

**STATE OF FLORIDA
CHARTER SCHOOL APPEAL COMMISSION**

FLORIDA EAST COAST CHARTER SCHOOL,

Appellant/Applicant,

v.

DOE No. 2019-3846

SCHOOL BOARD OF VOLUSIA COUNTY,
FLORIDA,

Appellee/School Board.

RECOMMENDATION OF THE CHARTER SCHOOL APPEAL COMMISSION

The Charter School Appeal Commission (“Commission”) is directed to assist the Commissioner and State Board of Education with an impartial review of appeals from applicants whose charter applications have been denied. § 1002.33(6)(e)1., Fla. Stat. Florida East Coast Charter School, Inc. (“Applicant”) filed an application to open a new charter school and was denied by the School Board of Volusia County (“School Board”). The Applicant appealed. The Commission held a hearing on October 11, 2019, and has reviewed the Application, the appeal filed by the Applicant, the response filed by the School Board, and other documents submitted by the parties. Based on the hearing and review of the record, the Commission recommends overturning the School Board’s denial of the Applicant’s charter school application.

I. Standard of Review

Section 1002.33(6)(b)3.a., Florida Statutes, provides that if a school board denies a charter school application, the school board “shall . . . articulate in writing the specific reasons, based upon good cause, supporting its denial of the application.” The specific reasons for denial must be based upon the statutory requirements for charter school applications, Sch. Bd. of Osceola County v. UCP of Central Fla., 905 So. 2d 909 (Fla. 5th DCA 2005), and must constitute good cause for denial. Sch. Bd. of Volusia County v. Academies of Excellence, Inc., 974 So. 2d 1186 (Fla. 5th DCA 2008).

When an application for a new charter school is denied, the applicant can appeal the decision of the school board to the State Board of Education. The Charter School Appeal Commission conducts an impartial review of the appeal and provides a recommendation to the State Board, which makes the final decision to uphold or overturn the decision of the School Board. The decision of the State Board, and this recommendation by the Commission, must be based upon competent, substantial evidence. Imhotep-Nguzo Saba Charter Sch. v. Dept. of Ed., 947 So. 2d 1279 (Fla. 4th DCA 2007). The Commission “may receive copies of the appeal documents forwarded to the State Board of Education, review the documents, [and] gather other applicable information regarding the appeal.” § 1002.33(6)(e)2., Fla. Stat. The Commission must include a fact-based justification in this recommendation to the State Board. Sch. Bd. of Palm Beach County v. Fla. Charter Ed. Found., Inc., 213 So. 3d 356 (Fla. 4th DCA 2017).

II. Fact-Finding and Analysis

a. Brief Background

Charter schools may be created when an individual, group of parents or teachers, a municipality, or legal entity submits an application to a school district. § 1002.33(3)(a), Fla. Stat. Applicants are required to use the Model Florida Charter School Application (“Model Application”), which contains descriptions of the applicant’s educational, operational and financial plans. See Fla. Admin. Code R. 6A-6.0786. After the application is filed, the school board can request applicants participate in a capacity interview, where applicants can explain their plan, demonstrate their capacity to open and maintain a high-quality charter school, and answer questions about their proposal.

A school board must review all charter school applications using the Evaluation Instrument developed by the Department. See Fla. Admin. Code R. 6A-6.0786. The Evaluation Instrument incorporates the statutory requirements for a charter school application and provides three main issues for evaluation of a charter school application: Education Plan, Organizational Plan, and Business Plan. Once the Evaluation Instrument is complete, the school board must vote to approve or deny the application. If approved, the school district and the applicant execute a charter agreement, which functions as a contract between the charter school governing board and the district (sponsor). This agreement details the terms and conditions for the school’s operation. § 1002.33(7), Fla. Stat. If denied, the school district must articulate in writing the specific reasons, based upon good cause, for the denial, and provide a copy to the applicant and the Department along with the supporting documentation.

In this case, the School Board held a meeting on April 9, 2019, to discuss the Application, and voted to deny the Application based on the Superintendent’s recommendation. The School Board found the Application met the standard in 13 of the 19 areas evaluated, partially met the standard in four areas related to Curriculum, Facilities, Food Service, and Financial Management and Oversight, and did not meet the standard in two areas related to the Budget and Start-Up Plan. The School Board detailed its decision in a letter dated April 18, 2019. The Applicant then timely filed this appeal.

b. Issue One: Educational Plan, Curriculum Plan

The School Board’s denial letter stated that the Application partially met the standard in the area of the Curriculum Plan because the Applicant did not identify a curriculum that would be used and stated the curriculum and materials would be selected once a principal was hired.

The Model Application does not require that an applicant’s curriculum be fully developed at the time of application. The application states that “[i]f the curriculum is not yet fully developed, describe any curricular choices made to date and proposed curricular choices (e.g. textbooks, etc.) and explain the plan for how the curriculum will be completed between approval of the application and the opening of the school.” This should include a timeline, milestones, and individuals responsible for included tasks. The application also asks that an applicant

describe the focus of the curriculum plan and explain how it will be implemented, including what core subjects will be offered and how the curriculum will be aligned to Florida standards.

The evaluation criteria set forth in the Evaluation Instrument include that the curriculum plan show a clear and coherent framework for teaching and learning, is research based, is well-aligned with the school's mission and educational philosophy, provides an emphasis on reading, enables students to attain Florida standards and receive a year's worth of learning for each year enrolled, and is appropriate for students below, at, and above grade level.

Here, the Applicant provided all required information, describing in detail the educational mission of the school, which will use a whole-child approach and will focus on STEM disciplines (science, technology, engineering and math) and reading. The Applicant also stated that, where possible, it would implement curriculum utilized by the District, including curriculum maps, instructional materials, assessments, and other resources. While the Applicant did note that *final* decisions regarding curriculum and instructional materials will be made once the principal is hired, the Applicant provided sufficient information regarding curriculum decisions that were made to date in the Application. Further, the Applicant explained how the curriculum will be completed after approval of the application and before the school's opening, by providing that final decisions would be made by the principal.

In addition, the School Board's denial letter stated that the Applicant failed to follow statutory requirements regarding its Physical Education ("PE") curriculum because the Applicant is not planning to hire a PE teacher. Florida law allows PE instruction to be provided by any instructional personnel, regardless of certification, when designated by the school principal. § 1003.455(3), Fla. Stat. Florida law also requires that all PE programs and curricula must be reviewed by a certified PE instructor. § 1003.455(1), Fla. Stat. The Applicant stated that PE instruction will be provided by certified teachers and the PE curriculum will be reviewed by a certified PE teacher.

While acknowledging that the Applicant confirmed that PE instruction would be provided by instructional personnel, the School Board argues the Application is deficient because this level of specificity was not included in the Application. The School Board's argument is premised on the idea that the application cannot be supplemented by information provided at a later date. This premise is incorrect. Section 1002.33, Florida Statutes, does not prohibit the school board from asking questions or obtaining additional or clarifying information. While the statute requires the sponsor to allow an applicant the opportunity to correct typographical errors and make other nonsubstantive changes, if such errors are identified as cause for denial, the statute does not state that those are the *only* changes that are permitted to the application. § 1002.33(6)(b), Fla. Stat. Further, applicants are permitted to explain their application and answer questions at the capacity interview, school board meeting, and at the Commission hearing, which reinforces the idea that the sponsor and the Commission can, and should, take new information into account before rendering a decision. Nothing in the statute limits the school board or the Commission to the four corners of the application in making its decision.

Here, because the Applicant provided sufficient detail concerning its curriculum and confirmed that PE instruction would be in compliance with section 1003.455, Florida Statutes,

the School Board did not have competent, substantial evidence to support its denial of the Application based on a failure to meet the standards for the Educational Plan.

c. Issue Two: Business Plan

i. Facilities

The School Board's denial letter stated that the Application partially met the standard in the area of Facilities, because the Applicant did not provide enough detail concerning furniture, fixtures and equipment that are going to serve as collateral for a start-up loan. The School Board wanted the Applicant to specify what those items are, their value, and to provide authority to use the items as collateral for a loan. In addition, the School Board's denial letter stated that to the extent the Applicant intends to purchase these items, no such items were included in the budget. Finally, School Board stated that the Applicant did not provide additional documentation of a start-up loan and did not identify back-up or alternate facilities.

The evaluation criteria set forth in the Evaluation Instrument states that if a facility is already acquired, the Applicant must provide evidence that the facility complies with all applicable laws and regulations, that the facility can be ready for the school's opening, that the facility is appropriate for the school's program and targeted population, that the Applicant has sufficient resources to fund the facilities plan, and that that the Applicant has a reasonable back-up plan.

Here, the Applicant provided the required information with respect to a back-up plan, stating that the school would delay opening for one year in the event it needs to find a different facility. The Model Application does not require that the specific alternate facility be named in the Application. The Applicant also provided sufficient detail concerning its resources to acquire its chosen facility, explaining that the bank has already committed to issuing the loan and the funds to purchase furniture and other items are included in the budget. The Applicant confirmed that items to be used as collateral will be the Applicant's own property, not that owned by the landlord. We reject the argument that there is a conflict between the terms of the start-up loan and the lease because while the lease prohibits the tenant from encumbering the landlord's interest in the property, the bank is only looking to the collateral owned by the Applicant to support the loan.

Based on the foregoing, including the statements made in the Application and at the appeal regarding the Applicant's financial resources and facilities plan, the School Board did not have competent, substantial evidence to deny the Application based on the "Facilities" section of the Evaluation Instrument.

ii. Food Service

The School Board's denial letter stated that the Application partially met the standard in the area of Food Service because the District does not approve free and reduced lunch applications if an outside vendor is used for food service. In such cases, the School Board advised that free and reduced lunch applications would have to be processed through the vendor. In addition, the School Board stated the Applicant did not categorize reimbursable meal rates by paid, reduced, and free, and did not separate reimbursable meals into breakfast and lunch.

The Model Application requires an applicant to describe how the school will address food service for its student body, including any plans for contracting services or plans to participate in the National School Lunch Program. The evaluation criteria set forth in the Evaluation Instrument include that the food service plan must serve all students, place an emphasis on healthy food, and must make particular provisions for those students who may qualify for free or reduced lunch.

Here, the Applicant adequately described meal reimbursement rates and the Model Application does not require the numbers to be separated into breakfast and lunch. Upon learning that the district does not approve free and reduced meal applications if an outside vendor is used, the Applicant confirmed that the process would be done through the school's food service vendor.

Based on the foregoing, including the statements made in the Application and during the appeal, the School Board did not have competent, substantial evidence to deny the Application based on the issue of "Food Service."

iii. Budget

The School Board's denial letter stated that the Application did not meet the required standard in the area of the projected budget because the start-up loan amount was insufficient and did not include sufficient funds for contingencies. In addition, the denial letter stated that the budgeted amounts for a school guardian and computers were lower than current rates. The School Board also repeated the issues outlined above in the Facilities section regarding the items to be used for collateral and the start-up loan.

Charter school applications are required to provide an annual financial plan for each year of operation requested, up to five years. The 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. §§ 1002.33(6)(a)5., 1002.33(6)(b)2., Fla. Stat. The evaluation criteria include budgetary projections that are consistent with and support all key aspects of the application and a realistic assessment of the projected sources of revenue and expenses that ensure financial viability.

Here, the Applicant explained that the budget included amounts for contingencies as a line item, rather than being shown as the amount remaining in the fund balance portion of the budget. In addition, we reject the argument that the Applicant must maintain a positive fund balance of 3 percent of projected revenues. This requirement applies to school districts based on section 1011.051, Florida Statutes. Charter schools are not school districts and are exempt from most statutes listed in the education code. See § 1002.33(16), Fla. Stat. The Applicant also explained that the start-up costs are much lower than normal, given that the school will not be paying rent during the start-up phase and will be allowed to use existing furniture and other equipment already in the building at no cost. The Applicant plans to lease, rather than purchase, computers, and confirmed that it has the additional funds needed to pay for a school guardian if one cannot be hired at the projected salary of \$27,000. As noted above in the Facilities section, issues related to the loan and collateral have been sufficiently addressed.

Based on the foregoing, including the statements made in the Application and the fact that the Applicant has shown it has start-up costs that are significantly lower than normal, the School

Board did not have competent, substantial evidence to deny the Application based on the “Budget” section of the Evaluation Instrument (and the related statutory provisions).

iv. Financial Management and Oversight

The School Board’s denial letter stated that the Application partially meets the standard in the area of Financial Management and Oversight, stating that board monitoring should begin immediately upon start-up and should continue on a monthly basis through year five in order to ensure financial viability of the school. In addition, the denial letter states that the Applicant’s insurance policy does not meet the standards required by the School Board.

The evaluation criteria set forth in the Evaluation Instrument include a clear description of how the school’s finances will be managed, a plan for the governing board to “regularly exercise oversight over” and take accountability for all financial operations at the school, and a plan for appropriate and reasonable insurance coverage. Here, the Applicant confirmed it will comply with all School Board requirements for insurance and stated that financial monitoring by the board would be ongoing each month.

Based on the foregoing, including the statements made in the Application and the fact that the Applicant confirmed it will have sufficient insurance and financial monitoring, the School Board did not have competent, substantial evidence to deny the Application based on the “Financial Management and Oversight” section of the Evaluation Instrument.

v. Start-up Plan

The School Board’s denial letter stated that the Application did not meet the standard in the area of the Start-up Plan, again stating that the start-up loan was insufficient and did not leave enough left over for contingencies. The School Board also repeated the issues outlined above in the Facilities section regarding the items to be used for collateral and the start-up loan.

The evaluation criteria set forth in the Evaluation Instrument provide that a start-up plan must show a thoughtful and realistic implementation plan that covers major operational items and provides flexibility for addressing unanticipated events. Here, the Applicant provided a realistic start-up plan. The specific issues cited by the School Board have been addressed in the Facilities and Budget sections above.

Based on the foregoing, including the statements made in the Application and at the appeal, the School Board did not have competent, substantial evidence to deny the Application based on the “Start-up Plan” section of the Evaluation Instrument.

III. Recommendation

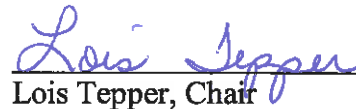
Based on the factual justifications provided above, the Commission recommends that the State Board of Education find that:

1. the School Board did not have competent, substantial evidence to support its denial of the Application based on the Applicant's alleged failure to meet the standards for the Educational Plan; and
2. the School Board did not have competent, substantial evidence to support its denial of the Application based on the Applicant's alleged failure to meet the standards for the Business Plan.

IV. Overall Recommendation

Based on the foregoing, the Charter School Appeal Commission recommends that the State Board issue a final order overturning the School Board's denial of the Application by granting the appeal of Florida East Coast Charter School.

October 22, 2019



Lois Tepper, Chair
Charter School Appeal Commission