

January 10, 2025

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. Please let this Cover Letter serve as formal notice of Applicant's filing of its Motion to Strike, enclosed within.

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
6345 Branchwood Drive
Lake Worth, FL 33467

Applicant Attorney: Del Toro Law
Peter D. Del Toro, PharmD., Esq.
514 Colorado Avenue
Stuart, FL 34994

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 of the Appellant's Motion to Strike with one exhibit. 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.

Please feel free to contact me with any questions or concerns.

Respectfully submitted,

**Counsel for Appellant- American Academy
of Palm Beach K-8 Charter School**

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By: /s/ Peter D. Del Toro
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STATE BOARD OF EDUCATION
CHARTER SCHOOL APPEAL COMMISSION

AMERICAN ACADEMY OF PALM BEACH
K-8 CHARTER SCHOOL,

Applicant/Appellant

v.

THE SCHOOL BOARD OF
PALM BEACH COUNTY, FLORIDA,

School Board/Appellee

DEPT OF EDUCATION
TALLAHASSEE FLA

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FILED AGENCY CLERK

**MOTION TO STRIKE STATEMENTS FROM APPELLEE'S
OCTOBER 25, 2024 RESPONSE TO INITIAL BRIEF**

COMES NOW, Applicant/Appellant, AMERICAN ACADEMY OF PALM BEACH K-8 CHARTER SCHOOL ("American Academy"), by and through the undersigned counsel, and files this Motion to Strike Statements from Appellee's October 25, 2024, Response to Initial Brief, and in support thereof states:

Factual Background

1. On or about April 4, 2024, American Academy submitted its charter school application to the Palm Beach County School Board (the "School Board") for review in accordance with Florida Statute 1002.33.
2. The School Board failed to act within the 90 day statutory period required for approval or denial of the application.
3. American Academy then filed a timely appeal of the School Board's failure to act.
4. American Academy was directed to "work things out with the School Board."
5. American Academy's charter school application (the "Application") was subsequently denied by the School Board.
6. American Academy then filed a timely appeal of the School Board's denial of its Application.
7. The School Board timely responded to American Academy's appeal and filed its *Response to Initial Brief* (the "Response"). (See response from School Board provided to the Committee.)
8. In its Response, the School Board claims that during a meeting on July 31, 2024, American Academy was "expressly advised of when the application would be brought forward for a vote if it did not withdraw or revise it." (See Response, p. 6).

9. However, the July 31 meeting between American Academy and the School Board was not recorded and is therefore not a part of the record.
10. American Academy made numerous requests to have the July 31 meeting recorded, even going so far as to offer to bear the burden of all costs associated with recording. The School Board denied all such requests. (See Exhibit A)
11. Further, the School Board's Response includes an Exhibit D, a letter from the School Board to American Academy dated August 8, 2024 (the "Letter"), directly referencing the same unrecorded July 31 meeting.
12. The School Board's Response uses the Letter as evidence that it has "repeatedly encouraged" American Academy to correct any alleged deficiencies in its application. (See Response, pp. 1-2).
13. Any reference to the unrecorded July 31 meeting or the School Board's Letter, and by incorporation its Exhibit D, and reference to the final School Board hearing should be stricken from the School Board's Response and prohibited from reference at any future hearing because none of the meetings were recorded and are therefore not a part of the record.

MEMORANDUM OF LAW

I. Motion to Strike Standard

"When a party includes in an appendix material or matters outside the record, or refers to such material or matters in its brief, it is proper for the court to strike the same." *Altchiler v. State, Dep't of Professional Regulation, etc.*, 442 So. 2d 349 (Fla. 1st DCA 1983).

II. Under The Florida Administrative Code a Meeting Without A Transcript is Not a Part of the Record on Appeal.

Florida Administrative Code Chapter 6A-6.0781 governs the appeal of a decision denying an application for charter school. Under Florida Administrative Code section 6A-6.0781, a transcript is required for a meeting to be part of the record on appeal. Specifically, the regulation states that "available transcripts of all meetings before the district school board in which the decision was considered" must be included in the record on appeal and filed as exhibits to the appeal. Fla. Admin. Code R. 6A-6.0781(1)(b) (2024). Additionally, Florida Statute § 286.0105, titled *Notices of meetings and hearings must advise that a record is required to appeal*, advises that if a person decides to appeal any decision made by a board, agency, or commission, they may need to ensure that a verbatim record of the proceedings is made, which includes the testimony and evidence upon which the appeal is based. Fla. Stat. § 286.0105. This further supports the necessity of having a transcript as part of the record on

appeal. In the case of *Murphy v. Blubaugh*, the court emphasized the importance of including a transcript in the record on appeal to evaluate the arguments properly. The absence of a transcript hindered the court's ability to assess whether the injunction was supported by the evidence *Murphy v. Blubaugh*, 252 So. 3d 809 (Fla. 2nd DCA, 2018). As such, any reference by the School Board to any meeting not properly recorded should be stricken from their response.

A school board that denies a charter school application must provide documentation supporting the reasons for denial to the applicant. *Fla. Stat. § 1002.33(3)(b)*. The contents of a hearing that does not have a transcript cannot be used to support a school board's decision of denial. *See Sch. Bd. V. UCP*, 905 So. 2d 909, 915 (Fla. 5th DCA 2005) ("But, the transcript from the hearing is not contained in the record, making it impossible to determine whether any empirical evidence was presented at that time to support its denial.").

Here, the School Board denied American Academy's request to have meetings recorded. As transcripts of meetings are required per the Florida Administrative Code in order to be included in the record, any reference to any meetings and corresponding documents mentioning meetings by the School Board should be stricken from the response, oral argument, and not considered by the Charter School Appeal Commission.

CERTIFICATION

I hereby certify that the undersigned attempted to confer with opposing counsel via email and telephone but did not receive a response, therefore a ruling is required on this matter.

Respectfully submitted,
**Counsel for Appellant American
Academy of Palm Beach K-8 Charter
School**

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Exhibit A

DECLARATION OF JAMES PEGG

1. My name is James Pegg, I am over 18 years of age, of sound mind, and otherwise competent.
2. I was hired as a consultant by American Academy of Palm Beach K-8 Charter School to assist in submitting an application with the Palm Beach County School Board to open a charter school in Palm Beach County, Florida.
3. During the application process, on July 31, 2024, a meeting was held between American Academy and the Palm Beach County School Board.
4. I requested that the July 31, 2024, hearing be recorded and transcribed.
5. Palm Beach County School Board denied my request to have the July 31, 2024, hearing recorded and transcribed.
6. Stacy Harris of American Academy also requested that the July 31, 2024, hearing be recorded and transcribed and additionally offered to cover the costs for recording and transcription.
7. The Palm Beach County School Board denied Ms. Hariss' request to have the hearing recorded and transcribed.

DECLARATION UNDER PENALTY OF PERJURY

I, James Pegg, declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

Executed on January 10, 2025.

James Pegg
By: James Pegg