

STATE BOARD OF EDUCATION
Action Item
January 17, 2017

SUBJECT: Polk Charter Academy vs. School Board of Polk County

PROPOSED BOARD ACTION

Grant or Deny the Charter School Appeal

AUTHORITY FOR STATE BOARD ACTION

Section 1002.33(6)(c)3.b., Florida Statutes

EXECUTIVE SUMMARY

This is a high performing replication appeal by Polk County Charter Academy, of the decision of the School Board of Polk County to deny the charter replication application of Polk Charter Academy.

ISSUES:

Whether the pending application was submitted by a high-performing charter school, and thus whether the State Board of Education should hear this appeal or refer it to the Charter School Appeal Commission.

Whether the School Board had good cause to deny the application based on the Charter School's failure to comply with the provisions of Sections 1002.33 and 1002.331, Florida Statutes.

STANDARD OF REVIEW: Clear and convincing evidence

The School Board's determination must be based on good cause. The standard by which the State Board is to review the School Board's decision is whether the School Board had clear and convincing evidence to make that determination. The question, therefore, is whether the School Board had clear and convincing evidence (highly probable or reasonably certain) that the application for a High Performing Charter School does not materially comply with statutory requirements of Section 1002.33, Florida Statutes. If so, the School Board's decision must be upheld.

Supporting Documentation Included: Legal Description of Appeal Process; Historical Information; and Portions of Sections 1002.33 and 1002.331, Florida Statutes. Appeal of Charter School and Response of District (under separate cover)

Facilitator/Presenter: Adam Miller, Executive Director, Office of Independent Education & Parental Choice

Legal Description of Appeal Process and Standard of Review:

Issue: Whether the School Board has met their burden to prove with clear and convincing evidence (i.e. highly probable or reasonably certain) that the application for a High Performing Charter School does not materially comply with the statutory requirements of section 1002.33(6)(c)3.b., Florida Statutes.

The State Board of Education will consider the appeal of an applicant to replicate one of its existing High Performing Charter Schools, which has received at least two school grades of “A” and no school grade below “B” during each of the previous three school years. The Charter School Appeal Commission does not provide a nonbinding recommendation and is not involved in the High Performing Charter School appeal process.

The School Board, not the applicant, in such cases, has the burden of proof to show material noncompliance, which is defined as a failure to follow requirements or a violation of prohibitions applicable to charter school applications. The failure must be quantitatively or qualitatively significant either individually or when aggregated with other noncompliance.

The State Board of Education shall issue a written decision that the School Board either approve or deny the application. The State Board’s decision is a final action subject to judicial review in the district court of appeal.

Polk Charter Academy vs. School District of Polk County

Historical Information

The following table provides academic and financial performance data for **Winthrop Charter School (29-6658)**, which is the high-performing charter school to be replicated (designated as high performing on March 15, 2016).

	School Grade	Enrollment	% Minority	% FRL	Unassigned Fund Balance
2011-12	C	830	56.0%	43.6%	\$399,978
2012-13	B	1,076	58.6%	40.0%	\$987,547
2013-14	A	1,263	61.6%	41.4%	\$2,414,665
2014-15	A	1,288	62.5%	23.1%	\$2,587,762*
2015-16	A	1,312	65.0%	20.4%	\$2,823,105**

* The application mistakenly stated the 2014-15 unassigned fund balance as \$2,755,737.

** The application did not include the 2015-16 fund balance as it was not yet available at the time of application.

1002.33 Charter schools. –

6) APPLICATION PROCESS AND REVIEW.—Charter school applications are subject to the following requirements:

(a) A person or entity wishing to open a charter school shall prepare and submit an application on a model application form prepared by the Department of Education which:

1. Demonstrates how the school will use the guiding principles and meet the statutorily defined purpose of a charter school.
2. Provides a detailed curriculum plan that illustrates how students will be provided services to attain the Sunshine State Standards.
3. Contains goals and objectives for improving student learning and measuring that improvement. These goals and objectives must indicate how much academic improvement students are expected to show each year, how success will be evaluated, and the specific results to be attained through instruction.
4. Describes the reading curriculum and differentiated strategies that will be used for students reading at grade level or higher and a separate curriculum and strategies for students who are reading below grade level. A sponsor shall deny a charter if the school does not propose a reading curriculum that is consistent with effective teaching strategies that are grounded in scientifically based reading research.
5. Contains an annual financial plan for each year requested by the charter for operation of the school for up to 5 years. This plan must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends.
6. Contains additional information a sponsor may require, which shall be attached as an addendum to the charter school application described in this paragraph.
7. For the establishment of a virtual charter school, documents that the applicant has contracted with a provider of virtual instruction services pursuant to s. 1002.45(1)(d).

(b) A sponsor shall receive and review all applications for a charter school using an evaluation instrument developed by the Department of Education. A sponsor shall receive and consider charter school applications received on or before August 1 of each calendar year for charter schools to be opened at the beginning of the school district's next school year, or to be opened at a time agreed to by the applicant and the sponsor. A sponsor may not refuse to receive a charter school application submitted before August 1 and may receive an application submitted later than August 1 if it chooses. In order to facilitate greater collaboration in the application process, an applicant may submit a draft charter school application on or before May 1 with an application fee of \$500. If a draft application is timely submitted, the sponsor shall review and provide feedback as to material deficiencies in the application by July 1. The applicant shall then have until August 1 to resubmit a revised and final application. The sponsor may approve the draft application. A sponsor may not charge an applicant for a charter any fee for the processing or consideration of an application, and a sponsor may not base its consideration or approval of a final application upon the promise of future payment of any kind. Before approving or denying any final application, the sponsor shall allow the applicant, upon receipt of written notification, at least 7 calendar days to make technical or nonsubstantive corrections and clarifications, including, but not limited to, corrections of grammatical, typographical, and like errors or missing signatures, if such errors are identified by the sponsor as cause to deny the final application.

1. In order to facilitate an accurate budget projection process, a sponsor shall be held harmless for FTE students who are not included in the FTE projection due to approval of charter school applications after the FTE projection deadline. In a further effort to facilitate an accurate budget projection, within 15 calendar days after receipt of a charter school application, a sponsor shall report to the Department of Education the name of the applicant entity, the proposed charter school location, and its projected FTE.
2. In order to ensure fiscal responsibility, an application for a charter school shall include a full accounting of expected assets, a projection of expected sources and amounts of income, including income derived from projected student enrollments and from community support, and an expense projection that includes full accounting of the costs of operation, including start-up costs.

3.a. A sponsor shall by a majority vote approve or deny an application no later than 60 calendar days after the application is received, unless the sponsor and the applicant mutually agree in writing to temporarily postpone the vote to a specific date, at which time the sponsor shall by a majority vote approve or deny the application. If the sponsor fails to act on the application, an applicant may appeal to the State Board of Education as provided in paragraph (c). If an application is denied, the sponsor shall, within 10 calendar days after such denial, articulate in writing the specific reasons, based upon good cause, supporting its denial of the charter application and shall provide the letter of denial and supporting documentation to the applicant and to the Department of Education.

b. An application submitted by a high-performing charter school identified pursuant to s. 1002.331 may be denied by the sponsor only if the sponsor demonstrates by clear and convincing evidence that:

(I) The application does not materially comply with the requirements in paragraph (a);

(II) The charter school proposed in the application does not materially comply with the requirements in paragraphs (9)(a)-(f);

(III) The proposed charter school's educational program does not substantially replicate that of the applicant or one of the applicant's high-performing charter schools;

(IV) The applicant has made a material misrepresentation or false statement or concealed an essential or material fact during the application process; or

(V) The proposed charter school's educational program and financial management practices do not materially comply with the requirements of this section.

Material noncompliance is a failure to follow requirements or a violation of prohibitions applicable to charter school applications, which failure is quantitatively or qualitatively significant either individually or when aggregated with other noncompliance. An applicant is considered to be replicating a high-performing charter school if the proposed school is substantially similar to at least one of the applicant's high-performing charter schools and the organization or individuals involved in the establishment and operation of the proposed school are significantly involved in the operation of replicated schools.

c. If the sponsor denies an application submitted by a high-performing charter school, the sponsor must, within 10 calendar days after such denial, state in writing the specific reasons, based upon the criteria in sub-subparagraph b., supporting its denial of the application and must provide the letter of denial and supporting documentation to the applicant and to the Department of Education. The applicant may appeal the sponsor's denial of the application directly to the State Board of Education pursuant to sub-subparagraph (c)3.b.

4. For budget projection purposes, the sponsor shall report to the Department of Education the approval or denial of a charter application within 10 calendar days after such approval or denial. In the event of approval, the report to the Department of Education shall include the final projected FTE for the approved charter school.

5. Upon approval of a charter application, the initial startup shall commence with the beginning of the public school calendar for the district in which the charter is granted unless the sponsor allows a waiver of this subparagraph for good cause.

(c)1. An applicant may appeal any denial of that applicant's application or failure to act on an application to the State Board of Education no later than 30 calendar days after receipt of the sponsor's decision or failure to act and shall notify the sponsor of its appeal. Any response of the sponsor shall be submitted to the State Board of Education within 30 calendar days after notification of the appeal. Upon receipt of notification from the State Board of Education that a charter school applicant is filing an appeal, the Commissioner of Education shall convene a meeting of the Charter School Appeal Commission to study and make recommendations to the State Board of Education regarding its pending decision about the appeal. The commission shall forward its recommendation to the state board at least 7 calendar days before the date on which the appeal is to be heard. An appeal regarding the denial of an application submitted by a high-performing charter school pursuant to s. 1002.331 shall be conducted by the State Board of Education in accordance with this paragraph, except that the commission shall not convene to

make recommendations regarding the appeal. However, the Commissioner of Education shall review the appeal and make a recommendation to the state board.

2. The Charter School Appeal Commission or, in the case of an appeal regarding an application submitted by a high-performing charter school, the State Board of Education may reject an appeal submission for failure to comply with procedural rules governing the appeals process. The rejection shall describe the submission errors. The appellant shall have 15 calendar days after notice of rejection in which to resubmit an appeal that meets the requirements set forth in State Board of Education rule. An appeal submitted subsequent to such rejection is considered timely if the original appeal was filed within 30 calendar days after receipt of notice of the specific reasons for the sponsor's denial of the charter application.

3.a. The State Board of Education shall by majority vote accept or reject the decision of the sponsor no later than 90 calendar days after an appeal is filed in accordance with State Board of Education rule. The State Board of Education shall remand the application to the sponsor with its written decision that the sponsor approve or deny the application. The sponsor shall implement the decision of the State Board of Education. The decision of the State Board of Education is not subject to the provisions of the Administrative Procedure Act, chapter 120.

b. If an appeal concerns an application submitted by a high-performing charter school identified pursuant to s. 1002.331, the State Board of Education shall determine whether the sponsor has shown, by clear and convincing evidence, that:

(I) The application does not materially comply with the requirements in paragraph (a);

(II) The charter school proposed in the application does not materially comply with the requirements in paragraphs (9)(a)-(f);

(III) The proposed charter school's educational program does not substantially replicate that of the applicant or one of the applicant's high-performing charter schools;

(IV) The applicant has made a material misrepresentation or false statement or concealed an essential or material fact during the application process; or

(V) The proposed charter school's educational program and financial management practices do not materially comply with the requirements of this section.

The State Board of Education shall approve or reject the sponsor's denial of an application no later than 90 calendar days after an appeal is filed in accordance with State Board of Education rule. The State Board of Education shall remand the application to the sponsor with its written decision that the sponsor approve or deny the application. The sponsor shall implement the decision of the State Board of Education. The decision of the State Board of Education is not subject to the Administrative Procedure Act, chapter 120.

(d) The sponsor shall act upon the decision of the State Board of Education within 30 calendar days after it is received. The State Board of Education's decision is a final action subject to judicial review in the district court of appeal.

(e)1. A Charter School Appeal Commission is established to assist the commissioner and the State Board of Education with a fair and impartial review of appeals by applicants whose charter applications have been denied, whose charter contracts have not been renewed, or whose charter contracts have been terminated by their sponsors.

2. The Charter School Appeal Commission may receive copies of the appeal documents forwarded to the State Board of Education, review the documents, gather other applicable information regarding the appeal, and make a written recommendation to the commissioner. The recommendation must state whether the appeal should be upheld or denied and include the reasons for the recommendation being offered. The commissioner shall forward the recommendation to the State Board of Education no later than 7 calendar days prior to the date on which the appeal is to be heard. The state board must consider the commission's recommendation in making its decision, but is not bound by the recommendation. The

decision of the Charter School Appeal Commission is not subject to the provisions of the Administrative Procedure Act, chapter 120.

3. The commissioner shall appoint a number of members to the Charter School Appeal Commission sufficient to ensure that no potential conflict of interest exists for any commission appeal decision. Members shall serve without compensation but may be reimbursed for travel and per diem expenses in conjunction with their service. Of the members hearing the appeal, one-half must represent currently operating charter schools and one-half must represent sponsors. The commissioner or a named designee shall chair the Charter School Appeal Commission.

4. The chair shall convene meetings of the commission and shall ensure that the written recommendations are completed and forwarded in a timely manner. In cases where the commission cannot reach a decision, the chair shall make the written recommendation with justification, noting that the decision was rendered by the chair.

5. Commission members shall thoroughly review the materials presented to them from the appellant and the sponsor. The commission may request information to clarify the documentation presented to it. In the course of its review, the commission may facilitate the postponement of an appeal in those cases where additional time and communication may negate the need for a formal appeal and both parties agree, in writing, to postpone the appeal to the State Board of Education. A new date certain for the appeal shall then be set based upon the rules and procedures of the State Board of Education. Commission members shall provide a written recommendation to the state board as to whether the appeal should be upheld or denied. A fact-based justification for the recommendation must be included. The chair must ensure that the written recommendation is submitted to the State Board of Education members no later than 7 calendar days prior to the date on which the appeal is to be heard. Both parties in the case shall also be provided a copy of the recommendation.

(f)1. The Department of Education shall provide or arrange for training and technical assistance to charter schools in developing and adjusting business plans and accounting for costs and income. Training and technical assistance shall also address, at a minimum, state and federal grant and student performance accountability reporting requirements and provide assistance in identifying and applying for the types and amounts of state and federal financial assistance the charter school may be eligible to receive. The department may provide other technical assistance to an applicant upon written request.

2. A charter school applicant must participate in the training provided by the Department of Education after approval of an application but at least 30 calendar days before the first day of classes at the charter school. However, a sponsor may require the charter school applicant to attend training provided by the sponsor in lieu of the department's training if the sponsor's training standards meet or exceed the standards developed by the department. In such case, the sponsor may not require the charter school applicant to attend the training within 30 calendar days before the first day of classes at the charter school. The training must include instruction in accurate financial planning and good business practices. If the applicant is a management company or a nonprofit organization, the charter school principal and the chief financial officer or his or her equivalent must also participate in the training. A sponsor may not require a high-performing charter school or high-performing charter school system applicant to participate in the training described in this subparagraph more than once.

(g) In considering charter applications for a lab school, a state university shall consult with the district school board of the county in which the lab school is located. The decision of a state university may be appealed pursuant to the procedure established in this subsection.

(h) The terms and conditions for the operation of a charter school shall be set forth by the sponsor and the applicant in a written contractual agreement, called a charter. The sponsor may not impose unreasonable rules or regulations that violate the intent of giving charter schools greater flexibility to meet educational goals. The sponsor has 30 days after approval of the application to provide an initial proposed charter contract to the charter school. The applicant and the sponsor have 40 days thereafter to negotiate and notice the charter contract for final approval by the sponsor unless both parties agree to an extension. The proposed charter contract shall be provided to the charter school at least 7 calendar days

prior to the date of the meeting at which the charter is scheduled to be voted upon by the sponsor. The Department of Education shall provide mediation services for any dispute regarding this section subsequent to the approval of a charter application and for any dispute relating to the approved charter, except disputes regarding charter school application denials. If the Commissioner of Education determines that the dispute cannot be settled through mediation, the dispute may be appealed to an administrative law judge appointed by the Division of Administrative Hearings. The administrative law judge has final order authority to rule on issues of equitable treatment of the charter school as a public school, whether proposed provisions of the charter violate the intended flexibility granted charter schools by statute, or on any other matter regarding this section except a charter school application denial, a charter termination, or a charter nonrenewal and shall award the prevailing party reasonable attorney's fees and costs incurred to be paid by the losing party. The costs of the administrative hearing shall be paid by the party whom the administrative law judge rules against.

1002.331 High-performing charter schools.—

(1) A charter school is a high-performing charter school if it:

- (a) Received at least two school grades of “A” and no school grade below “B,” pursuant to s. 1008.34, during each of the previous 3 school years.
- (b) Received an unqualified opinion on each annual financial audit required under s. 218.39 in the most recent 3 fiscal years for which such audits are available.
- (c) Did not receive a financial audit that revealed one or more of the financial emergency conditions set forth in s. 218.503(1) in the most recent 3 fiscal years for which such audits are available. However, this requirement is deemed met for a charter school-in-the-workplace if there is a finding in an audit that the school has the monetary resources available to cover any reported deficiency or that the deficiency does not result in a deteriorating financial condition pursuant to s. 1002.345(1)(a)3.

A virtual charter school established under s. 1002.33 is not eligible for designation as a high-performing charter school.

(2) A high-performing charter school is authorized to:

- (a) Increase its student enrollment once per school year to more than the capacity identified in the charter, but student enrollment may not exceed the current facility capacity.
- (b) Expand grade levels within kindergarten through grade 12 to add grade levels not already served if any annual enrollment increase resulting from grade level expansion is within the limit established in paragraph (a).
- (c) Submit a quarterly, rather than a monthly, financial statement to the sponsor pursuant to s. 1002.33(9)(g).
- (d) Consolidate under a single charter the charters of multiple high-performing charter schools operated in the same school district by the charter schools’ governing board regardless of the renewal cycle.
- (e) Receive a modification of its charter to a term of 15 years or a 15-year charter renewal. The charter may be modified or renewed for a shorter term at the option of the high-performing charter school. The charter must be consistent with s. 1002.33(7)(a)19. and (10)(h) and (i), is subject to annual review by the sponsor, and may be terminated during its term pursuant to s. 1002.33(8).

A high-performing charter school shall notify its sponsor in writing by March 1 if it intends to increase enrollment or expand grade levels the following school year. The written notice shall specify the amount of the enrollment increase and the grade levels that will be added, as applicable. If a charter school notifies the sponsor of its intent to expand, the sponsor shall modify the charter within 90 days to include the new enrollment maximum and may not make any other changes. The sponsor may deny a request to increase the enrollment of a high-performing charter school if the commissioner has declassified the charter school as high-performing. If a high-performing charter school requests to consolidate multiple charters, the sponsor shall have 40 days after receipt of that request to provide an initial draft charter to the charter school. The sponsor and charter school shall have 50 days thereafter to negotiate and notice the charter contract for final approval by the sponsor.

(3)(a) A high-performing charter school may submit an application pursuant to s. 1002.33(6) in any school district in the state to establish and operate a new charter school that will substantially replicate its educational program. An application submitted by a high-performing charter school must state that the application is being submitted pursuant to this paragraph and must include the verification letter provided by the Commissioner of Education pursuant to subsection (5). If the sponsor fails to act on the application within 60 days after receipt, the application is deemed approved and the procedure in s. 1002.33(6)(h) applies. If the sponsor denies the application, the high-performing charter school may appeal pursuant to s. 1002.33(6).

(b) A high-performing charter school may not establish more than one charter school within the state under paragraph (a) in any year. A subsequent application to establish a charter school under paragraph (a) may not be submitted unless each charter school established in this manner achieves high-performing charter school status.

(4) A high-performing charter school may not increase enrollment or expand grade levels following any school year in which it receives a school grade of “C” or below. If the charter school receives a school grade of “C” or below in any 2 years during the term of the charter awarded under subsection (2), the term of the charter may be modified by the sponsor and the charter school loses its high-performing charter school status until it regains that status under subsection (1).

(5) The Commissioner of Education, upon request by a charter school, shall verify that the charter school meets the criteria in subsection (1) and provide a letter to the charter school and the sponsor stating that the charter school is a high-performing charter school pursuant to this section. The commissioner shall annually determine whether a high-performing charter school under subsection (1) continues to meet the criteria in that subsection. Such high-performing charter school shall maintain its high-performing status unless the commissioner determines that the charter school no longer meets the criteria in subsection (1), at which time the commissioner shall send a letter providing notification of its declassification as a high-performing charter school.

(6) A high-performing charter school replicated under this section may not be replicated as a virtual charter school.