FLORIDA CHARTER SCHOOL APPEAL COMMISSION
APPEAL FROM THE APPROVAL OF A
CONVERSION CHARTER SCHOOL APPLICATION
BY THE FLORIDA CHARTER SCHOOL REVIEW COMMISSION

THE SCHOOL BOARD OF ALACHUA COUNTY, FLORIDA,

Appellant,

v.

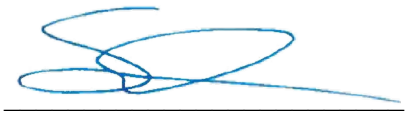
CASE NO.: _____

NEWBERRY COMMUNITY SCHOOL, INC.,

Appellee.

APPELLEE'S MOTION TO DISMISS FOR LACK OF JURISDICTION

Respectfully submitted,



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Appellee, Newberry Community School, Inc., pursuant to Rule 6A-6.0781(3), Florida Administrative Code, hereby moves to dismiss this appeal for lack of jurisdiction. Appellant has no standing to appeal the Charter School Review Commission's approval of Appellee's charter application, this appeal is untimely, and the Appellant is not a proper party to this appeal. Accordingly, the State Board must dismiss. Appellant objects to this motion.

I. Procedural Background

In April 2024, parents and teachers of students enrolled at Newberry Elementary School ("NES"), voted to convert NES to a public charter school pursuant to section 1002.33(3)(b), Florida Statutes (2024). Appellee thereafter submitted a charter application (the "Application") to the Florida Charter Institute (the "FCI") in accordance with Rule 6A-6.0792(4), Florida Administrative Code. Following review of the Application and Appellant's input, the FCI submitted a recommendation of approval to the Charter School Review Commission (the "CSRC"). The CSRC unanimously approved the Application during a public meeting on February 26, 2025, and provided written notice of such approval to Appellant on March 10, 2025. Appellant filed this appeal on April 30, 2025, with the Florida Charter School Appeal Commission.

II. Argument

Put simply, this appeal is an attempt by Appellant to usurp the CSRC's fact-finding authority and force Appellee to defend its Application for a second time. Appellant admits in its Initial Brief that "there is no express right for the Appellant, as the sponsor, to appeal the approval of the conversion charter school application by the CSRC." Section 1002.3301(6), Florida Statutes (2024), provides only that the CSRC's decisions "may be appealed in accordance with s. 1002.33(6)(c)." Section 1002.33(6)(c), Florida Statutes (2024), provides that only "[a]n applicant

may appeal any denial of that applicant's application . . . to the State Board of Education no later than 30 calendar days after receipt of the sponsor's decision . . . and shall notify the sponsor of its appeal." (emphasis supplied). Further, Rule 6A-6.0792, Florida Administrative Code, which is the State Board Rule implementing section 1002.3301, Florida Statutes, expressly provides in subsection (8)(c) that "[i]f the application is denied, the applicant may appeal the [CSRC's] decision in accordance with Section 1002.33(6)(c), F.S." (emphasis supplied). The statutory right to appeal is only afforded to charter school applicants, not district school boards.

Further, the Legislature created the CSRC to provide an alternative charter authorizer with the power to "solicit, review, and approve applications for charter schools that are overseen by district school boards." Fla. S. Comm. on Ed., CS for SB 758 (2022) Bill Analysis, 6 (Feb. 25, 2022). It was the Legislature's express intent that the "school district [be] required to contract with the new charter school within 30 calendar days after the CSRC's [approval]." *Id*. at 7. Common-sense dictates that a statute expressly requiring Appellant's compliance with the CSRC's decision within thirty days does not simultaneously imply a right to appeal the same. Indeed, one is "not required to abandon either . . . common sense or principles of logic in statutory interpretation." *Sch. Bd. of Palm Beach Cty. v. Survivors Charter Schs., Inc.*, 3 So. 3d 1220, 1235 (Fla. 2009). It is thus abundantly clear from Legislative history; the plain text of sections 1002.33 and 1002.3301, Florida Statutes; and the State Board's implementing regulations that charter school sponsors were intentionally given no right to appeal a CSRC decision.

Allowing Appellant to subvert the CSRC and proceed with this appeal would circumvent the Legislature's intent and undermine the fundamental purpose of the CSRC. The statutory right to appeal a CSRC decision is clearly reserved only to applicants whose applications have been denied. In fact, it is impossible for Appellant in this case to comply with the State Board's

procedural requirements for this appeal. Under Rule 6A-6.0781, Florida Administrative Code, which provides the "procedures for . . . all appeals to the State Board . . . under provisions of Section 1002.33(6), F.S.," written and oral arguments must be limited only to "due process and the reasons for denial." Absent the denial of a charter application, such as in the case at hand, there is simply nothing to appeal.

Appellant also acknowledges in its Initial Brief the public official standing doctrine, under which Appellant, despite its disagreement with the CSRC's approval, is "obligated to obey the legislature's duly enacted statute until the judiciary passes on its constitutionality." *Sch. Bd. of Collier Cty. v. Fla. Dept. of Ed.*, 279 So. 3d 281, 288 (Fla. 1st DCA 2019) (internal citations omitted). Appellant's mere "disagreement with [its] constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy." *Id*. at 289 (internal citations omitted). Any argument Appellant may have that this statutory framework is unfair should be directed at the Legislature, not the State Board. Just as Appellant would be bound by the State Board's reversal of Appellant's own *denial* of an application, Appellant is bound by the CSRC's *approval* of an application,[1] neither of which conflicts with Appellant's constitutional authority to operate, control, and supervise public schools.[2] Appellant therefore lacks standing to appeal the CSRC's approval and must sponsor Appellee's new charter school as required by law.

Even if Appellant did have standing to appeal the CSRC's approval, this appeal is untimely. Any appeal of a CSRC decision is statutorily required to be filed "no later than 30 calendar days

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[1] *Compare* § 1002.33(6)(d)(1), Fla. Stat. (2024) ("The sponsor shall act upon the decision of the State Board of Education within 30 calendar days after it is received."), § 1002.3301(4), Fla. Stat. (2024) ("The district school board . . . shall be the sponsor . . . and shall provide an initial proposed charter contract to the charter school pursuant to s. 1002.33(7)(b) within 30 calendar days after the [CSRC's] decision granting an application.").

[2] *See Sch. Bd. of Volusia Cty. v. Acads. of Excellence, Inc.*, 974 So. 2d 1186 (Fla. 5th DCA 2008) ("Granting a charter application is not equivalent to opening a charter school . . . Once the charter application has been granted, the school board still has control over the process because the applicant and the school board must agree on the provisions of the charter.").

after receipt of the [CSRC's] decision." § 1002.33(6)(c)(1), Fla. Stat. (2024). As Appellant received written notification of the CSRC's approval on March 10, 2025, the deadline to appeal was April 9, 2025. Appellant filed this appeal, however, on April 30, 2025, and under the State Board's own rules, it "does not have jurisdiction to hear late-filed appeals." R. 6A-6.0781, Fla. Admin. Code. Any attempt by the State Board to extend this statutory deadline is without effect, as "[a]n administrative agency has only such power as granted by the Legislature and may not expand its own jurisdiction." *Dep't of Revenue v. Graczyk*, 206 So. 3d 157, 160 (Fla. 1st DCA 2016) (internal citation omitted). Even assuming *arguendo* that the State Board has such authority, this unprecedented appeal process would constitute an unadopted rule, actionable by Appellee.

Lastly, this appeal would require the State Board to review *de novo* whether the CSRC's approval was supported by competent, substantial evidence, without regard to whether there may be competent substantial evidence to support alternative findings of fact. *See Sch. Bd. of Palm Beach Cty. v. Fla. Charter Educ. Found., Inc.*, 213 So. 3d 356, 361 (Fla. 4th DCA 2017), *O.H. v. Agency for Persons with Disabilities*, 332 So. 3d 27, 33 (Fla. 3d DCA 2021). Therefore, to the extent the State Board reaches the merits of this appeal, its scope of review is limited to the evidence on which the CSRC relied in reaching its decision. It is thus axiomatic that the CSRC itself is an indispensable party to this appeal, and proceeding without the CSRC would impede any ability of the CSRC to defend its own rationale. As such, Appellee is an improper party to this appeal, and the CSRC is an indispensable party whom Appellant failed to join.

III. Conclusion

For the foregoing reasons, the State Board should dismiss this appeal for lack of jurisdiction and declare Appellee the prevailing party as provided under section 1002.33(6)(d)(1), Florida Statutes (2024).

Respectfully submitted this 8th day of May 2025.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 8th day of May 2025, via electronic delivery per the agreement of the parties, to:

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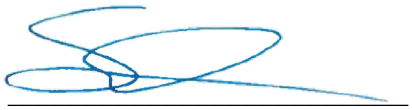

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