

**STATE OF FLORIDA
CHARTER SCHOOL APPEAL COMMISSION**

NAL-003, INC.,
D/B/A NAVIGATOR ACADEMY
OF LEADERSHIP HIGH SCHOOL DAVENPORT,

Appellant/Applicant,

v.

DOE No. 2023-4149

THE SCHOOL BOARD OF POLK 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. Navigator Academy of Leadership High School Davenport (“Navigator Academy” or “Applicant”) filed an application to open a charter school that was denied by the School Board of Polk County. The Applicant appealed, and the Commission held a hearing on December 4, 2023. Commission members reviewed the appeal filed by the Applicant, the response filed by the School Board, and supporting documentation. 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., Fla Stat., provides that if a school board denies a charter school application, the school board must “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).

If an application for a charter school is denied, the applicant can appeal that denial to the State Board of Education. For each appeal, the Commission is made up of an evenly split panel, with half the members representing currently operating charter schools and half representing sponsors. The Commissioner of Education, or his designee, serves as chair. The Commission conducts an impartial review 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 is not limited to documents contained in the record on appeal, and may consider additional information and can ask clarifying questions in making its decision. School Bd. of

Volusia County v. Florida East Coast Charter School, 312 So. 3d 158 (Fla. 5th DCA 2021). The recommendation to the State Board must include a fact-based justification. Sch. Bd. of Palm Beach County v. Fla. Charter Ed. Found., Inc., 213 So. 3d 356 (Fla. 4th DCA 2017).

II. 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 must complete the Model Florida Charter School Application (“Model Application”), which contains descriptions of the applicant’s educational, operational, and financial plans. 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.

A school board must review all charter school applications using the Evaluation Instrument developed by the Department. Fla. Admin. Code R. 6A-6.0786. The Evaluation Instrument incorporates the statutory requirements for a charter school application and provides three main areas for evaluation of the application: Education Plan, Organizational Plan, and Business Plan. Once the Evaluation Instrument is complete, the school board votes 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 for denial, based upon good cause, and provide a copy to the applicant and the Department along with the supporting documentation. This is commonly referred to as the “denial letter.”

III. School Board’s Review of the Application

Navigator Academy filed an Application with the School Board of Polk County on April 24, 2023, seeking to open a new high school serving grades 9-12.¹ If approved, the high school would be located on the same site as Navigator Academy of Leadership Davenport K-8 (NAL-002), a charter school that has been in operation since 2019. The high school is expected to receive much of its enrollment from students graduating from the K-8 campus.

The Applicant presented to the School Board at a work session on May 9, 2023. The School Board’s Charter Review Team met on May 25, 2023, to review the Application using the Evaluation Instrument. The Charter Review Team includes members of the district executive staff, a professional charter school consultant, community representatives, and staff from several disciplines, including curriculum and instruction, assessment and accountability, English Speakers of Other Languages (ESOL), facilities, business services, human resources, support services, discipline, and school-based operations. The School Board also held a capacity interview on May 16, 2023, where the Applicant answered questions about the Application.

¹ This is the third substantially similar application submitted by the Applicant. The first application was submitted on February 1, 2021, and denied, the second was submitted on February 2, 2022, and subsequently withdrawn.

The Charter Review Team’s findings were presented to the School Board on June 13, 2023, during a work session. The Applicant was provided notice of the work session but did not attend. The Charter Review Team recommended denial of the Application based on its finding that the Applicant did not meet required standards in three areas. The School Board considered the Application at a School Board meeting on July 25, 2023, and voted to deny the Application based on the Superintendent’s recommendation. The Applicant was provided notice of the meeting but did not attend. The School Board detailed its decision in a letter dated August 3, 2023, and the Applicant timely filed this appeal.

IV. Fact Finding and Analysis

A. Issue One: Business Plan – Transportation

The Model Application requires applicants to describe a “reasonable” plan for transportation to ensure that transportation is not a barrier to equal access for all students residing in a reasonable distance of the charter school, consistent with § 1002.33(20)(c), Fla. Stat. Charter schools do not have the same obligations for transportation that are required of district schools, and may provide transportation through an agreement or contract with the sponsor, a private provider, or parents.

The School Board’s denial letter stated that the Applicant failed to provide a transportation plan that will serve all eligible students and will not be a barrier to access. In addition, the School Board noted that the Applicant did not provide for transportation in the budget.

The Applicant sufficiently addressed these concerns at the Commission meeting. Transportation has not been an issue at the Navigator Academy K-8 school, which is located at the same site where the high school will be. While the Applicant has not found a private bus vendor as contemplated in the Application, no parents have requested transportation assistance. Transportation options include walking, biking, carpool, parent pickup, or private vendors arranged by parents (for after school activities). These same options are expected for the high school. If bus service is ever added, the Applicant’s site plan can accommodate them. Further, the Applicant acknowledged that if a student required transportation in their Individualized Education Plan (IEP), the school would meet that requirement. The Applicant also explained that they have adequate contingency funds available to address transportation, if needed.

Based on the foregoing, including a review of the Application, additional explanation provided at the hearing, and the Applicant’s experience operating another school at the same location, there is not competent substantial evidence to deny the Application based on the transportation plan. The transportation plan described in the Application meets the requirements of § 1002.33(20)(c), Fla. Stat., and the standards set forth in Section 17 of the Evaluation Instrument adopted in Fla. Admin. Code R. 6A-6.0786.

B. Issue Two: Organization Plan – Management and Staffing

The Model Application requires applicants to identify the principal and summarize their qualifications, describe the management structure of the school, explain the plan for recruitment,

selection and development of qualified instructional staff, and provide a staffing plan for each year of the charter term that includes all anticipated personnel and aligns with projected enrollment. Applicants are also required to submit organization charts that show the school governance, management, and staffing structure, beginning with the pre-operational year through the end of the charter term. The overall staffing plan must be viable and adequate.

The School Board's denial letter outlined several issues with the Applicant's staffing plan, including having insufficient teachers for Exceptional Student Education (ESE) and ESOL; insufficient budgets for nursing staff, contracted speech services, and mental health; no budget for substitute teachers and other positions, such as maintenance and technology staff; and, insufficient athletic coaching staff.

The Applicant was able to address these concerns at the Commission meeting and demonstrated that it is aware of the needs of its school population, particularly since they operate another school in the same area. The Applicant explained that some staffing positions, such as ESE and ESOL, appear low because they were projected based on a first-year enrollment of 250 students and would be increased in subsequent years as the school reached full enrollment of 650 students. Some positions would be shared with the Navigator Academy K-8 location. There is a sound plan for athletic coaching, beginning with junior-varsity and adding varsity, as the student population increases. Further, the Applicant explained that if projected staffing levels need to be increased in any area, they have sufficient contingency funds to do so.

Based on the foregoing, including a review of the Application and additional clarifying information provided at the hearing, there is not competent substantial evidence to deny the Application based on the management and staffing plan. The Applicant's plan for management and staffing is viable, adequate, and meets the requirements of §§ 1002.33(7)(a)9. and 1002.33(7)(a)14., Fla. Stat., and the standards set forth in Section 11 of the Evaluation Instrument adopted in Fla. Admin. Code. R. 6A-6.0786.

C. Issue Three: Business Plan – Budget

The Model Application requires applicants to provide an operating budget for each year of the charter term that contains revenue projections, expenses, and anticipated fund balances. Applicants must also include a start-up budget, monthly cash flow projections for the start-up period through the first year of operation, and a year-one cash flow contingency to address budget shortfalls. In addition, applicants must describe any unique sources of funding, explain the school's contingency approach and plans to meet financial needs, and must include a detailed narrative description of the line-item revenue and expenditure assumptions on which the operating and start-up budgets are based. Evaluation criteria include having budgetary projections that are consistent with and support all key aspects of the application, a realistic assessment of projected sources of revenue and expenses that ensure the financial viability of the school, and a sound plan to adjust the budget should revenues not materialize as planned.

The School Board determined that the proposed budget was insolvent once unguaranteed income sources were removed, such as competitive grant funding, charter school capital outlay, and amounts to be earned through fundraising. In addition, the proposed budget included collecting

an annual student technology fee, which the school later acknowledged would not be required. In addition, the School Board found the Applicant's explanation about its loan, debt service, and rent to be conflicting. The budget also did not contain funds for all positions outlined in the staffing plan. Following the capacity interview, the Applicant provided an additional letter in support from underwriter D.A. Davidson, but the School Board found it insufficient to address these concerns.

While not a model of clarity, the Applicant was able to explain their proposed budget to the satisfaction of the Commission, even without the presence of their budget expert at the hearing. While the Applicant understands some proposed revenue sources are not guaranteed, they have a contingency plan to deal with any budget shortfalls. The financing structure for this school is somewhat unique, and functions like a line of credit where excess funds can be used to cover unanticipated needs. Using this model, the school has a \$15 million maximum price and the Applicant estimates being able to complete construction for \$12 million. The same financing method was used for Navigator Academy K-8, leading to a significant positive fund balance, which the School Board acknowledged. Construction costs are anticipated to be lower for the high school, given that site work was previously completed. Although the budget narrative lacked detail in some areas, the Applicant was able to answer questions, provide clarifying information at the hearing, and demonstrated sufficient knowledge in building and adjusting a school budget.

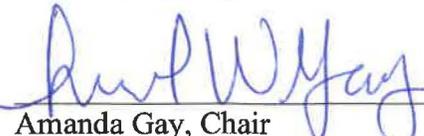
Based on the foregoing, including a review of the Application, additional explanation provided at the hearing, and the Applicant's record operating another school that is financially sound, there is not competent substantial evidence to deny the Application based on the proposed budget. The Applicant's budget meets the requirements of §§ 1002.33(6)(a)5. and 1002.33(6)(b)2., Fla. Stat., and the standards set forth in Section 20 of the Evaluation Instrument adopted in Fla. Admin. Code R. 6A-6.0786.

V. Recommendation

Based on the factual justifications provided above, the Commission recommends that the State Board of Education find that the School Board does not have competent substantial evidence to support its denial of the Application based on the Applicant's alleged failure to meet the standards set forth in Florida law and rule for Transportation, Management and Staffing, or Budget.

VI. 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 Navigator Academy of Leadership High School Davenport (NAL-003).

January 3, 2024

Amanda Gay, Chair
Charter School Appeal Commission