

DEL TORO LAW

September 24, 2024

The Agency Clerk for Department of Education
Florida Charter School Appeal Commission
325 Wes Gaines Street, Room 1520
Tallahassee, FL 32399-0400

Re: American Academy of Palm Beach K-8 Charter School
Appeal of Denial of Charter School Application by the
School Board of Palm Beach County, Florida

To Whom It May Concern:

Del Toro Law represents the American Academy of Palm Beach K-8 Charter School. Although prior notice of the intent to appeal the denial of the charter school application by Palm Beach County was given, in an abundance of caution, please let this cover letter serve as formal notice of my client's appeal. The application was denied at the school board's meeting on September 4, 2024.

The name and address of the parties, and of the applicant's attorney are as follows:

Applicant: American Academy of Palm Beach K-8 Charter School
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Applicant Attorney: Del Toro Law
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Sponsor: The School District of Palm Beach County, Florida
3300 Forest Hill Boulevard, C-316
West Palm Beach, FL 33406-5869

Per 6A-6.0781_ F.A.C., please find enclosed five (5) hard copies and one (1) electronic copy of the Appellant's Brief with tabbed exhibits. Additionally, one (1) hard copy has been sent to The School District of Palm Beach County, Florida, Office of the Superintendent at 3300 Forest Hill Boulevard, C-316, West Palm Beach, Florida 33406-5869 per rule.

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We look forward to scheduling a hearing as soon as possible. Please feel free to contact me with any questions or concerns.

Respectfully submitted,

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

AMERICAN ACADEMY OF PALM BEACH K-8 CHARTER SCHOOL
APPLICANT/ APPELLANT

vs.

CASE NO:

THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA
SCHOOL BOARD/APPELLEE

APPELLANTS' INITIAL BRIEF

Respectfully submitted,

Counsel for Appellant

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	ii,iii
TABLE OF CITATIONS.....	iv,v
PRELIMINARY STATEMENT.....	1
STATEMENT OF THE CASE AND FACTS.....	1
STANDARD OF REVIEW.....	2
STATEMENT OF THE ISSUES TO BE DECIDED.....	3
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT AND CITATIONS OF AUTHORITY.....	4
A. The School Board’s Failure to approve or deny American Academy’s application within the 90 day statutory window deems the application approved as an operation of law.....	4
B. The School Board violated American Academy’s Procedural Due Process rights under Florida law by not following its own notice rule under Section 2.57 of the School Board Policies.....	6
C. The School Boards denial of the application cannot be supported by substantial and competent evidence as the School Board did not review American Academy’s application in its entirety.....	7
D. The School Boards denial of the application based on based on Section 20 of the Application, titled “Budget”, is not supported by substantial and competent evidence and is not based on a mandatory requirement for charter schools; rather the School Board modified Applicants application without permission in order to establish a basis to deny Applicant.....	8
E. The School Boards denial of the application based on Section 6 of the Application, titled “Exceptional Students”, is not supported by substantial and competent evidence and is not based on a mandatory requirement for charter schools. Additionally, the support documents attached to the application were never reviewed by the School Board.....	11

TABLE OF CONTENTS
(Continued)

CONCLUSION.....12
CERTIFICATE OF SERVICE.....13
CERTIFICATE OF COMPLIANCE.....13

REQUIRED INFORMATION:

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TABLE OF CITATIONS

Cases

<i>Board of Public Instruction v. State</i> , 219 So. 2d 430 (Fla. 1969)	4
<i>Brittany's Place Condo. Ass'n v. United States Bank, N.A.</i> , 205 So. 3d 794 (Fla. 2nd DCA 2016)	9
<i>Canney v. Board of Public Instruction</i> , 222 So. 2d 803	4
<i>Imhotep–Nguzo Saba Charter Sch. v. Dep't of Educ.</i> , 947 So. 2d 1279, 1285.....	2,3
<i>Krakov v. Department of Professional Regulation, Bd. of Chiropractic</i> , 586 So. 2d 1271.....	5
<i>Messing v. Nieradka</i> , 230 So. 3d 962	6
<i>Nehme</i> , 863 So. 2d at 205 (quoting <i>Seagrave</i> , 802 So. 2d at 286).....	9
<i>of Professional Regulation, Bd. of Chiropractic</i> <i>Professional Regulation, Bd. of Chiropractic</i> 586 So. 2d 1271	6
<i>Parrish v. State Farm Fla. Ins. Co.</i> , 356 So. 3d 771 (Fla. 2023)	9
<i>Sch. Bd. of Osceola County v. UCP of Cent. Florida</i> , 905 So. 2d 909 (Fla. 5th DCA 2005)	3
<i>Sch. Bd. of Palm Beach County v. Florida Charter Educ. Found., Inc.</i> , 213 So. 3d 356 (Fla. 4th DCA 2017)	2
<i>Sch. Bd. of Volusia County v. Acads. of Excellence, Inc.</i> , 974 So. 2d 1186 (Fla. 5th DCA 2008)	3
<i>World Bank v. Lewis</i> , 425 So. 2d 77	5

**TABLE OF CITATIONS
(Continued)**

Statutes

Fla. Stat. § 120.604, 6, 8, 10

Fla. Stat. §1002.331, 2, 3, 4, 6, 9, 11

Other

Florida Administrative Code 6A-
6.0786.....9,11

Palm Beach County School Board Polic Section 2.57.....1,7, 8

PRELIMINARY STATEMENT

Appellant, American Academy of Palm Beach K-8 Charter School, (“Applicant”, “School”, “American Academy”, or “Charter School”) files this appeal of The School Board of Palm Beach County’s (“School Board) failure to act within the 90 day statutory window and The School Board of Palm Beach County’s denial of Applicant’s charter school application.

STATEMENT OF THE CASE AND FACTS

On April 4, 2024, American Academy submitted an application to the School Board to open a charter school in Palm Beach County, Florida. *See Composite Exhibit A: Application and Attachments.* Fla. Stat. §1002.33, the controlling statute in Florida for charter schools, requires a sponsor, i.e. the School Board, to approve or deny an applicant within 90 days of submittal of an application. *Fla. Stat. §1002.33.* Per the same statute, if a School Board denies an application, it must state in writing the specific reasons, which are based upon good cause, for denying the application. *Id.* Additionally, the School Board has promulgated policies for the process of evaluating a charter school application. Specifically, School Board policy 2.57 requires the School Board, upon review of the application, to give formal written notice to the applicant of any issues within the application; the same rule allows a seven day cure period for the applicant to address the issues within the notice letter. *See Exhibit B: Palm Beach County School Board Policy 2.57.*

The School Board failed to approve or deny the application within the required statutory 90 day window. The School Board also failed to follow their own policies and never gave the Applicant formal notice and opportunity to cure. On September 13, 2024, 153 days after submission of the application, the School Board, without considering the full application submitted, voted to deny American Academy's application. American Academy timely filed an appeal for the School Board missing the 90 day statutory window and also filed a timely appeal from the denial which took place on September 4, 2024. *See Composite Exhibit C: Appeal Notice Letters.*

STANDARD OF REVIEW

The State Board reviews de novo whether the School Board's determination was supported by competent, substantial evidence that meets the "good cause" legal standard. *Sch. Bd. of Palm Beach County v. Florida Charter Educ. Found., Inc.*, 213 So. 3d 356, 361 (Fla. 4th DCA 2017) (citing *Imhotep–Nguzo Saba Charter Sch. v. Dep't of Educ.*, 947 So. 2d 1279, 1285 (Fla. 4th DCA 2007)).

Under the controlling charter school statute, the School Board was required to set forth the specific reasons, based upon good cause, for denying a charter application in writing. *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 basis 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); Sch. Bd. of Volusia County v. Acads. of Excellence, Inc., 974 So. 2d 1186, 1191 (Fla. 5th DCA 2008); *Sch. Bd. of Osceola County v. UCP of Cent. Florida*, 905 So. 2d 909, 914-16 (Fla. 5th DCA 2005). The State Board reviews de novo whether the School Board's determination was supported by competent, substantial evidence that meets the “good cause” legal standard. *Sch. Bd. of Palm Beach County v. Florida Charter Educ. Found., Inc.*, 213 So. 3d 356, 361 (Fla. 4th DCA 2017) (citing *Imhotep–Nguzo Saba Charter Sch. v. Dep't of Educ.*, 947 So. 2d 1279, 1285 (Fla. 4th DCA 2007)).

STATEMENT OF THE ISSUES TO BE DECIDED

1. Whether the School Board’s failure to act within the statutorily required 90 day window makes the application automatically approved via operation of law.
2. Whether the School Board violated Applicants procedural due process rights by failing to give required formal written notice and an opportunity to cure.
3. Whether the School Board’s denial of the application was based on competent and substantial evidence to support the denial and whether the basis for the denial relates to a mandatory charter school requirement.

SUMMARY OF THE ARGUMENT

The controlling statutes and case law, as will be examined in detail in the Argument section of this brief, are clear: by failing to either approve or deny the application within the 90 day time period required by statute, the application is automatically deemed approved via operation of law. Any attempt by the School

Board to act outside of this window is barred. Additionally, the School Board did not follow their own policies in dealing with Applicant, denying Applicant their due process rights. In denying the application, the School Board did not base their denial on competent and substantial evidence, but instead used subjective and selective methods to craft a denial, the basis of which are not mandatory charter school requirements.

ARGUMENT AND CITATIONS OF AUTHORITY

A. The School Board's Failure to approve or deny American Academy's application within the 90 day statutory window deems the application approved as an operation of law.

School boards are subject to the Administrative Procedures Act. See *Canney v. Board of Public Instruction*, 222 So. 2d 803 (1st DCA 1969); See also *Board of Public Instruction v. State*, 219 So. 2d 430 (Fla. 1969). The Florida Supreme Court has held that a county school board is part of the state system of public instruction and is a state agency subject to the Administrative Procedures Act. *Id.* Per Fla. Stat. § 1002.33(6)(b)(3)(a), a school board shall by majority vote to approve or deny an application no later than 90 calendar days after the application is received. *Fla. Stat. § 1002.33*. If a school board fails to act within 90 days on a charter school application for a non-high-performing school applicant in Florida, the application is deemed approved by operation of Fla. Stat. § 120.60, which states that any application not approved or denied within the statutory time limit "shall be deemed approved." *Fla. Stat. § 120.60*.

The above application of the statute is supported by case law. In *Krakow v. Department of Professional Regulation, Bd. of Chiropractic*, the First District Court of Appeals held that the Board's failure to approve or deny an application within 90 days was deemed an automatic approval and precluded the Board from considering the merits of the application. *Krakow v. Department of Professional Regulation, Bd. of Chiropractic* 586 So. 2d 1271 (1st DCA 1991). Here, the Board failed to deny American Academy within the 90 day statutory window, which would deem their application approved. On September 13, 2024, 162 days from submission of the application, the School Board issued a denial letter to American Academy, denying the application based on four pretextual reasons, which based on the holding in *Krakow*, they are precluded from considering after the 90 day window expires. Further, in the case of *World Bank v. Lewis*, the First District Court of Appeals emphasized that the legislative intent behind such statutes is to ensure timely action on applications. *World Bank v. Lewis*, 425 So. 2d 77 (1st DCA 1982). The court held that if the statutory time limit is violated, the application is automatically approved, placing the applicants in the same position they would have been in had the application been approved on the merits within the required period. *Id.*

The School Board conceded via a letter dated July 29, 2024 they did not act within the 90 day statutory window:



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL

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July 29, 2024

Stacy Harris
Direction of Operations
American Academy of Palm Beach

Re: July 9, 2024 letter to the Florida State Board of Education, Mr. Ben Gibson Chair

Dear Ms. Harris,

The Palm Beach County School District (the "District") is in receipt of your letter dated July 9, 2024, to the Florida State Board of Education. We recognize that the Charter Department did not bring this matter to the Board for action within the requisite 90 days, however, a review of your application had been completed and the District was hoping to work with your team to withdraw the application so that it

As the School Board did not vote to approve or deny American Academy's application for 153 days from submittal (it was denied at the meeting on September 4, 2024), Appellants application should be deemed approved without any further requirements from the School Board.

B. The School Board violated American Academy's Procedural Due Process rights under Florida law by not following its own notice rule under Section 2.57 of the School Board Policies.

Procedural due process requires that an individual be given notice and an opportunity to be heard. *Messing v. Nieradka*, 230 So. 3d 962 (2nd DCA 2017). The specific parameters of notice and the opportunity to be heard are not fixed but must be adequate to reasonably convey the required information and allow a reasonable time for the individual to respond. *Id.* The Palm Beach County School Board has

promulgated policies, specifically School Board Policy 2.57, which in conjunction with applicable Florida and federal laws, govern the actions which must be taken by the School Board when dealing with a charter school applicant. *See Exhibit B: School Board Policy 2.57.* Policy 2.57, Section 3(e) states, “The Superintendent's designee shall in writing notify by email, with read receipt requested (if email address is known), and mail the applicant the results of the charter application evaluation, noting which sections have been rated "Partially Meets the Standard," or "Does Not Meet the Standard". Policy 2.57 Section 3(f) then allows for a “cure period” where the applicant, within 7 days, may submit in writing, per Fla. Stat 1002.33(6), “technical and non-substantive corrections and clarifications...that relate to any deficiency noted by the reviewer on the application evaluation instrument, if such errors are identified by the District as cause to deny the application.” *See Exhibit B: Policy 2.57.* Not only did the School Board fail to provide the formal notification letter within the 90 day time period as required under Florida law and their own policy, the School Board never provided American Academy with formal notification of what sections of the application, if any, were cause to deny the application. American Academy was not allowed to modify its application to address any School Board concerns as other applicant have in the past. American Academy was not provided notice, nor an opportunity to be heard, which violated their right to procedural due process and equal treatment under the law.

C. The School Board’s denial of the application cannot be supported by substantial and competent evidence as the School Board did not review American Academy’s application in its entirety.

American Academy submitted a 105 page application which was supplemented by 550 pages of supporting documentation labeled “Attachments” and given corresponding letter designations for ease of review. *See Composite Exhibit A: Application and corresponding attachments.* The School Board concedes, in their denial letter dated September 13, 2024, to not reviewing 10 of the application sections and also concedes to not reviewing any of the supplemental attachments (26 sections). *See Exhibit D: Denial Letter dated Sept 13, 2024.* As analyzed above, the School Board is subject to the Florida Administrative Procedure Act, specifically Fla. Stat. 120.60. Fla. Stat. 120.60 requires an agency to review an application in its entirety in order to approve or deny the applicant. *Fla. Stat. 120.60.* The application and its attachment contain crucial information as it relates to the charter school meeting its requirements under the law. By not reviewing the application in its entirety, the School Board cannot issue a denial based on substantial and competent evidence, as all information was not considered in rendering their decision.

D. The School Board’s denial of the application based on Section 20 of the Application, titled “Budget”, is not supported by substantial and competent evidence and is not based on a mandatory requirement for charter schools; rather the School Board modified Applicant’s application without permission in order to establish a basis to deny Applicant.

In denying American Academy’s application based on budget issues, the School Board stated that, “the budget does not represent a realistic assessment of the projected sources of revenue and expenditures.” *See Exhibit D: Denial Letter.* Specifically, the School Board took issue with the initial enrollment estimate of roughly 288 students, stating it exceeds comparable charter schools in Palm Beach

County. The School Board states the school did not provide any basis for the enrollment projections. *See Exhibit D: Denial Letter.*

The evaluation tool which is required by the State to be used in evaluating charter school applications per Florida Administrative Code 6A-6.0786, known as Form IEPC-M2, does not require justification of the initial enrollment estimate of students; it only requires a realistic assessment of projected sources of revenue and expenses. *See Exhibit E: Form IEPC-M2.* The term used here, “realistic” is not defined in the cited administrative code nor the controlling Florida Statute, 1002.33. In absence of a statutorily defined term, one must look to the plain meaning of the word in question. The Florida Supreme Court has held, “Dictionaries aid the Florida Supreme Court in establishing the publicly understood plain meaning of a word whose relevant definition is contested, and it looks to them when a contractual term is undefined within a contract. The supreme court also engages in this exercise when a statutory term is undefined within a statute.” *Parrish v. State Farm Fla. Ins. Co.*, 356 So. 3d 771 (Fla. 2023). The Second District Court of Appeals, quoting the United States Supreme Court, has held “When necessary, the plain and ordinary meaning of words can be ascertained by reference to a dictionary. *Nehme*, 863 So. 2d at 205 (quoting *Seagrave*, 802 So. 2d at 286).” *Brittany's Place Condo. Ass'n v. United States Bank, N.A.*, 205 So. 3d 794 (Fla. 2nd DCA 2016). Here, Merriman-Webster’s Dictionary defines “realistic” as follows: accurately representing what is natural or real; able to see things how they really are and to deal with them in a practical way; based on what is real rather than on what is wanted or hoped for. “Realistic”

(Merriman-Webster's Online Dictionary) September 22, 2024. One only needs to look at the past practice of the School Board to understand that American Academy's first year enrollment projections are realistic. American Academy's initial enrollment projection of 288 students for a K-8 school is substantially less than what the School Board has approved in the recent past. In May of 2017, the School Board approved "Bridgeprep Charter Academy" (extended second language school) with a first year projected enrollment of 424 students; at the same meeting also approving "Sports Leadership Arts Management Academy Charter Middle High School" (grades 6-12) with a projected first year enrollment of 400 students. *See Composite Exhibit F: Board Agendas and Approvals.* In February of 2020, the School Board approved "Somerset Academy Acme Charter School" (K-8) for a projected first year enrollment of 486 students; approved "Somerset Academy Cypress Charter School" (K-8) for a projected first year enrollment of 486 students; and approved "R.I.S.E. Charter School" (grades 6-12) with a projected first year enrollment of 800 students. *See Composite Exhibit F.* Additionally, American Academy did provide support for its enrollment numbers. In its initial application, American Academy cited a 402 person survey of community members, of which 90 percent stated they would consider sending their child to American Academy. *See Exhibit G: Attachment T to American Academy Application.* This survey was provided in the application packet as an additional attachment, Attachment T, which was not reviewed or considered by the School Board at the September 4, 2024 meeting.

When considering the budget approval of other similarly situated charter schools based on initial enrollment and the survey which American Academy used as a good faith basis when developing their estimates of first year enrollment, it becomes clear that the School Board's denial is not based in substantial and competent evidence, but is rather arbitrary and capricious.

More importantly, the School Board took unprecedented action by physically changing the initial enrollment projections and subsequent budget numbers on American Academy's application without consent in order to justify "failing" the applicant for an unsustainable budget. The School Board concedes to this in their denial letter. *See Exhibit D: Denial Letter*. This action is egregious and at minimum constitutes fraud. Fla. Stat. § 1002.33 gives authority to a School Board to *review* an application, it does not bestow any power to the School Board to *alter* an application. While the applicant is unsure of the underlying impetus for this type of action, it is never the less unlawful and cannot be based on substantial and competent evidence. As such, American Academy requests this appeals commission overturn the School Board's denial.

E. The School Board's denial of the application based on Section 6 of the Application, titled "Exceptional Students", is not supported by substantial and competent evidence and is not based on a mandatory requirement for charter schools. Additionally, the support documents attached to the application were never reviewed by the School Board.

The School Board concedes to not reviewing any of the attachments relating to Section 6 of American Academy's application. *See Exhibit D: Denial Letter*. The answers to Section 6 were written and reviewed by a team of three educators, two of

who had been Principals of “A” rated elementary schools, both with significant ESE student populations. The third contributing section writer was involved in the opening of a 1500 student Florida University Charter Lab K-8 school with 160 ESE students. The third contributing writer had served 13 years as the charter lab school’s ESE Coordinator and Department Head where she supervised 25 employees. As part of her school population, the staff served students in multiple Autism units, Deaf and Hard of Hearing, Visually Impaired, Specific Learning Disabled, Language Impaired, Other Health Impaired, Orthopedically Impaired, and IND students.

Upon review of the requirements set forth in the required evaluation instrument, Form IEPC-M2, and the application answers and attached supplemental information, it becomes apparent that American Academy met or exceeded all standards. The team writing and reviewing this section clearly answered Section 6 questions A to K with proven data calculations, staffing ratios based on Palm Beach School District ESE student percentages, ESE staffing, current IEP practices which are currently in use by the Palm Beach School District ESE personnel and charter school personnel, and instructional strategies for ESE students including Gifted Services. The basis of denial by the School Board is not based on any mandatory requirement for charter schools. Wherefore American Academy request this Appeals Commission overturn the denial of the School Board.

CONCLUSION

The School Board of Palm Beach County has conceded the following in regard to American Academy’s charter school application: The School Board did not approve

or deny the application within the statutorily required 90 day window; the School Board did not review 5 of the 22 Sections of American Academy's 110 page application and reviewed none of the 550 pages of supplemental material which supported the application; the School Board follow its own policy by not issuing a formal notice letter and give American Academy an opportunity to cure any purported defects in the application the School Board did not use substantial and competent evidence when denying American Academy's application, but instead based their denials on non-mandatory charter school requirements.

Actions have consequences, and the Florida Statutes and supporting case law are clear: The School Board's failure to act within the 90 day statutory window result in an approval of American Academy's application as an operation of law. The School Board did not follow its own policies as it relates to notice, violating American Academy's procedural due process rights. Additionally, the School Board did not review relevant material supplied as part of the application in rendering its decision. Even after 153 days, the School Board did not review the application in its entirety, although it is required to by Statute.

WHEREFORE, Appellant American Academy respectfully requests that the State Board of Education, Charter Schools Appeal Commission, issue an order overturning the School Board of Palm Beach County's denial of American Academy and order approval of said Application.

CERTIFICATE OF SERVICE

I do hereby certify that five hard copies and one electronic copy of Appellants' Brief have been sent via Federal Express to *The Agency for Department of Education*, 325 West Gaines Street, Room 1520, Tallahassee, Florida 32399-0400 and one hard copy has been sent to *The School District of Palm Beach County, Florida, Office of the Superintendent*, 3300 Forest Hill Boulevard, C-316, West Palm Beach, Florida 33406-5869 on this 26th day of September, 2024.

CERTIFICATE OF COMPLIANCE

I, the undersigned counsel, do hereby certify that this Brief is submitted in 12 point proportionately spaced Century Schoolbook font, and that this brief complies with the page limit requirements set by 6A-6.0781, F.A.C.

Respectfully submitted,

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