

**FLORIDA DEPARTMENT OF EDUCATION
STATE BOARD OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION**

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

Petitioner,

v.

THE SCHOOL BOARD OF POLK COUNTY,
FLORIDA

Respondent

**BRIEF OF RESPONDENT, THE SCHOOL BOARD OF POLK COUNTY, FLORIDA, IN
RESPONSE TO NAL-003, INC., D/B/A NAVIGATOR ACADEMY OF LEADERSHIP
HIGH SCHOOL DAVENPORT'S NOTICE OF APPEAL OF DENIAL OF CHARTER
SCHOOL APPLICATION**

Submitted by C. Wesley Bridges II
General Counsel
The School Board of Polk County, Florida

Counsel for Respondent School Board
1915 South Floral Avenue
P.O. Box 391
Bartow, Florida 33831
863.534.0773
863.519.7972 (fax)
wes.bridges@polk-fl.net

**FLORIDA DEPARTMENT OF EDUCATION
STATE BOARD OF EDUCATION
CHARTER SCHOOL APPEALS COMMISSION**

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

Petitioner,

v.

THE SCHOOL BOARD OF POLK COUNTY,
FLORIDA

Respondent

**BRIEF OF RESPONDENT, THE SCHOOL BOARD OF POLK COUNTY, FLORIDA, IN
RESPONSE TO NAL-003, INC., D/B/A NAVIGATOR ACADEMY OF LEADERSHIP
HIGH SCHOOL DAVENPORT’S NOTICE OF APPEAL OF DENIAL OF CHARTER
SCHOOL APPLICATION**

Comes now the Respondent, THE SCHOOL BOARD OF POLK COUNTY, FLORIDA (hereinafter “School Board” or “Board”), by and through its undersigned counsel, and files this brief in response to the *Notice of Appeal of Denial of a Charter School Application and Petitioner’s Brief* (“Notice of Appeal”) filed by Petitioner NAL-003, INC. D/B/A NAVIGATOR ACADEMY OF LEADERSHIP HIGH SCHOOL DAVENPORT (hereinafter “NAL”). Nothing herein should be construed as a waiver of any substantive or procedural right or issue that may be raised pursuant to this appeal by the School Board. Respectfully, the State Board of Education should *deny* NAL’s appeal.

I. STATEMENT OF THE CASE

This proceeding is NAL's F.S. 1002.33(6)(c)1. Administrative appeal to the Charter School Appeals Commission ("CSAC") and State Board of Education ("SBE") of the denial of its Charter Application submitted on April 24, 2023.

II. COURSE OF PROCEEDINGS

On April 24, 2023, NAL filed an application with the School Board to open a new publicly funded charter school provisionally named "Navigator Academy of Leadership High School Davenport." This is the third high school application NAL has submitted; NAL filed a substantially similar applications in Polk County on February 1, 2021, which was denied by the School Board on April 27, 2021, and February 2, 2022, which was withdrawn on February 8, 2022. In its 2023 application, NAL proposed a school to serve up to 650 students in grades nine through twelve in facilities located on the same site as Navigator Academy of Leadership Davenport K-8 (hereinafter NAL K-8), a public charter school which has been in operation since 2019. On May 9, 2023, NAL made a presentation to the School Board at its regularly scheduled, duly noticed work session. Backup information was provided and included with the agenda item. (Respondent's Exhibit 1).

The proposed NAL would serve as grade 9-12 continuation of the K-8 program at NAL K-8.

Consistent with School Board Policy 9800-Charter Schools, a copy of which is attached as Respondent's Exhibit 2, the School Board convened a meeting of its Charter Review Team (hereinafter "Review Team") on May 25, 2023, for the purpose of reviewing NAL's application, using the evaluation instrument developed by FLDOE. For this purpose, the School Board retained the services of a professional

charter school consultant, Vicki Mace. Ms. Mace has served as the School Board's consultant for charter school applications for over ten years.

The Review Team is comprised of members of the Superintendent's executive staff or their designees, school principals, and other administrators from the following areas of expertise:

1. School Based Operations
2. Curriculum and Instruction, including, but not limited to, K-12 reading, math, and science.
3. Office of Charter Schools (non-voting)
4. Facilities
5. Business Services
6. Human Resource Services
7. Learning Support
8. Information Systems and Technology
9. Support Services
10. Assessment, Accountability and Evaluation
11. English Speakers of Other Language
12. Regional Assistant Superintendent Representative
13. General Counsel (non-voting)
14. Discipline
15. Diversity Management
16. Existing Charter School Principal/Director
17. Up to three (3) community members to be appointed by the Board.

Following the initial meeting of the Review Team, and pursuant to School Board Policy 9800, the School Board scheduled a capacity interview with NAL for the purpose of ascertaining the level of knowledge and overall preparedness to open a charter school exhibited by the founding board and the school's director, if named. The applicant was invited to bring up to three persons, not more than one of whom may be a management company representative or consultant. Attorneys are permitted to attend but are not counted and do not participate in the interview. The applicant was encouraged to have at least one governing board member present. This meeting was held on May 16, 2023. NAL was represented by Mr.

Jeremy Calkins, Dr. Diana LaFrance, and Mr. Manny Delgado. Information provided during the capacity interview was provided to the Review Team, the Superintendent of Schools, and the School Board. A copy of this information is attached as Respondent's Exhibit 3.

The Review Team convened on May 25, 2023, to review the information provided and vote on a final recommendation to the Superintendent. A copy of the Review Team's report is included with Respondent's Exhibit 4.

Presentation of NAL's application and the Review Team's findings to the School Board by consultant Vicki Mace and Senior Director of Charter Schools Candy Amato took place at a regularly scheduled and duly noticed work session of the School Board on June 13, 2023. The agenda item and backup are attached as Respondent's Exhibit 4. Ms. Amato provided actual notice of the work session to NAL via e-mail on June 6, 2023. (Respondent's Exhibit 5). The presentation lasted approximately 40 minutes. Upon information and belief, no representative of NAL attended the work session.

NAL's charter application was then placed on the agenda for a vote during the next following School Board meeting on July 25, 2023. Copies of the agenda, the agenda item, and the backup information provided to the School Board are attached as Respondent's Exhibit 6. Post-Covid, the School Board meets only once a month. Because this meeting fell beyond the 90-day period described in Section 1002.33(6)(b)3.a., the School Board and NAL agreed in writing to temporarily postpone the vote until that time (Respondent's Exhibit 7). Petitioner's footnote on page 4 is noted; however, the written agreement of the

parties obviated the 90-day requirement. Ms. Amato provided actual notice of the time and date of the School Board meeting to NAL via e-mail on July 18, 2023. (Respondent's Exhibit 8). In the same correspondence, Ms. Amato informed NAL that the Superintendent's recommendation would be to *deny* NAL's charter application.

Pursuant to Section 286.114, Florida Statutes (2023) and School Board Policy 0169.1--Public Participation at Board Meetings, members of the public are afforded a reasonable opportunity to be heard on propositions before the School Board. (Respondent's Exhibit 9). At the July 25, 2023, School Board meeting, at which NAL's application was presented to the School Board for a vote, no representative of NAL indicated a desire to be heard, and no one spoke on NAL's behalf. Had anyone in fact spoken, there would be a written record of the request to speak, as well as an entry in the minutes. Upon information and belief, no representative of NAL was present at that meeting of the School Board. Based on the Superintendent's recommendation, the information provided at the June 13 work session and the July 25 School Board meeting, the School Board voted seven to zero to deny the application. (Respondent's Exhibit 6) On August 3, the School Board's General Counsel forwarded to NAL a letter setting forth the decision and the reasons therefor, comprising competent and substantial evidence to deny Petitioner's Application based on good cause. (Petitioner's Exhibit A).

On September 1, 2023, NAL submitted its Notice of Appeal and Petitioner's Brief. It was received by the undersigned on September 5, 2023, following the Labor Day holiday.

III. Grounds for Appeal as Set Forth by Petitioner

A. Public support.

Although not clearly set forth as a basis for appeal in Petitioner’s brief, argument is presented that “this Charter School was well supported not only by its potential staff members, but the financing company and bond holders for the currently existing campus, the parents of students desperately seeing a continuum of grade levels...but also from the actual City of Davenport itself.” Further, “a copy of the letters of support from the NAL Bond Underwriter, City Manager, and dozens of parents is attached...” (Petitioner’s brief, page 4.) There is, in fact, a letter from the Davenport City Manager, of the sort and the level of detail typical of such letters. (Petitioner’s Exhibit C) There is, in fact, a letter dated April 19, 2023, from D A Davidson, a charter school bond underwriter, by definition a party with a special financial interest, indicating that they “support” NAL, although it does not contain a commitment to underwrite. (Petitioner’s Exhibit C) Interestingly, during the capacity interview, the School Board raised questions about the inclusion of competitive grant funds (CSP), capital outlay funds, and other non-guaranteed sources of funding. (1:16:53--1:17:56) In response, Applicant indicated that D A Davison was “going to push our debt service off for year three and then also project development fees, whatever we need to make sure that our budget is whole, that’s what we’ll use.” D A Davison provided a second letter dated May 26, 2023 (Respondent’s Exhibit 10) at the School Board’s request, but that letter *does not* mention “pushing off debt service” until year three.

There are no letters from parents; rather, there is a spreadsheet purporting to include anonymous responses from parents to some sort of survey or questionnaire, apparently conducted by the Applicant; however, the questions themselves were not provided, nor the context, nor any attribution. (Petitioner's Exhibit C) The "overwhelming" support from the public suggested by the Petitioner appears to be mainly anecdotal.

B. "No meaningful public discussion"

Petitioner argues on page 4 of their brief that there was "no meaningful public discussion or consideration from the School Board, despite overwhelming support from the public." In fact, in addition to the initial presentation to the School Board by the Applicant at the May 9, 2023, work session (Respondent's Exhibit 1), the School Board received a detailed presentation on the application and the review conducted by Vicki Mace and the Review Team at its work session on June 13, 2023, including voluminous backup and reference materials. Copies of the agenda, minutes, and backup materials are provided as Respondent's Exhibit 4. In addition, the complete Review Team recommendation document was provided to the School Board in advance of the June 25 meeting and attached to the agenda item as backup. Copies of the agenda, minutes, and supporting documents are attached as Respondent's Exhibit 6. Petitioner had ample opportunity to attend both the June 13 work session and the July 25 Board meeting, including an opportunity to speak to the School Board and address any of the concerns identified in the Review Team's review, but did not do so. Accordingly, it was entirely appropriate for

the School Board to vote based on the June 13 presentation, the voluminous backup materials and information provided to them and attached to the agendas, and the recommendation of the Superintendent of Schools.

C. “Of the 22 areas of evaluation, only three (3) did not meet the standard.”

Petitioner argues that the School Board’s Denial Letter “listed only three sections out of over twenty as the basis for the denial.” Numerically, this is correct. However, the categories identified as not meeting the required standards are arguably the most important to opening and successfully operating a charter school: Budget, management and staffing, and transportation services. Further, there were a significant number of additional areas where the Applicant was found to only partially meet the standard.

IV. ARGUMENT

Petitioner’s brief includes, beginning on page 6, a rebuttal of the School Board’s denial letter. (Petitioner’s Exhibit A).

The first topic addressed is the Management and Staffing Plan, and quotes extensively from the denial letter. The letter is the best evidence of its content, and can be reviewed in its entirety at Petitioner’s Exhibit A. The Review Team is comprised of individuals with expertise in their various disciplines, and their findings and conclusions are based upon thorough review of the Petitioner’s Application. For purposes of this Appeal, the School Board would reiterate the reasons set forth in its Denial Letter (Petitioner’s Exhibit A).

In its application, NAL indicated that its staff would begin with one certified ESE teacher, but the budget included 0.5 of a unit for ESE. In addition to providing direct

services, the ESE teacher is also responsible for preparing and facilitating all IEP and 504 meetings, monitoring, and implementing stipulated goals and expectations, and ensuring all legal requirements are met. The School Board would stand by its assertion that 0.5 of a unit for an ESE teacher for approximately 30 students is inadequate and insufficient to meet the anticipated needs of exceptional students at the school. Logistically, 0.5 unit for 30 students also raises serious concerns about meeting Florida's class size requirement.

English for Speakers of Other Languages ("ESOL") presents similar concerns. NAL allotted 0.5 of a unit for ESOL, for an estimated 30 students. Aside from class size issues, the demographics of Davenport strongly suggest that 0.5 unit is inadequate.

The second topic addressed in Petitioner's rebuttal of the denial is the Transportation Plan. Once again, the denial letter (Petitioner's Exhibit A) is the best evidence of its content. Petitioner apparently misapprehends the School Board's position and rationale vis-à-vis the inadequacy of NAL's transportation plan. The basic precept of Florida law when it comes to the transportation of charter school students is that "transportation may not be a barrier to equal access for all students residing within a reasonable distance of the charter school as determined in its charter." (Section 1002.33(20)(c), Florida Statutes 2023). Davenport is a high-growth area, with infrastructure that is not conducive of walking or riding bicycles to school. The safety of students walking or riding bicycles to school is a constant concern for much of Polk County, Davenport included. Public transportation in the area is all but non-existent. Anecdotally, the School Board has had conversations with

representatives from Navigator (K-8) about the possibility of contracting for private transportation, but thus far no such service has been provided by the school.

The School Board does not suggest that transportation must be made available to all students residing more than two miles from the campus, or that charter schools should be required to comply with the same laws and regulations as regular public schools as regards transportation of students. Rather, the Review Team and the School Board believe that NAL's transportation plan, isn't actually a transportation plan at all. They simply do not intend to provide transportation to any students—including ESE students. "All students that attend Navigator Academy of Leadership Davenport (K-8) either walk to school, ride their bikes, use a private bus, or arrive and leave school via parent pickup....Navigator High School will not be providing bus transportation to its students." The School Board reasserts its position that the application failed to provide a transportation plan that will serve all eligible students and will not be a barrier to access for students residing within a reasonable distance of the school. Further, the application does not provide revenue and expenditures for student transportation in the proposed budget.

The third topic addressed in Petitioner's rebuttal is the school's proposed budget. Again, the School Board would refer to and reiterate the deficiencies identified in the denial letter (Petitioner's Exhibit A) as to the specific reasons for denial. A review of the transcript of the capacity interview (Respondent's Exhibit 3) reflects the Applicant's awareness of the impropriety of including competitive grant funds such as CSP, capital outlay funds in the first two years of operation, or such speculative funding sources as "fund raisers" in the proposed budget. In the capacity interview,

Applicant indicated that their financial underwriter, D A Davidson, would defer debt service for the first two years, and indicated a letter to that effect would be forthcoming; however, the May 26, 2023, letter from D A Davidson said nothing of the sort, once again expressing an interest in underwriting tax-exempt bonds on NAL's behalf, but making no commitments, and certainly not offering to defer debt service for two years. (Respondent's Exhibit 10)

Since 1996, the School Board has received 142 charter school applications, has approved 56, and currently has 35 operational charter schools. Anecdotally, during that time and through all of those applications, the School Board has never encountered an applicant who proposed to include in its budget such speculative revenue sources as competitive grant funds, fund raising, and capital outlay funds that Applicant admits will not be available at all for the first two years of operation. As pointed out in the denial letter, after subtracting all of the unguaranteed revenue, the proposed budget is insolvent for the first year of operation without the receipt of capital outlay revenue. And despite Applicant's assertions that its underwriter would provide a letter deferring debt service for the first two years, no such letter has been forthcoming.

Further, and of concern, the budget includes revenue from a "technology fee" of \$150 per student, amounting to \$37,500 the first year, \$56,250 the second, \$75,000 the third, \$93,750 in the fourth, and \$97,500 for year five. At the capacity interview, the applicant stipulated that this is not allowable, and indicated that such fees would be requested on a voluntary basis, instead; however, the revenues have not been replaced.

For these and all of the other reasons set forth in the denial letter, the School board maintains its position that the proposed budget is insolvent.

Ultimately, in reviewing NAL's appeal in light of the reasons for denial based on good cause as articulated in the School Board's denial letter, it would be easy to draw a conclusion that the parties were reviewing different applications entirely. However, as Daniel Patrick Moynihan once famously said, "Everyone is entitled to his own opinion, but not his own facts." The School Board could only evaluate the application submitted. Close inspection of the application itself, the analysis performed by the Review Team, the responses adduced during the capacity interview, and the supporting documentation contained in the record, demonstrates the significant deficiencies in the application, especially in the areas of budget, staffing, and transportation. Taken together, these deficiencies comprise good cause to deny the application.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the School Board of Polk County, Florida, prays the Charter School Appeal Commission and the State Board of Education to uphold the School Board's denial of this charter school application. The School Board notes Petitioner's prayer for relief including attorney's fees and costs. The School Board will seek the same; however, any such award in favor of either party must be pursued through an appropriate action with the Division of Administrative Hearings.

Dated: September 29, 2023.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief with exhibits was served upon the Petitioner, NAL-003, INC. D/B/A NAVIGATOR ACADEMY OF LEADERSHIP HIGH SCHOOL DAVENPORT, by and through its counsel, TRIPP SCOTT at the address included herein via overnight delivery on the date identified immediately above. Five physical copies have also been seen submitted to the Agency Clerk for the Department of Education, 325 West Gaines Street, Room 1520, Tallahassee, Florida 32399-0400.1



C. Wesley Bridges II
General Counsel
The School Board of Polk County, Florida
1915 South Floral Avenue
Post Office Box 391
Bartow, Florida 33813
863.534.0773
863.519.7972 (FAX)
Florida Bar Number 0802735