

**STATE OF FLORIDA
CHARTER SCHOOL APPEAL COMMISSION**

THE SCHOOL BOARD OF ALACHUA
COUNTY, FLORIDA,

Appellant/School Board,

v.

DOE No. 2025-4282

NEWBERRY COMMUNITY SCHOOL, INC.,

Appellee/Applicant.

RECOMMENDATION OF THE CHARTER SCHOOL APPEAL COMMISSION

In April 2024, teachers and parents at Newberry Elementary School, an existing public school in Alachua County, Florida, voted to convert to a charter school that would be called Newberry Community School (“Applicant”). Following the vote, the Applicant submitted its application for a conversion charter school to the Charter School Review Commission (“Review Commission”), which is an entity created within the Florida Department of Education to review and approve applications for charter schools that will be overseen by district school boards. The Review Commission held a hearing on February 26, 2025, where the application was approved.

The School Board of Alachua County (“School Board” or “Appellant”) challenged the CSRC’s decision and filed this appeal with the Charter School Appeal Commission (“Appeal Commission”), pursuant to Section 1002.3301(6), Fla. Stat. The Appeal Commission held a hearing on August 25, 2025. Commission members reviewed the appeal filed by the School Board, the response filed by the Applicant, and supporting documentation, and heard argument and explanation by both parties at the hearing. Based on the hearing and its review of the record, the Appeal Commission recommends affirming the decision of the Review Commission and granting the Applicant’s conversion charter school application.

I. Standard of Review

Section 1002.3301(6), Fla. Stat., provides that the decisions of the Review Commission may be appealed in accordance with § 1002.33(6)(c), Fla. Stat, which is the subparagraph that governs the Appeal Commission’s process. This case is one of first impression for the Appeal Commission, as the Application was approved by the Review Commission and that decision to approve is being challenged by the School Board. The Appeal Commission applied the same overall process and standard of review to this case as it would to a typical appeal from a charter school where the sponsor denied an application.

For each appeal, the Appeal Commission is made up of an evenly split panel, with half the members representing currently operating charter schools and half representing sponsors. The Commissioner of Education, or his designee, serves as chair. The Appeal Commission conducts an impartial review and provides a recommendation to the State Board, which makes the final

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decision to uphold or overturn the decision of the Review Commission. The decision of the State Board, and the recommendation by the Appeal Commission, must be based upon competent, substantial evidence. Imhotep-Nguzo Saba Charter Sch. v. Dept. of Ed., 947 So. 2d 1279 (Fla. 4th DCA 2007). The Appeal Commission is not limited to documents contained in the record on appeal and may consider additional information and can ask clarifying questions in making its decision. School Bd. of Volusia County v. Florida East Coast Charter School, 312 So. 3d 158 (Fla. 5th DCA 2021). Thus, the review of the Review Commission's decision is not a typical appellate review, which is limited to information considered below, and is instead a continuation of the administrative review process. The recommendation to the State Board must include a fact-based justification. Sch. Bd. of Palm Beach County v. Fla. Charter Ed. Found., Inc., 213 So. 3d 356 (Fla. 4th DCA 2017).

II. The Charter School Review Commission

Pursuant to Section 1002.3301, Fla. Stat., the Charter School Review Commission was created within the Florida Department of Education to review and approve applications for charter schools overseen by district school boards. Upon approving an application, the district school board that oversees the school district in which the charter school will be located serves as sponsor of the applicant charter school. The Department contracted with the Florida Institute for Charter Innovation ("FCI") at Miami-Dade College to provide administrative and technical assistance by reviewing and providing an analysis of charter school applications submitted to the Review Commission.

Within three (3) calendar days after an applicant submits an application for a charter school to the Review Commission, the applicant must also provide a copy of the application to the school district in which the proposed charter school will be located. § 1002.3301(5), Fla. Stat. Within 30 calendar days after receiving a copy of the application, the school district may provide input to the Review Commission and, if provided, the Review Commission is required to consider such input in reviewing the application. Id. Following receipt of feedback from the district, FCI holds a capacity interview with the applicant, where applicants can explain their plan, demonstrate their capacity to open and maintain a high-quality charter school, and answer questions.

The FCI review team then completes the Florida Charter School Evaluation Instrument developed by the Department as set forth in Fla. Admin. Code R. 6A-6.0786. The Evaluation Instrument incorporates the statutory requirements for a charter school application and provides three main areas for evaluation of the application: Education Plan, Organizational Plan, and Business Plan. Under those headings are twenty-two (22) subsections, each of which contains a narrative explanation of that section, the relevant statutory references, and specific evaluation criteria. For each section, a rating of "Meets the Standard," "Partially Meets the Standard," or "Does Not Meet the Standard" is applied by the evaluator. At the end, the evaluator makes an overall recommendation to approve or deny the application. Once FCI has completed its evaluation, it submits its recommendation to the Review Commission. The Review Commission then holds a public meeting, hears additional input from the applicant and the school district, and renders a decision.

If the application is approved by the Review Commission, the district school board where the proposed charter school will be located must sponsor the charter school and provide an initial

proposed charter contract to the charter school within 30 calendar days after the Review Commission's decision granting an application. § 1002.3301(4), Fla. Stat. Decisions of the Review Commission can be appealed to the Appeal Commission in accordance with § 1002.33(6)(c), Fla. Stat.

III. Conversion Charter Schools

Conversion charter schools are traditional public schools that have been converted into charter schools. On November 26, 2024, the Applicant submitted its Application for a conversion charter school to the Review Commission. An application for a conversion charter school may be made by the district school board, the principal, teachers, parents, and/or the school advisory council at an existing public school that has been in operation for at least two years prior to the application to convert. § 1002.33(3)(b), Fla. Stat.¹ At the time this Application was submitted, an application proposing to convert a public school to a charter school must demonstrate the support of at least 50 percent of the teachers employed at the school and at least 50 percent of the parents voting whose children are enrolled at the school and that a majority of the parents eligible to vote participate in the ballot process, according to rules adopted by the State Board of Education.² Id.

At the time the vote to convert occurred, Rule 6A-6.0787, Fla. Admin. Code, stated that a majority of teachers employed at the school had to vote in favor of conversion. The rule was amended in August 2024 to align with the statute and states that at least 50 percent of teachers employed at the school must vote in favor of conversion.

There were 44 teachers employed at Newberry Elementary School at the time of the vote, with 22 voting for conversion, 21 voting against conversion, and one vote in favor of conversion being disqualified.

IV. Review of the Newberry Community School Application

In December 2024, the School Board reviewed the Application and submitted feedback to the Review Commission, noting at least ninety-two (92) concerns and giving an overall recommendation to deny the Application. Using the Evaluation Instrument, the School Board asserted that nine (9) sections of the application partially met the standard and eight (8) sections did not meet the standard. Those that did not meet the standard were Student Performance, Assessment and Evaluation; Exceptional Students; English Language Learners; Professional Development; Facilities; Transportation; Food Service; and Budget. The School Board also argued that because a majority of teachers did not vote in favor of conversion, the vote failed and the Review Commission was prohibited from considering the Application.

¹ Beginning July 1, 2025, a municipality seeking to attract job-producing entities by establishing a job engine charter school may apply to the district school board to convert an existing public school to a charter school. Ch. 2025-109 § 6, Laws of Fla.

² Beginning July 1, 2025, applications to convert an existing public school to a charter school must only demonstrate the support of at least 50 percent of the parents voting whose children are enrolled at the school, provided that a majority of parents eligible to vote participate in the ballot process. There is no longer a requirement to demonstrate the support of the teachers at the school. Ch. 2025-109 § 6, Laws of Fla.

FCI held a capacity interview with the Applicant on January 16, 2025, and reviewed the Application using the Evaluation Instrument. FCI found that all areas of the application met the required standards, except the Start-Up Plan, which was found to partially meet the standard due to a lack of detail provided in that section. Overall, FCI recommended that the Review Commission approve the application. The Charter School Review Commission considered the Application at a public hearing held on February 26, 2025. At the meeting, legal counsel for the Department of Education advised that the Review Commission should resolve the vote question in favor of the school because in the event of a conflict between a statute and an administrative rule, longstanding legal precedent states that the statute must control. After review of the application and the recommendation by FCI, as well as written input from the School Board and argument by counsel for both parties, the Review Commission voted unanimously to approve the Application.

V. Fact Finding and Analysis

A. Conversion Charter School Vote

The School Board argues that the Application should have been rejected at the outset, without review by the Review Commission, because a majority of teachers at the school did not vote in favor of converting to a charter school, contrary to then-existing Rule 6A-6.0787, Fla. Admin. Code. Further, the School Board argues that both parties agreed prior to the vote that a majority of parents and teachers need to vote in favor to convert Newberry Elementary to a charter school, and that a majority meant 50 percent plus one, so that the teachers' vote in favor of conversion could be no lower than 23. The final vote count was 22 teachers voting in favor of conversion and 21 teachers voting against conversion, with one vote in favor of conversion being disqualified.

Where there is a conflict between statute and an administrative rule, the statute must control. See Canal Ins. Co. v. Continental Cas. Co., 489 So. 2d 136, 138 (Fla. 2d DCA 1986) (“When any conflict exists between the statute and the regulation, the statute, of course, controls.”); Fla. Dep’t of Revenue v. A. Duda & Sons, Inc., 608 So. 2d 881, 884 (Fla. 5th DCA 1992) (“In the event of a conflict between a statute and an administrative regulation on the same subject, the statute governs.”); Phillips v. Leon Cty. Public Works, 277 So. 3d 1076, 1080 (Fla. 1st DCA 2019) (“When an administrative rule conflicts with the enabling statute, the statute will control.”). Based on the foregoing, the Commission found that the vote to convert Newberry Elementary School to a charter school met the threshold requirement for teachers in support of conversion, because at least 50 percent voted to convert, pursuant to § 1002.33(3)(b), Fla. Stat. (2024).

B. Municipal Charter Application

The School Board argues that the Application to convert Newberry Elementary School to a charter school is a *de facto* municipal application due to the significant involvement of the City of Newberry, including as a financial partner and employer of school employees. Municipalities are not authorized to apply to convert a public school to a charter school. § 1002.33(3)(b), Fla. Stat. (2024). At the Appeal Commission meeting, the Applicant explained that Newberry Community School will have an independent governing board and will contract with the City of

Newberry as a service provider. The Applicant also clarified that the City will not have any direct role in the governance of the school. Based on the foregoing, the Appeal Commission found that the application to convert Newberry Elementary School to a charter school was not a *de facto* municipal charter application.

C. Merits of the Application

The School Board argues that that the significant discrepancy between its expressed concerns with the Application and FCI's evaluation and capacity interview demonstrates that there is a lack of competent, substantial evidence to support the approval of the conversion charter school application. The School Board further argues that there is no evidence that the FCI or the Review Commission seriously considered its input and only superficially addressed the School Board's concerns. There was no evidence to support this allegation. In fact, the evidence showed staff at FCI reviewed the Application, held a capacity interview with the Applicant to address concerns, and made a recommendation to the Review Commission. The Application, along with the recommendation from FCI, was considered at an open public meeting where the School Board had the opportunity to provide more input. After that thorough review, the Review Commission approved the Application and the School Board appealed.

While FCI and the Review Commission are required to consider the input of the school district, there is no requirement in statute or rule that each individual concern or question raised by the district must be responded to in writing or at the capacity interview. FCI and the Review Commission must determine whether they share the concerns of the district and make a decision concerning what issues should be discussed at the capacity interview and what issues can be resolved with a review of the application. Moreover, the review of the Application by the Appeal Commission did not reveal a non-serious, superficial review by the Review Commission. Each of the eight (8) areas the district argued were deficient were individually considered and rejected by the Appeal Commission, as follows:

i. Student Performance, Assessment and Evaluation

With respect to Section 5 of the Application, Student Performance, Assessment, and Evaluation, the School Board asserted that it did not meet the standard and expressed concerns that parents of students with disabilities should receive the same frequency of notification as general education students. In addition, the School Board argued that there was no specific data system referenced in the Application, nor was there a corresponding budget item for a data system. FCI's evaluation of this section found that it met the standard, noting that its initial concern with the rigor of the stated academic goals was addressed during the capacity interview. FCI also stated that the Applicant understands accountability provisions, requirements for parental communication and obligations under the Family Educational Rights and Privacy Act (FERPA), and that the Applicant resolved questions relating to tracking student growth and setting realistic goals. Based on the foregoing, including the strengths of the Application noted by FCI in its review, the Appeal Commission found that there is competent, substantial evidence to support the finding that the Student Performance, Assessment, and Evaluation section meets the required standards.

ii. Exceptional Students

Regarding Section 6, Exceptional Students, the School Board asserted that it did not meet the standard and expressed concerns over staffing levels and specialized transportation. FCI's evaluation of this section did not identify any concerns and staffing ratios were discussed at the capacity interview. FCI noted that the Applicant had a realistic enrollment projection and presented a comprehensive plan for ensure compliance with laws for serving students with disabilities. At the App al Commission meeting, the Applicant explained that if a student's Individualized Education Plan (IEP) required specialized transportation, the school would provide it and there was additional federal funding available for those costs. In addition, the Applicant explained that staffing ratios in the Application were an estimate and that accurate numbers must include examination of each student's IEP. Based on the foregoing, the Appeal Commission found that there is competent, substantial evidence to support the finding that the Exceptional Students section meets the required standards.

iii. English Language Learners

For Section 7, English Language Learners (ELLs), the School Board asserted that it did not meet the standard and expressed concerns that there was no mention of "Language Line" or a similar resource in the budget and that it was unclear how the full-time ELL coordinator will serve students during the instructional day. FCI's evaluation did not note any concerns and noted that the Applicant demonstrated an understanding of the requirements for serving ELLs, provided clear monitoring and evaluation plans to track ELL progress, and sufficiently addressed staffing and budgetary considerations of operating a strong ELL program. At the Appeal Commission meeting, the Applicant explained that Language Line is encompassed in the budget under professional technical services, supplies, other purchased services, and instructional staff training. The Applicant further explained that the ELL coordinator would oversee the English for Speakers of Other Languages (ESOL) program, support teachers, ensure compliance with the district, and plan professional development. The ELL coordinator would not give direct classroom instruction. Based on the foregoing, the Appeal Commission found that there is competent, substantial evidence to support the finding that the English Language Learners section meets the required standards.

iv. Professional Development

Regarding Section 13, Professional Development, the School Board asserted that it did not meet the standard, noting that there was no identified space for a STEAM Enrichment classroom and that the budget for professional learning was not sufficient to cover the cost of the programs outlined in the Application, including the cost of hiring substitutes when teachers are attending training during the school day. FCI's evaluation of this section did not identify any concerns, although facility capacity and training were discussed at the capacity interview. At the Appeal Commission meeting, the Applicant clarified that professional development would not take place during instructional time, meaning substitutes are not necessary. In addition, the Applicant explained that many of the professional learning materials the school expects to use are free, making the \$60,000 budget sufficient. Further, the STEAM program would roll out over several years, with some components available immediately. Based on the foregoing, and a review of the

budget that includes a reasonable expectation for how much professional development would cost, the Appeal Commission found that there is competent, substantial evidence to support the finding that the Professional Development section meets the required standards.

v. Facilities

With respect to Section 16, Facilities, the School Board asserted that it did not meet the standard and raised concerns with the projected student population increase from 658 to 928 students over the next five (5) years compared to the permanent capacity of 471 students. Similarly, the School Board asserted that core facilities, such as food service and the media center, were insufficient to support current enrollment. The School Board also asserted the projected maintenance budget to be insufficient. FCI's evaluation of this section did not identify any concerns and noted that as an existing school, many start-up costs are not needed. FCI also noted that the Applicant had plans for facility improvements and to address long-term growth. Further, the Applicant addressed multiple facilities scenarios and budgetary considerations at the capacity interview to the satisfaction of the reviewers. At the Appeal Commission meeting, the Applicant sufficiently addressed questions regarding increasing facilities space, the maintenance budget, and entering into a facilities maintenance agreement with the district. Based on the foregoing, the Appeal Commission found that there is competent, substantial evidence to support the finding that the Facilities section meets the required standards.

vi. Transportation

On Section 17, Transportation, the School Board asserted that it did not meet the standard, noting that there was no allocation for a special needs bus with a lift, there was no allocation for a certified trainer, and that the amount allocated for purchasing a bus was not realistic. In addition, the School Board asserted the repair allocation to be lower than average, depending on whether the bus is new or used. FCI's evaluation of this section found that it met the standard, although noted that transportation expenses may have been underestimated. At the Appeal Commission meeting, members noted that the per-student transportation budget was significantly higher than normal and that, coupled with the robust discussion at the capacity interview and review by FCI, satisfied the Appeal Commission. Based on the foregoing, the Appeal Commission found that there is competent, substantial evidence to support the finding that the Transportation section meets the required standards.

vii. Food Service

With respect to Section 18, Food Service, the School Board asserted that it did not meet the standard, noting issues with the reimbursement rate and food service supplies budget being insufficient. FCI's review of this section did not identify any concerns. At the Appeal Commission meeting, the Applicant explained that food service would be provided by a third-party vendor where food would be prepared off campus and delivered ready to serve, meaning the only equipment needed would be warming equipment, which was included in the budget. Issues relating to kitchen equipment were moot given that food will not be prepared on site. Based on the foregoing, the Appeal Commission found that there is competent, substantial evidence to support the finding that the Food Service section meets the required standards.

viii. Budget

Regarding Section 20, Budget, the School Board asserted that it did not meet the standard and noted deficiencies in the proposed budget relating to IDEA Funding Match, utilities, food service, food service equipment, buses, garbage, and recycling. FCI's evaluation of this section found that it met the standard, noting that the Applicant had realistic revenue projections and was able to address concerns relating to facilities, transportation, professional development, instructional program, human resources, food service, and other areas to the satisfaction of the review team, demonstrating that the Applicant can operate a school in a fiscally sound manner. FCI also noted that the Applicant had an experienced team to guide the school in making budgetary decisions. At the Appeal Commission meeting, members noted that many of the budgetary items were already addressed, such as food service and transportation, and that other small budget concerns were not material when looking over the budget as whole, which includes sufficient reserves to cover these issues. The Applicant explained the financial commitment from the City of Newberry and loan, which will primarily be used for startup costs during the planning year, and answered other budgetary questions posed by the members. Based on the foregoing, the Appeal Commission found that there is competent, substantial evidence to support the finding that the Budget section meets the required standards.

VI. Recommendation

Based on the factual justifications provided above, the Appeal Commission recommends that the State Board find that the vote to convert Newberry Elementary School to a charter school met the threshold requirement for teachers in support of conversion, pursuant to Section 1002.33(3)(b), Fla. Stat. (2024). In addition, the Appeal Commission recommends that the State Board find that the application is not a municipal charter application.

Further, the Appeal Commission recommends that the State Board find that there is competent substantial evidence to support approving the Application filed by Newberry Community School and that the Application meets the standards set forth in Florida law and rule for Student Performance, Assessment, and Evaluation; Exceptional Students; English Language Learners; Professional Development; Facilities; Transportation; Food Service; and Budget.

VII. Overall Recommendation

Based on the foregoing, the Charter School Appeal Commission recommends that the State Board of Education issue a final order (1) denying the appeal of the School Board of Alachua County and (2) granting the conversion charter application filed by Newberry Community School.

September 11, 2025



Armanda Gay, Chair
Charter School Appeal Commission