

STATE BOARD OF EDUCATION
CHARTER SCHOOL APPEAL COMMISSION

AMERICAN ACADEMY OF PALM BEACH
K-8 CHARTER SCHOOL,

Applicant/Appellant,

vs.

THE SCHOOL BOARD OF
PALM BEACH COUNTY, FLORIDA,

School Board/Appellee.

**APPELLEE'S RESPONSE TO APPELLANT'S
MOTION TO STRIKE STATEMENTS FROM THE RESPONSE BRIEF**

Appellee, the School Board of Palm Beach County, Florida (the "School Board"), objects to Appellant, American Academy of Palm Beach K-8 Charter School's ("American Academy") Motion to Strike Statements from Appellee's October 25, 2024 Response to Initial Brief, and responds as follows.

I. The Cited Portions of the School Board's Brief Reference Materials Already in the Record on Appeal.

In its motion to strike, American Academy essentially argues that if there is no transcript of a meeting, the School Board should not be permitted to refer to the meeting at all. This makes no sense: it is well established that parties can refer to any part of the record on appeal, including references to untranscribed events.

The record in any appellate proceeding indeed sets a factual boundary, as argument in an appellate brief, standing alone, cannot establish factual matters. *See Schroeder v. MTGLQ Inv'rs, L.P.*, 290 So. 3d 93, 96 (Fla. 4th DCA 2020) ("While the appellant in his brief makes certain statements of fact . . . , such facts are not so alleged or proved. . . . [I]t would be highly improper

for us to consider such an issue based solely upon statements and arguments contained in the brief.” (quoting *Bailey v. State*, 173 So. 2d 708 (Fla. 1st DCA 1965))).

The School Board does not, however, refer to matters outside the record in its response brief. To the contrary, the School Board refers to a letter that is unquestionably in the record. See Resp. Br., 5-6 (referring to “Exhibit B to Exhibit D” of the brief). That letter discusses the July 31, 2024 untranscribed meeting. *Id.* (stating that “the August 8th letter . . . noted that School District staff had met with American Academy to review its application on July 31st”). The School Board’s brief does not go beyond the contents of the August 8th letter. This is well within the bounds of permissible record references.

American Academy’s argument appears to stem from a misunderstanding of *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150 (Fla. 1979), which set forth the rule that an appellant cannot prevail on factual issues without a transcript of underlying proceedings. See *id.* at 1152 (“When there are issues of fact the appellant necessarily asks the reviewing court to draw conclusions about the evidence. Without a record of the trial proceedings, the appellate court cannot properly . . . conclude that the trial court’s judgment is not supported by the evidence or by an alternative theory.”). *Applegate* does not apply here: the July 31, 2024 meeting was not an evidentiary hearing, but an informational meeting; and this appeal does not seek to resolve factual issues determined at that meeting. Based on this alone, the motion to strike lacks merit.

II. The Commission Is Not Limited to Transcribed Proceedings.

The motion to strike must also be denied because it incorrectly suggests that the scope of the record on appeal before this Commission is strictly limited.

Rule 6A-6.0781 of Florida’s Administrative Code governs the content of the record in this appeal. See Fla. Admin. Code R. 6A-6.0781(1)(b). It identifies the materials that must be presented

to the Commission, including “available transcripts of all meetings before the district school board in which the decision was considered[.]” *Id.* (emphasis added). Additionally, the Commission may “gather other applicable information regarding the appeal,” and “may request information to clarify the documentation presented to it.” § 1002.33(6)(e) 2.–5., Fla. Stat. (2024). Thus, the Commission may consider a broad range of materials and is certainly not restricted to solely considering transcribed proceedings.

The Fifth District has specifically rejected a restrictive reading of rule 6A-6.0781(1)(b) similar to that proposed by American Academy in the motion to strike. *See Sch. Bd. of Volusia Cnty. v. Florida E. Coast Charter Sch.*, 312 So. 3d 158, 161 (Fla. 5th DCA 2021) (“[W]e conclude the Commission was not limited to the information contained within the record on appeal and appropriately considered other clarifying information.”). American Academy’s arguments run contrary to this holding, in that American Academy appears to ask the Commission to read additional restrictive language into the rule. This it should not do.

Accordingly, even if the School Board were referring to matters outside the record (it was not), American Academy’s argument would still lack merit.

III. Conclusion

Based on the foregoing, it is respectfully requested that the Commission deny American Academy’s motion to strike portions of the School Board’s response brief.

Dated: January 17, 2025

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that one (1) electronic copy of this Response was submitted to the Agency Clerk for the Department of Education, 325 W. Gaines Street, Suite 1520, Tallahassee, Florida 32399-0400, on January 17, 2025, and that five (5) hard copies will be hand delivered on January 21, 2025. I also certify this Response is being served on this day, January 17, 2025, on Peter D. Del Toro, Esq., DEL TORO LAW, 514 Colorado Avenue, Stuart, Florida 34994, Counsel for Applicant/Appellants, at peter@deltoro.law and sandra@deltoro.law.



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