

**STATE OF FLORIDA
CHARTER SCHOOL APPEAL COMMISSION**

OWN YOUR SUCCESS ACADEMIES, INC.
D/B/A HILLSBOROUGH COUNTY
ACCELERATION ACADEMY,
A FLORIDA NONPROFIT CORPORATION,

Appellant/Applicant,

v.

DOE No. 2021-4018

THE SCHOOL BOARD OF
HILLSBOROUGH COUNTY, FLORIDA,

Appellee/School Board.

RECOMMENDATION OF THE CHARTER SCHOOL APPEAL COMMISSION

The Charter School Appeal Commission (“Commission”) is directed to assist the Commissioner and State Board of Education with an impartial review of appeals from applicants whose charter applications have been denied. § 1002.33(6)(e)1., Fla. Stat. Own Your Success Academies, Inc., d/b/a Hillsborough County Acceleration Academy, a Florida nonprofit corporation (“OYSA” or “Applicant”), filed an application to open a new charter school that was denied by the School Board of Hillsborough County (“School Board”). The Applicant appealed. The Commission held a hearing on October 27, 2021, and reviewed the Application, the appeal filed by the Applicant, the response filed by the School Board, and other documents submitted by the parties. Based on the hearing and review of the record, the Commission recommends denial of the Applicant’s charter school Application.

I. Standard of Review

Section 1002.33(6)(b)3.a., Fla. Stat., provides that if a school board denies a charter school application, the school board “shall . . . articulate in writing the specific reasons, based upon good cause, supporting its denial of the application.” The specific reasons for denial must be based upon the statutory requirements for charter school applications, Sch. Bd. of Osceola County v. UCP of Central Fla., 905 So. 2d 909 (Fla. 5th DCA 2005), and must constitute good cause for denial. Sch. Bd. of Volusia County v. Academies of Excellence, Inc., 974 So. 2d 1186 (Fla. 5th DCA 2008).

When an application for a new charter school is denied, the applicant can appeal the decision of the school board to the State Board of Education (“State Board”). The Commission conducts an impartial review of the appeal and provides a recommendation to the State Board, which makes the final decision to uphold or overturn the decision of the School Board. The decision of the State Board, and this recommendation by the 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 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). The Commission must include a fact-based justification in the recommendation to the State Board. Sch. Bd. of Palm Beach County v. Fla. Charter Ed. Found., Inc., 213 So. 3d 356 (Fla. 4th DCA 2017).

II. Background

Charter schools may be created when an individual, group of parents or teachers, a municipality, or legal entity submits an application to a school district. § 1002.33(3)(a), Fla. Stat. The Model Florida Charter School Application (“Model Application”) contains descriptions of the applicant’s educational, operational and financial plans. See Fla. Admin. Code R. 6A-6.0786. After the application is filed, the school board can request applicants participate in a capacity interview, where applicants can explain their plan, demonstrate their capacity to open and maintain a high-quality charter school, and answer questions about their proposal.

A school board must review all charter school applications using the Evaluation Instrument developed by the Department of Education and adopted by the State Board. See Fla. Admin. Code R. 6A-6.0786. The Evaluation Instrument incorporates the statutory requirements for a charter school application and provides three main issues for evaluation of a charter school application: Education Plan, Organizational Plan, and Business Plan. Once the Evaluation Instrument is complete, the school board must vote to approve or deny the application. If approved, the school district and the applicant execute a charter agreement, which functions as a contract between the charter school governing board and the district (sponsor). This agreement details the terms and conditions for the school’s operation. § 1002.33(7), Fla. Stat. If denied, the school district must articulate in writing the specific reasons, based upon good cause, for the denial and provide a copy to the applicant and the Department along with the supporting documentation.

In this case, Hillsborough County received the application from OYSA on February 1, 2021, with OYSA anticipating opening in the 2022-23 school year. The school would be open 235 days a year and would use a blended learning model that allows students to learn through a combination of traditional classroom and online instruction. OYSA intends to serve largely minority and economically disadvantaged students, many of whom would be age 18-21. OYSA will target students who never started or dropped out of high school, or who are failing in their current courses and are the most at risk of not graduating. Acceleration Academies has been successful as a district alternative program in other counties. If approved, this would be the first charter school operated by OYSA/Acceleration Academies in Florida.

The school district designated a review team composed of district staff and an external charter operator representative to review the Application, to interview the Applicant, and to make a recommendation to the Superintendent. The district’s review team included representatives from various departments, including Curriculum and Instruction, Finance, Exceptional Student Education (ESE), English Language Learners (ELLs), Assessment and Accountability, Human Resources, and Charter School Office staff. The review team recommended denial of the OYSA Application and found that the Application met or partially met the standard in 14 areas, and did not meet the standard in six areas.

On June 15, 2021, the School Board held a meeting where Superintendent recommended denial of the Application, based on the findings from the district review team. The School Board unanimously voted to deny the Application. The School Board detailed its decision in a letter dated June 24, 2021. The Applicant then timely filed this appeal.

III. Motion to Exclude

On October 25, 2021, two days before the Commission heard this appeal, OYSA filed a Motion to Exclude Reasons for Denial, arguing that because the School Board did not provide specific reasons or facts supporting denial of the Application in its denial letter, OYSA was entitled to prevail on the appeal as a matter of law. The School Board responded on October 26, 2021, and argued that the Motion to Exclude was untimely and did not provide any evidence to support its conclusions. In addition, the School Board argued that the denial letter did contain sufficient detail to put the OYSA on notice as to the deficiencies in its Application.

At the Charter School Appeal Commission hearing, both parties were provided an opportunity to argue the motion. Chair Amanda Gay denied the motion and the hearing before the Commission proceeded.

IV. Fact Finding and Analysis

A. Issue One: Educational Plan

i. Educational Program Design

The School Board's denial letter states that the Application does not meet the standard in this area because the educational program design and learning environment is not consistent with the requirements in Florida law for charter schools. Specifically, the School Board found that the proposed daily schedule does not comply with statutory requirements because instructional minutes would be completed outside of the brick-and-mortar setting.

The evaluation criteria set forth in the Evaluation Instrument include an educational program design that is clear and coherent; is based on effective, experience or research-based educational practices and teaching methods; aligns with the school's mission and needs of the target population; and, is likely to lead to improved performance for the target population. In addition, the criteria include a proposed daily school schedule and calendar that complies with statutory requirements for annual number of instructional minutes and days, and that aligns with the priorities described in the educational program design. The district's review team noted concern with the Applicant's proposed blended learning model that does not implement seat time requirements for brick-and-mortar schools and instead allows students to work on courses virtually to meet instructional minutes.

Here, the Applicant provided sufficient information regarding its educational program design, including a proposed blended learning model, and explained how it would serve the needs of the targeted population. In addition, § 1002.33(7)(a)2.b., Fla. Stat., expressly provides charter schools the ability to use blended learning courses consisting of traditional classroom and online instruction. While the district's review committee had concerns with the ability to calculate seat

time and instructional minutes when students are not in the brick-and-mortar classroom, the Applicant adequately addressed this issue at the Commission hearing, explaining that its educational software has a means of measuring the number of minutes students are engaged with academic content. Further, the Applicant stated it would work with the district to ensure reporting was timely and accurate.

Based on the foregoing, including the statements made in the Application and during the appeal, the School Board did not have competent, substantial evidence to deny the Application based on the issue of “Educational Program and Design.”

ii. Exceptional Students

The School Board’s denial letter states the Application does not meet the standard in this area because a comprehensive and compelling plan for identification of students with special needs was not clearly articulated; the continuum of services for Exceptional Students that would be provided was not described; and there was not a clear understanding of appropriate placement of ESE students through the Individual Education Plan (IEP) process.

The evaluation criteria set forth in the Evaluation Instrument require a comprehensive and compelling plan for appropriate identification of students with special needs to ensure they are served in the least restrictive environment possible, have appropriate access to the general education curriculum and schoolwide educational, extra-curricular, and culture-building activities in the same manner as non-disabled students, receive required and appropriate support services as outlined in their IEPs and 504 plans, and participate in standardized testing. In addition, the criteria include an understanding and commitment to collaborating with the sponsor to ensure that placement decisions for students with disabilities will be made based on each student’s unique needs through the IEP process.

The Applicant provided sufficient explanation on this issue. The Application explains that the school is committed to serving students with a range of needs and estimates its exceptional student population to be 14-15 percent, based on district enrollment data and trends seen at other Acceleration Academies schools. While the Applicant expects that many of its students will already have an IEP or will have been previously identified as in need of special education services, the Application presents a clear understanding of the requirement to find and evaluate students in need of services under the Individuals with Disabilities Education Act (IDEA). In addition, the Applicant explained that it would offer a Multi-Tiered System of Support (MTSS) to ensure all students’ needs are being met. These services range from quiet workspaces and behavior incentives to one-on-one time with a Content Coach. In addition, the Applicant acknowledges that some students may have more significant needs beyond those listed in the MTSS. In those cases, the Applicant will work with the district to determine if OYSA is the best fit for such students. The Applicant also demonstrated an understanding of the IEP process.

Based on the foregoing, including the statements made in the Application and during the appeal, the School Board did not have competent, substantial evidence to deny the Application based on the issue of “Exceptional Students.”

iii. English Language Learners

The School Board's denial letter states that the Application did not meet the standard in this area because it showed limited understanding of the legal obligations regarding the education of English Language Learners (ELLs) under federal and state law. In addition, the denial letter states that the Application lacks a clear plan for identifying, monitoring, educating, and evaluating ELL students. The School Board also states that there was not an enrollment projection for ELL students, nor a staffing plan aligned to that projection.

The evaluation criteria set forth in the Evaluation Instrument include a demonstrated understanding of legal obligations regarding the education of ELLs; a plan for educating ELLs that reflects the full range of programs and services required to provide all students with a high-quality education; and a clear plan for monitoring and evaluating the progress of ELL students, including exiting students from ELL services. In addition, the Applicant is required to provide a realistic enrollment projection and a staffing plan that aligns with that projection.

The Applicant demonstrated an understanding of the legal obligations regarding the education of ELL students and showed that it has capacity to meet those obligations. The Application clearly states that all families will be required to complete a Home Language Survey upon enrollment. In addition, the Application as well as comments at the Commission hearing demonstrate an understanding of the League of United Latin American Citizens (LULAC) Consent Decree and the legal requirements for educating ELL students. Moreover, the Applicant indicated it would work with the district to ensure that its plan for ELL students meets all state and federal requirements.

Based on the foregoing, including the statements made in the Application and during the appeal, the School Board did not have competent, substantial evidence to deny the Application based on the issue of "English Language Learners."

B. Issue Two: Business Plan

i. Budget

The School Board's denial letter states that the Application does not meet the standard in this area because the Applicant's budgetary projections were not consistent with its stated plans, including ensuring appropriate seat time to receive needing funding, having appropriate staffing to meet class-size requirements, affording a Safe-School Officer, and paying for transportation and food service. In addition, the School Board found that the Application did not provide a realistic assessment of projected sources of revenue or expenses due to the Education Service Provider (ESP) retaining 95% of the school's state funding from the Florida Education Finance Program (FEFP). The budget also lacked required items, such as the district's administrative fee, audit expenses, and funds for an English for Speakers of Other Languages (ESOL) program. The School Board also found the explanation as to how the Applicant would adjust its budget if revenues do not materialize as planned.

The evaluation criteria set forth in the Evaluation Instrument require budgetary projections that are consistent with and support all key aspects of the application; a realistic assessment of projected sources of revenue and expenses that ensure financial viability of the school; and a sound plan to adjust the budget should revenues not materialize as planned.

Here, the Applicant was not able to provide sufficient explanation relating to its budget to meet these requirements. The Applicant failed to include comprehensive budget projections that addressed required expenses, such as the salary for the Safe-School Officer. Moreover, there was no explanation of transportation or transportation-related costs in the budget. The budget did not contain realistic ELL or ESE student projections or provide for adequate support staff. Furthermore, the projected budget provided just \$1,000 a month for food, which is insufficient to pay for a school lunch program and the snacks and drinks the Application states will be provided to students both on and off campus. Costs for an annual audit and an insurance broker were also not found in the school's budget. Finally, Applicant did not bring its accountant or other budget expert to the Commission's hearing, which contributed to the Applicant's inability to explain its budgetary projections.

Based on the foregoing, including the statements made in the Application and during the appeal, the School Board did have competent, substantial evidence to deny the Application based on the "Budget." The Commission found that failure to meet this standard constitutes statutory good cause for denial.

ii. Financial Management and Oversight

The School Board's denial letter states that the Application does not meet the standard in this area for several reasons. The main issue identified by the School Board was that 95% of the FEFP funding would be paid to the ESP, Acceleration Academies, which left the governing board with little oversight authority over the financial operations of the school. The School Board also found that the roles and responsibilities for day-to-day operations were unclear. And, an annual financial audit and an insurance broker were not found in the proposed budget.

The evaluation criteria set forth in the Evaluation Instrument require a clear description of how the school's finances will be managed, including who (or what contracted entity) will manage the finances. Such plan should contain strong internal controls to ensure appropriate fiscal management and ability to comply with all financial reporting requirements. In addition, the criteria include provisions requiring an annual financial audit, public transparency of school financial health, and a plan for the governing board to regularly exercise oversight over and take accountability for all financial operations of the school.

The Applicant was not able to provide sufficient information regarding its financial management plan or oversight to meet this criteria. Specifically, much like the School Board found, the Applicant failed to demonstrate that its governing board would regularly exercise oversight of the financial operation of the school. According to the Applicant, the ESP would have the authority to distribute funds from an account where 95% of the FEFP funds would be deposited. The ESP would use the funds in this account to pay for the general expenses of running the school, such as payroll, benefits, insurance, educational content, books, software licensing, technology,

Wi-Fi, maintenance costs, rent, utilities, food, transportation, special education expenses, and disability accommodation expenses. However, the Applicant did not provide any assurance that the school's governing board would authorize expenses before the release of FEFP funds by the ESP. As a result, the Applicant's plan fails to contain strong internal controls to ensure appropriate fiscal management of state funding. While the Applicant stated at the Commission hearing that the OYSA board would meet monthly to address any financial issues, including approving or denying additional costs or needed funds, this fails to provide strong internal controls given that the ESP has the ability to distribute funds for the daily operations of the school.

There are additional deficiencies in the Applicant's plan for financial management and oversight. As noted in the Budget section, many necessary items were not found in the proposed budget, including provisions for a financial audit and an insurance broker. While the Applicant explained at hearing that those items were included in the 5% of funds retained for various administrative costs, this was not evident in the proposed budget provided by the Applicant. In addition, it was not clear how much profit the ESP would retain based on its contract with OYSA or how that amount would be determined. As a result, the Applicant's plan lacks clarity, public transparency and controls to ensure appropriate fiscal management. Overall, the plan proposed by the Applicant did not contain the level of financial management and oversight by the governing board required to approve a charter school application.

Based on the foregoing, including the statements made in the Application and during the appeal, the School Board did have competent, substantial evidence to deny the Application based on "Financial Management and Oversight." The Commission found that failure to meet this standard constitutes statutory good cause for denial.

C. Issue Three: Addendum B – Education Service Providers

The School Board's denial letter states that the Application did not include the required "Addendum B" which would have provided certain required information concerning the Applicant's chosen ESP, Acceleration Academies. The denial letter also states that during the capacity interview, there was a concern raised that one of the founders of the ESP was also acting as legal counsel for the charter school governing board, meaning there was no arm's length relationship between the board and the ESP.

Addendum B is a section of the Model Application that is required when an Applicant has chosen to work with an ESP. Addendum B requires Applicants to explain why the ESP was selected, including its background, track record, and affiliation with other schools; the legal relationship between the school's governing board and the ESP; the ESP's organizational structure; and the terms of the management agreement. In addition, the Applicant is required to provide a draft of the proposed contract with the ESP.

The Applicant confirmed that no founding members of, or legal counsel to, the ESP represent the charter school governing board in a legal capacity. While Addendum B was not included with the Application, the majority of the information required by the Addendum was found in the body of the Application, including a draft contract between the governing board and the ESP, and the items that were not included were not significant enough to justify denial of the

Application on this basis. Further, the School Board could have easily resolved this matter prior to this appeal had they allowed the Applicant to provide the missing section.

Based on the foregoing, including the statements made in the Application and during the appeal, the School Board did not have competent, substantial evidence to deny the Application based on the "Addendum B" section of the Evaluation Instrument.

V. Recommendation

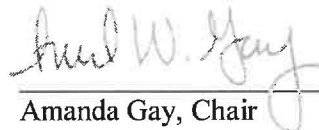
Based on the factual justifications provided above, the Commission recommends that the State Board of Education find that:

1. The School Board did not have competent, substantial evidence to support its denial of the Application based on the Applicant's alleged failure to meet the standards for the Educational Plan;
2. The School Board did have competent, substantial evidence to support its denial of the Application based on the Applicant's alleged failure to meet the standards for the Business Plan; and
3. The School Board did not have competent, substantial evidence to support its denial of the Application based on the Applicant's alleged failure to meet the standards for Addendum B.

VI. Overall Recommendation

Based on the foregoing, the Charter School Appeal Commission recommends that the State Board of Education issue a final order upholding the School Board's denial of the Application by denying the appeal of Own Your Success Academies, Inc.

January 28, 2022



Amanda Gay, Chair
Charter School Appeal Commission