

**FLORIDA CHARTER SCHOOL APPEAL COMMISSION
APPEAL FROM THE DENIAL OF A CHARTER SCHOOL APPLICATION**

OWN YOUR SUCCESS ACADEMIES, INC.
D/B/A HILLSBOROUGH COUNTY
ACCELERATION ACADEMY,
A FLORIDA NONPROFIT CORPORATION,

Petitioner,

vs.

THE SCHOOL BOARD OF
HILLSBOROUGH COUNTY, FLORIDA,

Respondent.

**MOTION TO EXCLUDE REASONS FOR DENIAL WHERE SCHOOL BOARD DID
NOT STATE WITH**

Own Your Success Academies, Inc., d/b/a Hillsborough County Acceleration Academy, a Florida nonprofit corporation (hereinafter "OYSA" or the "Charter School"), files this evidentiary motion in response to the denial of the Charter Application of the Hillsborough County Acceleration Academy (the "Charter Application") by the School Board Of Hillsborough County, Florida (hereinafter or "School Board")

I. The School Board Did Not Provide the Specific Reasons for Denial.

Under the controlling charter school statute, the School Board was required to set forth the **specific reasons**, based upon good cause, for denying the instant charter application in writing. *See Fla. Stat. § 1002.33(6)(b)(3)(a)*. By law, the Charter School Appeals Commission must find that the instant Charter Application should have been approved by the School Board if: (1) it determines that there is insufficient competent and substantial evidence to support the basis for the School Board's denial as set forth in its Denial Letter; or (2) the bases for the denial set out in the Denial Letter do not relate to a mandatory charter school requirement. *See Fla. Stat. §§*

1002.33(2)(a),(b) & (6)(c). Such a finding is warranted in this appeal as, indeed, the School Board has not offered a single factual justification to justify any of its legal conclusions in its Denial Letter. This alone means that the School Board lacked any good cause to deny the instant charter application. Moreover, this also means that the School Board cannot legally or fairly now assert any new facts to try and justify its baseless denial of the instant Charter Application.

To be clear, in the instant case, the School Board merely regurgitated the evaluation criteria established by Rule 6A-6.0786, Form IEPC-M2, titled the "Florida Charter School Application Evaluation Instrument" as the reasons for denial. For example, the School Board, in its evaluation of the "Exceptional Students" section of the Charter Application, one of the evaluation criteria requires, "[a] comprehensive and compelling plan for appropriate identification of students with special needs..." The School Board, in its denial, stated the following as the reason for denial, "[t]he application does not clearly articulate a comprehensive and compelling plan for appropriate identification of students with special needs." *See* Exhibit G to Notice of Appeal. This pattern continues throughout the evaluation instrument as noted in sections 6, 7, 8, 11, 12, 16, and 21. As such, OYSA has not been provided with the specific reasons, but rather mere *legal conclusions* supporting its denial of the Charter Application in violation of Section 1002.33(6)(b)(3)(c), Florida Statutes. Any reason for denial which merely reiterates and copies the evaluation instrument, without any specific facts, must be excluded from review by the Charter School Appeal Commission as being legally deficient and lacking the required good cause.

A similar legal issue was raised by a school board in the case of *Sch. Bd. of Palm Beach County v. Florida Charter Educ. Found., Inc.* 213 So. 3d 356, 362 (Fla. 4th DCA 2017). In that case, the Fourth District Court of Appeal found that "[a] *fact-based justification* for the recommendation *must* be included" pursuant to Section 1002.33(6)(e)5., Florida Statutes by the

Charter School Appeals Commission. *Id.* In that case, the Charter School Appeal Commission "failed to include a "fact-based justification" and that the mere reiteration of an evaluation criteria, such as failing to meet the evidentiary standard, "is a legal conclusion, not a fact-based justification." *Id.* Similarly, in this case the School Board was also required to provide the specific reasons for denial Section 1002.33(6)(c), Florida Statutes so OYSA could properly prepare and appeal the decision. However, no specific reasons have been provided and as such, OYSA has not properly been apprised of the specific reasons or facts supporting denial and cannot properly defend itself in the upcoming hearing. Because the School Board has not actually articulated any facts to supports its denial, as required by law, OYSA must prevail in this appeal as a matter of law.¹

Conclusion

WHEREFORE, for all the foregoing reasons, the Own Your Success Academies, Inc., d/b/a the Hillsborough County Acceleration Academy, respectfully requests that the Charter School Appeal Commission: (1) find that the School Board has failed to provide OYSA with the specific reasons for denial as required by Section 1002.33(6)(c), Florida Statutes and (2) find that the School Board failed to allow OYSA to make technical, non-substantive corrections and clarifications pursuant to Section 1002.33(6)(b), Florida Statutes. Accordingly, any evaluation criteria for which the School Board did not provide specific reasons but rather mere legal conclusions cannot be considered by the Charter School Appeal Commission and must be deemed to have met the controlling legal standard. It is simply too late now for the School Board to try and justify its baseless denial here after the fact. Accordingly, OYSA must prevail as a matter of law.

¹ OYSA was also not provided the opportunity to make technical, non-substantive corrections and clarifications via written notice from the School Board within seven (7) calendar days for the errors identified by the School Board to deny the Charter Application. Fla. Stat. § 1002.33(6)(b). This would include, but is not limited to, providing Addendum B. This failure by the School Board also requires reversal of the denial.

Certificate of Service

I hereby certify that the movant has conferred with counsel for the School Board and the School Board (**does not**) objects to the above motion. I hereby certify that a copy of the instant motion with exhibits was served upon the School Board of Hillsborough County, Florida via Jeffrey Gibson, Esq. (jg@macfar.com) and Thomas Fariior, Esq. (trf@macfar.com). Further, the instant motion has also been submitted to the Agency Clerk for the Department of Education, 325 West Gaines Street, Room 1520, Tallahassee, Florida 32399-0400.

TRIPP SCOTT
Attorneys for Petitioner
110 SE Sixth Street
15th Floor
110 SE Sixth Street
Ft. Lauderdale, FL 33301
954.525.7500
954.761.8475 FAX

BY: Thomas Sternberg, Esq.
Edward Pozzuoli, Esq.
Fla. Bar No. 717363
Stephanie Alexander, Esq.
Fla. Bar No. 81078
Thomas Sternberg, Esq.
Fla. Bar No. 1018969