children  
10 and have no equipment there. That's obviously not  
11 what the intention to run this school includes.  
12 There's got to be equipment and there will be  
13 equipment or there's not going to be a school.

14 The discussion that I heard the financial  
15 officer refer to at the capacity hearing, which  
16 appears on page 72 of the transcript, by the way,  
17 does not say that -- the discussion was not about  
18 whether there is equipment there that only belongs  
19 to the landlord that's going to be used as  
20 collateral. That discussion morphed immediately  
21 into what equipment happens to already be there.  
22 And there was really not an answer to the question  
23 about what would be purchased so that it could be  
24 used as collateral. It just went right off the  
25 track into a discussion that there's already a lot

1 of equipment there.

2 So the capacity interview at page 72 does not  
3 in any way support the idea that there's not going  
4 to be sufficient equipment to serve as collateral.

5 MR. MORENO: I think I'll just go back to the  
6 one point that's important I think is that to  
7 secure, because the issue is that will you get the  
8 loan or not get the loan.

9 So what you're saying is that -- I mean, with  
10 \$1,500 worth of assets, that's not going to  
11 support your loan. So what you're stipulating is  
12 that the loan -- you would still receive the loan  
13 because the landlord is willing to guarantee it  
14 and there's a guarantor in place that will get you  
15 that loan?

16 MR. SEEBER: That's correct.

17 MR. MORENO: Okay.

18 MR. SEEBER: And the idea that there's going  
19 to be a guarantee is shown right on the face of  
20 that document, at page 301 of the original  
21 submission that refers to guarantors.

22 MR. MORENO: I see that.

23 CHAIR TEPPER: Other questions?

24 MR. DORAN: And for the record, we would  
25 object to the consideration of any hearsay

1 evidence that has been presented without any  
2 corroboration. We have no knowledge whatsoever  
3 the position of the landlord and neither does this  
4 board based on what's been presented. We object  
5 to consideration of that.

6 CHAIR TEPPER: Thank you.

7 Mr. Arnold.

8 MR. ARNOLD: I stand by my previous  
9 objection -- or argument that that objection  
10 should be overruled.

11 CHAIR TEPPER: Thank you.

12 Tiffanie, go ahead.

13 MS. PAULINE: Yes. Just one more question  
14 for the school regarding the budget, the operating  
15 budget.

16 So in the first year, there's a revenue line  
17 called "Other Sources-Services," and it looks like  
18 it's \$150 per student, I guess, revenue that's  
19 coming in.

20 MR. SPENCE: (Nodding head affirmatively.)

21 MS. PAULINE: Explain that.

22 MR. SPENCE: That would be our aftercare  
23 program.

24 MS. PAULINE: Okay. Aftercare?

25 MR. SPENCE: Uh-huh.

1 MS. PAULINE: And aftercare is being offered  
2 by the school or an outside entity?

3 MR. SPENCE: I will yield to the -- I mean, I  
4 don't even know if that has been determined yet.  
5 But my indication through the budget is that it  
6 could be handled at the school.

7 MS. PAULINE: Could we verify that?

8 MR. ARNOLD: So the legal entity will be  
9 running -- the legal entity of Florida East Coast  
10 Charter will be running the aftercare.

11 MS. PAULINE: Okay. So the follow-up  
12 question to that would then be are there any  
13 expenses related to running the aftercare?

14 MR. ARNOLD: I believe that that was expected  
15 revenue that would be generated.

16 MS. PAULINE: Expected revenue?

17 MR. ARNOLD: Exactly.

18 MS. PAULINE: So what would cover the  
19 expenses, the expense side?

20 MR. ARNOLD: So that would be revenue that  
21 would be -- that would be surplus that would go to  
22 the school.

23 MS. PAULINE: So this is a net affect?

24 MR. ARNOLD: It's the net, yeah, if you would  
25 like to use the term, sure.

1 CHAIR TEPPER: Other questions by Commission  
2 Members?

3 (No response.)

4 CHAIR TEPPER: Then would someone like to  
5 make the motion? And remember that we need to  
6 address each of the sections in our -- the cause  
7 language.

8 Richard.

9 MR. MORENO: Yeah. I move the Commission  
10 find that the school board did not have competent  
11 substantial evidence to support its denial of the  
12 application based on the applicant's failure to  
13 meet the standards of the business plan.

14 CHAIR TEPPER: Because.

15 MR. MORENO: I would say because the budget  
16 had contingencies in place within it to look for  
17 any emphasis on the operating basis and the  
18 opportunity that the school has outlined which is  
19 beyond what is normally required in charter  
20 applications regarding sites, and then to have the  
21 facility available.

22 And I believe when a bank issues a commitment  
23 letter, they have already looked deeply at what's  
24 available there. So with that, I believe that the  
25 bank and the note would be sufficient to cover

1           what they need.

2           CHAIR TEPPER:   Okay.   What about anything  
3           regarding the facility?   There was a question  
4           about a backup plan.   So we need language that the  
5           school has addressed the question regarding the  
6           backup plan for the facility.

7           MR. MORENO:   Yeah.   I would say that in the  
8           application, they had a backup plan that to me was  
9           sufficient enough to cover it.

10          CHAIR TEPPER:   Food service.   The school has  
11          adequately addressed the provision of food  
12          service?

13          MR. GARCIA:   I would agree.

14          CHAIR TEPPER:   Okay.

15          MR. MORENO:   I think the main issue was that  
16          they took an average of what the revenue was so I  
17          believe that it was sufficiently addressed.

18          CHAIR TEPPER:   The budget I think we're fine  
19          on, and I think financial management and oversight  
20          as well as start-up, which sort of went with the  
21          budget.   Is there anything else that we want to  
22          add?

23          Jenna.

24          MS. HODGENS:   The only thing that I can add  
25          is the piece about the -- that I brought up in the

1 documents as well as today about the -- I call  
2 them the safe school officer, you know, being  
3 brought to a .5. And I think that's something  
4 that clearly is stated in statute and would have  
5 to be negotiated in the contract.

6 I feel like that was addressed and they have  
7 said they would have a full-time person. We know  
8 every school in the state of Florida has to have a  
9 full-time person.

10 CHAIR TEPPER: The school has agreed to have  
11 a full-time security officer.

12 MR. MORENO: Yeah. And that was in the  
13 capacity interview on that.

14 MS. HODGENS: Right.

15 CHAIR TEPPER: Okay. I'm going to try to  
16 read this back and then you're going to have to  
17 help me out on it.

18 I move that the Commission find that the  
19 school board did not have competent substantial  
20 evidence to support its denial of the application  
21 based on the applicant's failure to meet the  
22 standards for the business plan because the budget  
23 had contingencies in place, the opportunities  
24 regarding the site. I need more there.

25 MS. HODGENS: Well, a facility was identified

1 and a backup plan was also evident. So there  
2 wasn't a second facility identified, but there was  
3 a backup plan.

4 CHAIR TEPPER: But before that, Richard said  
5 something about the opportunity regarding the  
6 site.

7 MS. HODGENS: He said the opportunity of the  
8 school outlined where the facility was -- that's  
9 where I fell off -- was adequate in the  
10 application.

11 MR. MORENO: Yeah, because the statutory  
12 requirement for a facility is that you outline  
13 what a facility plan is. And this one is actually  
14 beyond what's there and it's all articulated in  
15 the plan.

16 MR. GARCIA: They already have a facility.

17 MR. MORENO: Correct.

18 CHAIR TEPPER: Also, it says the bank has  
19 issued a commitment letter and the school has  
20 addressed a facility backup plan, the school has  
21 adequately addressed the provision of food  
22 service, and the school has agreed to have a  
23 full-time security guard.

24 Is there a second?

25 MR. GARCIA: I'll second.

1 CHAIR TEPPER: Osvaldo.

2 So you've heard the motion and the second.  
3 If you vote yes, you are voting for the charter  
4 school. If you vote no, you are voting for the  
5 school district.

6 Karen.

7 MS. HINES: Richard Moreno.

8 MR. MORENO: Yes.

9 MS. HINES: Osvaldo Garcia.

10 MR. GARCIA: Yes.

11 MS. HINES: Jenna Hodgens.

12 MS. HODGENS: Yes.

13 MS. HINES: Tiffanie Pauline.

14 MS. PAULINE: Yes.

15 CHAIR TEPPER: So we don't need to do the  
16 second portion there; however, we do need to take  
17 a final motion.

18 Jenna, would you make the motion to grant the  
19 appeal?

20 MS. HODGENS: Sure. I move the Commission  
21 recommend that the State Board of Education grant  
22 the appeal.

23 CHAIR TEPPER: Is there a second?

24 MR. GARCIA: Second.

25 CHAIR TEPPER: Osvaldo.

1 Karen.

2 MS. HINES: Jenna Hodgens.

3 MS. HODGENS: Yes.

4 MS. HINES: Osvaldo Garcia.

5 MR. GARCIA: Yes.

6 MS. HINES: Richard Moreno.

7 MR. MORENO: Yes.

8 MS. HINES: Tiffanie Pauline.

9 MS. PAULINE: Yes.

10 CHAIR TEPPER: Okay. Before I let you go,  
11 the school has prevailed. We will make a  
12 recommendation to the State Board of Education.  
13 This appeal will be heard on November 15th in  
14 Bunnell in Flagler County. You'll receive  
15 information between now and then about the agenda.  
16 You can judge where you are on the agenda. You'll  
17 each be given five minutes to speak. You may or  
18 may not be asked questions by the State Board  
19 Members.

20 We will work together now to put everything  
21 that we've said today into a recommendation to the  
22 State Board, and then we'll call all of you plus  
23 the lawyers back on a phone call. So I need  
24 everybody to get their calendars out. And I have  
25 six potential days that we could accomplish this.

1           It takes us about 30 minutes to do this on  
2 the phone. You'll have the document in advance,  
3 you can mark it up, and then we'll all get on the  
4 phone and we'll talk about it.

5           October 16. Just tell me if it's a no.

6           MS. HODGENS: Are you saying all day? You're  
7 not giving a time frame?

8           CHAIR TEPPER: Or you can shout out I can do  
9 it in the morning or whatever.

10          MS. HODGENS: So I'm going to shout that out.  
11 I can do it from nine to ten, that's it, that day.

12          MR. MORENO: Same here.

13          CHAIR TEPPER: Osvaldo, nine to ten on the  
14 16th?

15          MR. GARCIA: I'm already booked. From eight  
16 to ten I have something.

17          CHAIR TEPPER: Okay. That's fine. Let's go  
18 to October 17th.

19          MS. PAULINE: No.

20          CHAIR TEPPER: No for Tiffanie.  
21 The morning of October 18th.

22          MR. MORENO: I'm good.

23          MS. HODGENS: I'm not going to be available.

24          CHAIR TEPPER: You're not available?

25          MS. HODGENS: I'm going to be on a plane.

1 CHAIR TEPPER: October 21st.

2 MS. HODGENS: I'm on a plane again.

3 MR. MORENO: That's a nice weekend.

4 CHAIR TEPPER: October 22nd, are you off the  
5 plane?

6 MS. HODGENS: Yeah. I'll be at the national  
7 conference, but I can --

8 CHAIR TEPPER: You can step out?

9 MS. HODGENS: I can step out and call in.

10 CHAIR TEPPER: Afternoon of October 22nd.

11 MR. MORENO: That works for me.

12 MR. GARCIA: That works for me.

13 CHAIR TEPPER: Mr. Arnold?

14 MR. ARNOLD: I'm available.

15 CHAIR TEPPER: And for the district, could  
16 someone be the available the afternoon of  
17 October 22nd?

18 MS. YOON: Yes.

19 CHAIR TEPPER: Okay. Two o'clock on  
20 October 22nd. We will call each of you and  
21 conference everybody in at two o'clock on  
22 October 22nd. We'll go over everything, but  
23 you'll have it in advance.

24 I would ask the members not to call each  
25 other once you get it, or email or have any

1           conversations about it. The conversations will  
2           only be on the conference call, okay?

3                     (Affirmative response.)

4           MS. PAULINE: Thirty minutes or an hour?

5           CHAIR TEPPER: It will take 30 minutes.

6                     Okay. Is there anything else before we  
7           adjourn?

8                     (No response.)

9           CHAIR TEPPER: Then thank you very much.  
10          We're finished.

11                    (Whereupon, proceedings were concluded at  
12          10:00 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 1 through 60, 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 18th day of October, 2019.



\_\_\_\_\_  
MICHELLE SUBIA, CCR, RPR  
NOTARY PUBLIC  
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EXPIRES JUNE 7, 2022