

**FLORIDA CHARTER SCHOOL APPEAL COMMISSION  
APPEAL FROM THE DENIAL OF A CHARTER SCHOOL APPLICATION**

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

Petitioner,

CASE NO 21-

vs.

THE SCHOOL BOARD OF  
HILLSBOROUGH COUNTY, FLORIDA,

Respondent.

**NOTICE OF APPEAL OF DENIAL OF A CHARTER SCHOOL APPLICATION AND  
PETITIONER'S BRIEF**

Own Your Success Academies, Inc., d/b/a Hillsborough County Acceleration Academy, a Florida nonprofit corporation (hereinafter "OYSA" or the "Charter School"), files this instant Notice of Appeal, with incorporated brief, to formally appeal the denial of the Charter Application of the Hillsborough County Acceleration Academy (the "Charter Application") by the School Board Of Hillsborough County, Florida (hereinafter or "School Board") made at the School Board's June 15, 2021 School Board Meeting.

**Name and Address of Parties and Date Of Denial**

**Applicant/Petitioner**

Own Your Success Academies, Inc.  
1600 East Central  
Orlando, FL 32803-5902

**School Board/Respondent**

SCHOOL BOARD OF HILLSBOROUGH  
COUNTY, FLORIDA,  
901 East Kennedy Boulevard,  
Tampa, Florida 33602

**Date of Denial**

The School Board denied the Charter Application at a School Board Meeting on June 15, 2021. The formally rendered denial letter from the School Board to the Charter School is dated

June 24, 2021 (the "Denial Letter") and is addressed to Mr. Mark Graves, President of Acceleration Academies, the education service provider for the Charter School ("Acceleration Academies" or "ESP"). A copy of the Denial Letter is attached hereto as "**Exhibit A.**"

**Statement of Facts and Procedural Background**

OYSA submitted the Charter Application in partnership with its selected ESP, Acceleration Academies. A copy of the Charter Application is attached hereto as "**Exhibit B.**" The guiding philosophy of the Charter School is that all students, regardless of past academic performance or personal obstacles, are capable of graduating from high school and going on to success in college, trade school, military and/or the workplace. The Charter School is designed to help these young people realize their potential through a blended learning model that features an individualized course of study, intensive one-on-one coaching for academic and social-emotional needs, and a flexible schedule that works for students whose job and family obligations conflict with a traditional school day.

Importantly, the Charter School is designed to help the most at-risk population in Hillsborough County. The Charter School, with a proposed location in the Tampa Heights area, is intended to serve a majority of Black and Hispanic students who are eligible for free or reduced-price lunch. OYSA will recruit students who have dropped out of high school, never started high school or are failing in their current courses. Many of the anticipated students will be aged 18-21 and the Charter School intends to provide them with a respectful, encouraging place to finish their high school education.

Even the School Board Superintendent, Addison Davis, understood and highlighted the impactful work that Acceleration Academies provides during the June 15, 2021 School Board meeting:

One thing I will say, Acceleration Academy, while they are not a charter school, they really do some good work throughout the State of Florida and throughout the nation being able to address students that may have dropped out for some other reason. So there may be conversations about what they can do to help us and to help the community where we may have students that are 21, 22 years of age that not have fulfilled their obligations for a high school diploma and it may be a potential partnership that we look in. And that's their -- really, openly, their wheelhouse versus being a charter school.

A copy of the June 15, 2021 School Board Meeting Transcript is provided and attached with this brief as "**Exhibit C.**" Acceleration Academies has a proven track record of creating these partnerships in other School Districts. In Miami-Dade, for instance, the ESP partners include the Together for Children Coalition, Concerned African Woman, and the Department of Juvenile Justice, among others.

While the Charter School will be new, the approach is not. The selected ESP, Acceleration Academies, was founded based on their nationwide research on the high school dropout issue. The network has grown to include Acceleration Academies working in partnership with school districts across the nation and throughout Florida, including Miami-Dade, St. Lucie and Sarasota County.

By letter dated June 24, 2021, the School Board issued its Denial Letter that listed six (6) areas, with additional subparts, as a basis for the denial. None of the School Board's proffered reasons comport with the Florida charter school statute, are factually justified, legally sound, or supported by any record evidence. As such, this appeal has been filed.

### *Statement of Law*

Under the controlling charter school statute, the School Board was required to set forth the specific reasons, based upon good cause, for denying a charter application in writing. *See Fla. Stat. § 1002.33(6)(b)(3)(a)*. By law, the Charter School Appeals Commission must find that the instant Charter Application should have been approved by the School Board if: (1) it determines

that there is insufficient competent and substantial evidence to support the basis for the School Board's denial as set forth in its Denial Letter; or (2) the bases for the denial set out in the Denial Letter do not relate to a mandatory charter school requirement. *See* Fla. Stat. §§ 1002.33(2)(a) & (b); *Sch. Bd. of Volusia County v. Acads. of Excellence, Inc.*, 974 So. 2d 1186, 1191 (Fla. 5th DCA 2008); *Sch. Bd. of Osceola County v. UCP of Cent. Florida*, 905 So. 2d 909, 914-16 (Fla. 5th DCA 2005). Such a finding is warranted in this appeal.

Accordingly, the State Board reviews *de novo* whether the School Board's determination was supported by competent, substantial evidence that meets the “good cause” legal standard. *Sch. Bd. of Palm Beach County v. Florida Charter Educ. Found., Inc.*, 213 So. 3d 356, 361 (Fla. 4th DCA 2017) (citing *Imhotep–Nguzo Saba Charter Sch. v. Dep't of Educ.*, 947 So. 2d 1279, 1285 (Fla. 4th DCA 2007)).

### **Legal Argument and Identification of School Board Errors**

#### **The School Board's Budget Crisis**

First and foremost, it is imperative that this Commission understand the state of disrepair the School Board is in. The School Board has been in grave financial trouble, with only itself to blame. However, a School Board decision to deny a charter public school application that is motivated by protecting its own coffers is an illegal one.

The School Board's illegal intentions began in February of 2021. At a School Board workshop held on February 9, 2021, for example, School Board members acknowledged openly that the School Board was projected to lose \$250,000,000 to charter schools in Hillsborough County over the next few years and that it needed to come up with specific strategies to stem these losses. The School Board's subsequent decision to not approve OYSA's charter for financial reasons was unlawful.

For example, at that February 9, 2021 Workshop, School Board Chair Lynn Gray explained the enormous budgetary crisis that the School Board was facing:

But secondly, we will have to, at the end of this matter, maybe not today, work on a systematic way of increased accountability and oversight, because what has happened and I notice most of you are aware, but as of I think as of this week, maybe last week, we are spending or losing, I should say, about \$250 Million. So in July it was about 192 and then on our audit that we had chaired, not the audit but the report, last report it was up to 232 Million Dollars lost due to FTE minus 30,000 students, losing from the public going to the charter school. And we are always mindful that there are excellent charter schools and this is not a board workshop to bash the charter school industry. But rather it is a workshop to point out the fiscal liabilities to a District right now that is incurring a tremendous amount of cost, and at the same time of losing 30,000 or more students, we have we haven't yet right sized the amount of staff, teachers, maintenance, transportation, security, all those factors that if you lose students, they also should be for lack of better words reduced. So that hasn't been done yet fully. Right now we are sitting on a situation where I know we need to be more competitive as a public school district and at the same time we can't afford to continuously lose this much money.

This budget shortfall concerns the highest powers in the Florida educational system. By letter dated April 22, 2021, Commissioner Richard Corcoran, head of the Florida Department of Education, acknowledged that the School Board's finances were so legally precarious that the State might take the drastic and unprecedented step to assume operations of the School Board. Commissioner Corcoran's letter concludes by demanding a detailed financial recovery plan from the School Board and threatening to use "the totality of the powers delegated to [the commissioner] by the Legislature and State Constitution to take emergency action to bring the Hillsborough County School District into compliance with state law." A complete copy of this letter is attached hereto as "**Exhibit D.**" Indeed, the School Board was ultimately only saved from state takeover by the infusion of \$100 million in stimulus funds.

*The June 15, 2021 School Board Meeting*

At the very same meeting whereby the School Board voted to deny the Charter Application, the School Board, in response to its own budgetary failures, voted to terminate and non-renew four (4) currently existing charter schools and two (2) new charter school applications over money. These charter schools would serve thousands of students in Hillsborough County; however, the School Board chose to deny these parents and their children the public school of their choice simply to engage in self-dealing in violation of Florida law.

On June 23, 2021, Florida's Commissioner of Education, Richard Corcoran, appalled by the School Board's conduct and misfeasance, sent a letter to the School Board demanding that the School Board show actual reasons for this action and explain itself. A copy of Commissioner Corcoran's letter is attached hereto as "**Exhibit E**."<sup>1</sup> The Tampa Bay Times, a local newspaper in Hillsborough County, also quoted School Board member Nadia Combs, who was especially outspoken about the financial threat from charter schools, saying, "[i]t's really important that we don't continue to approve charters because of fear of litigation. If we stop five or six charters from coming here, we're saving the district millions and millions of dollars." Marlene Sokol, *Hillsborough School Board Surprises, Saying No to Six Charters*, TAMPA BAY TIMES (June 16, 2021), <https://www.tampabay.com/news/education/2021/06/16/hillsborough-school-board-surprises-saying-no-to-six-charters/>.

The School Board ultimately voted to deny the Charter Application at its June 15, 2021 School Board meeting.<sup>2</sup> A copy of the June 15, 2021 Agenda Item is attached hereto as "**Exhibit**

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<sup>1</sup> On July 20, 2021 the School Board ultimately retracted their prior non-renewal of four (4) charter public schools and voted to reinstate each charter public school.

<sup>2</sup> On February 1, 2021, the School Board received the application for the Charter School for a 2022-2023 school opening. Although the Charter School met the statutory guidelines for submitting the Charter Application, the School Board did not. Pursuant to Section 1002.33(6)(b)(3)(a), Florida Statutes that "[a] sponsor shall by a majority vote approve or deny an application **no later than 90 calendar days after the application is received** . . . If the sponsor fails to act on the application, an applicant may appeal to the State Board of Education as provided in paragraph (c)." As such, the School Board was required to actually vote to approve or deny the Charter

F" and a copy of the Agenda Item Attachment (the evaluation) is attached hereto as **Exhibit G.**" Of notable importance, the evaluation instrument noted that the Charter Application fully met or partially met the following standards: Mission, Guiding Principles and Purpose, Target Population and Student Body, Curriculum Plan, Student Performance, Assessment and Evaluation, School Culture and Discipline Governance, Management and Staffing, Human Resources and Employment, Student Recruitment and Enrollment, Facilities, Transportation, Food Service, School Safety and Security, and the Start-Up Plan.

**Factual Rebuttal to School Board's Denial Letter**

I. ***The Educational Program Design is Consistent with Requirements for Charter Schools.***

For its first denial reason, the School Board alleges that (1) "the educational program design and learning environment the school proposes is not consistent with the requirements in Florida Statutes for charter schools" and (2) "the proposed daily schedule does not comply with statutory requirements due to instructional minutes being completed outside of the brick-and-mortar setting."

The School Board's allegation that the Charter Application is "not consistent with the requirements in Florida Statutes for charter schools" is without merit. Section 1002.33(6)(b)(3)(a) provides that the School Board "shall articulate in writing **the specific reasons**, based upon good cause, supporting its denial of the application and shall provide the letter of denial and supporting documentation to the applicant and to the Department of Education." By merely providing such a generic and "catch-all" reason for denial, the School Board cannot rely upon this reason as a basis for denial absent the specific provisions it is allegedly referring to.

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Application *no later* than **Sunday, May 2, 2021**. The School Board, however, failed to vote on the Charter Application until June 15, 2021 and the School Board did not submit its formal Denial Letter until June 24, 2021.

Moreover, Section 1002.33(7)(a)2, Florida Statutes, requires that the main approval criteria be the quality of curriculum (which the Charter Application "partially met" via the School Board's Evaluation Instrument). Section 1002.33(7)(a)2, Florida Statutes, is seemingly directly applicable to the Charter Application submitted by the Charter School. It provides:

The focus of the curriculum, the instructional methods to be used, any distinctive instructional techniques to be employed, and identification and acquisition of appropriate technologies needed to improve educational and administrative performance which include a means for promoting safe, ethical, and appropriate uses of technology which comply with legal and professional standards.

Fla. Stat. § 1002.33(7)(a)2. Furthermore, the School Board's rationale for denying the Charter Application on the idea that there will be instructional time outside of the brick-and-mortar setting is without legal merit. The Florida Legislature has seemingly understood, beyond what the School Board has, that students, especially those served by the Charter School, should be given deference in how they receive their education. Section 1002.33(7)(a)2(b), Florida Statutes, expressly provides for education outside of the traditional brick-and-mortar setting:

In order to provide students with access to diverse instructional delivery models, to facilitate the integration of technology within traditional classroom instruction, and to provide students with the skills they need to compete in the 21st century economy, the Legislature encourages instructional methods for blended learning courses consisting of both traditional classroom and online instructional techniques. Charter schools may implement blended learning courses which combine traditional classroom instruction and virtual instruction. Students in a blended learning course must be full-time students of the charter school pursuant to s. 1011.61(1)(a)1. Instructional personnel certified pursuant to s. 1012.55 who provide virtual instruction for blended learning courses may be employees of the charter school or may be under contract to provide instructional services to charter school students. At a minimum, such instructional personnel must hold an active state or school district adjunct certification under s. 1012.57 for the subject area of the blended learning course. The funding and performance accountability requirements for blended learning courses are the same as those for traditional courses.

Fla. Stat. § 1002.33(7)(a)2(b). As it relates to the at-risk students which the Charter School seeks to educate, the Florida Legislature specifically enacted into law Section 1003.53, Florida Statutes



to address the education of dropout populations, and in doing so emphasized that services to dropout populations can and should vary from traditional educational program schedules, settings and methodologies to best meet the needs of dropout populations. Specifically, Section 1003.53(1)(a), Florida Statutes states, among other relevant provisions:

**Dropout prevention and academic intervention programs may differ from traditional educational programs and schools in scheduling, administrative structure, philosophy, curriculum, or setting and shall employ alternative teaching methodologies, curricula, learning activities, and diagnostic and assessment procedures in order to meet the needs, interests, abilities, and talents of eligible students.** The educational program shall provide curricula, character development and law education, and related services that support the program goals and lead to improved performance in the areas of academic achievement, attendance, and discipline. Student participation in such programs shall be voluntary. District school boards may, however, assign students to a program for disruptive students. Notwithstanding any other provision of law to the contrary, no student shall be identified as being eligible to receive services funded through the dropout prevention and academic intervention program based solely on the student being from a single-parent family.

Fla. Stat. § 1003.53(1)(a)(emphasis added). As such, for the reasons stated above, the School Board has failed to support its denial of the Charter Application with specific reasons, based upon good cause, as it relates to the requirements listed by the School Board relating to Section 1002.33(7)(a)2, Florida Statutes. *Sch. Bd. of Palm Beach County v. Florida Charter Educ. Found., Inc.*, 213 So. 3d 356, 361 (Fla. 4th DCA 2017) (legal conclusions, rather than fact-based justifications, are insufficient when denying a charter school application).

II. ***The Charter Application Appropriately Ensures Support for ESE Students, Special Needs Students, and Students with IEP's.***

The School Board, in its second reason for denial in the June 24, 2021 Denial Letter, provided that the Charter Application did not comply with Sections 1002.33(16)(a)3 & 1002.33(6)(b)(2), Florida Statutes. As support for this second reason, the School Board alleges that (1) "a comprehensive and compelling plan for appropriate identification of students with

special needs is not clearly articulated in the application;" (2) "the application does not clearly describe the continuum of service for Exceptional Students that will be provided at the school;" and (3) "the application does not provide a clear understanding of how to ensure appropriate placement of students through the IEP process."

The School Board's arguments here are, again, without merit. The School Board has fallen woefully short for its burden by providing boilerplate and generic reasons to support the contention that the Charter Application does not comply with Sections 1002.33(16)(a)3 & 1002.33(6)(b)(2), Florida Statutes. Again, Section 1002.33(6)(b)(3)(a) provides that the School Board "shall articulate in writing **the specific reasons**, based upon good cause, supporting its denial of the application and shall provide the letter of denial and supporting documentation to the applicant and to the Department of Education." By merely providing generic and "catch-all" reasons for denial with no citation to the application and no specific legal or factual rationale as how the Charter Application fails to comply with Sections 1002.33(16)(a)3 & 1002.33(6)(b)(2), Florida Statutes, the School Board cannot rely upon these reasons as a basis for denial absent the specific provisions it is allegedly referring to.

Further, the School Board has apparently cited to an improper statute as a reason for denial. The School Board first cites to Section 1002.33(16)(a)3, Florida Statutes, relating to disability services to students. The three (3) sub-reasons are all also related to this statutory citation. However, the School Board then also cites to Section 1002.33(6)(b)(2), Florida Statutes, which provides:

in order to ensure fiscal responsibility, an application for a charter school shall include a full accounting of expected assets, a projection of expected sources and amounts of income, including income derived from projected student enrollments and from community support, and an expense projection that includes full accounting of the costs of operation, including start-up costs.

Fla. Stat. § 1002.33(6)(b)(2). Clearly, this misplaced reference and reason for denial is not rationally related to any of the bulleted sub-reasons for denial and as such, must be disregarded.

However, as it relates to the first sub-reason for denial under this section, within the Charter Application, page 42, section 1.6.D, "New Identification of Disabilities" the process for identification of students with special education needs is documented. Because of the population the Charter School intends on serving at-risk overaged and under credited young adults, multiple students are typically identified from their prior school as qualifying for special education services. The Multi-Tiered Systems of Support ("MTSS") process in place—and fully identified in the Application—provides a process and system for the identification of students not previously identified by the previous school. Specifically, the MTSS process is expressly defined in the Charter Application in Section 1.6(E) and 1.6(F). Also specified in the Charter Application in Section 1.6(D) is the "Child Find" process where a parent may request an initial special education evaluation at any time.

As it relates to the second sub-reason for denial under this section, the Charter Application, on page 42, Sections 1.6(E) and 1.6(F), clearly describes the continuum of service for Exceptional Students that will be provided at the Charter School. Specifically, the contract between Acceleration Academies and the OYSA governing board specifically obligates Acceleration Academies to serve special education students based on IEP goals that are written for mild to moderate students with disabilities under IDEA. This classification would include students who are able to receive instruction with their nondisabled peers 40% to 100% of the school day. Acceleration Academies may provide these services directly or may contract these services to a third-party special education service provider. The section continues on to provide

an in-depth and comprehensive three (3) tier approach for the identification and instruction for those Exceptional Students.

Lastly, as to the third sub-reason for denial under this section, the Charter Application, on page 43, Section 1.6(G), provides that the Charter School will work cooperatively and collaboratively with the School Board to ensure appropriate placement for every potential student in the IEP process. The Charter Application goes on to provide that if a special education student has an IEP that specifies less than 40% instruction with nondisabled peers, the Charter School's Director and Special Education Coach (a certified teacher) will meet with appropriate team members from the School Board/district to determine whether or not the student's needs can be met at the Charter School. If there is any way to provide Free and Appropriate Education (FAPE) at the Charter School, the student will be accepted, and an IEP review/revision will be completed. If FAPE cannot be provided by the Charter School in a specific instance, the Charter School will work collaboratively with the district to determine appropriate options and recommendations. This section, coupled with the other relevant sections covering these topics, adequately prove that the Charter Application fully complies with Sections 1002.33(16)(a)3 & 1002.33(6)(b)(2), Florida Statutes.

**III. *The Charter Application Properly Reflects Support and Legal Compliance for English Language Learner Students.***

The School Board, in its third reason for denial in the June 24, 2021 Denial Letter, claims that the Charter Application did not comply with Section 1002.33(10)(f), Florida Statutes. As support for this third reason, the School Board alleges that (1) "the application reflects limited understanding of the legal obligations regarding the education of English Language Learners and the school's obligation under state and federal law;" (2) "the application lacks a comprehensive and compelling plan for educating English Language Learners;" (3) "the application lacks a clear

plan for identifying, monitoring and evaluating the progress of English Language Learner students, including exiting students from ELL services;" and (4) "the application does not include an enrollment projection of ELL students, nor a staffing plan aligned to projections."

However, Section 1002.33(10)(f), Florida Statutes, merely requires that "[s]tudents with disabilities and students served in English for Speakers of Other Languages programs shall have an equal opportunity of being selected for enrollment in a charter school." Although the four sub-reasons for denial under this section relate to English Language Learners, none of the sub-reasons, again, appear related to or describe the contents of the Charter Application. The School Board has fallen woefully short for its burden by providing generic reasons to support the contention that the Charter Application does not comply with Section 1002.33(10)(f), Florida Statutes. *See Fla. Stat. § 1002.33(6)(b)(3)(a)*. By merely providing generic reasons for denial with no citation to the Charter Application and no specific legal or factual rationale as how the Charter Application fails to comply with the legal requirements of Section 1002.33(10)(f), Florida Statutes, the School Board cannot rely upon these reasons as a basis for denial absent the specific legal requirements it is allegedly referring to.

Pages 45-46 of the Charter Application address this issue in its entirety. On page 45 of the Charter Application, Section 1.7(A), titled "Meeting Needs of English Language Learners" the Charter School first adopts and acknowledges Florida's Consent decree regarding the civil rights of English Language Learners. Then, the Charter Application provides that the Charter School will require all students (or parents of students if the student is under 18) to complete a three-question survey upon enrollment. The three questions on the language survey, as required by law are: (1) Is a language other than English used in the home; (2) Did/Does the student have

a first language other than English; and (3) Does the student most frequently speak a language other than English?

The Charter Application goes on to provide the analysis and response based upon the student's answers.

If the first answer only is YES, then the student will not be enrolled in an ESOL program. If the second or third or both questions are answered YES, then the [student] will be assessed within 20 days of enrollment for eligibility for the ESOL program. This is done through a review of records from the previous school and/or administering the WIDA (ACCESS test) to determine Limited English Proficiency (LEP) levels. The school registrar will maintain an up-to-date log of all eligibility testing and results, and all required documentation will be electronically filed within the [Charter Schools] information and case management system, Atlas. Parents and guardians will be notified immediately, in the language that they understand (when feasible), that their child has been placed in specialized ELL services pending the English language proficiency test.”

The Charter Application also provides a compelling plan for educating the English Language Learners. On page 46, section 1.7.B, titled "Instruction Support", the Charter Application provides:

Instructional support will be based upon the [student's] LEP level. The Academy will employ a certified ESOL teacher to serve as case manager for all ELL [students]. This teacher is responsible for administering assessments and providing direct instruction and support to the [student] based upon the LEP level. Edmentum (or similar), the Academy's online content provider, features several instructional adaptations and options for supporting an ELL [student] with coursework. For example, Edmentum offers language translations so a [student] can access text material and video content in the home language. [Students] not needing full translation can also utilize a translation dictionary while keeping the curriculum content in English.”

The Charter Application then goes on to refute the third and fourth sub-reason for denial as the Charter Application specifically provides for a Progress Monitoring and Evaluation Section and a Staffing Plan for English Language Learners. Section 1.7(C), titled "Progress Monitoring and Evaluation, the Charter Application provides that:

The Academy's certified ESOL teacher will be responsible for monitoring and evaluating the progress of the ELL [students]. The progress of ELLs will be reviewed during weekly data meetings in which each [student's] attendance, engagement and course progression are scrutinized. If an ELL is struggling with the content, there are multiple avenues to provide intervention and support that include the afore-mentioned Edmentum accommodations and one-to-one support from our certified ESOL coach. Initially, the ESOL coach reviews data to identify the concept/skill the [student] is struggling with and other potential issues that may be impacting learning. If the issue is content related, the Content Coach provides intervention individually or in a small group. If the issue is related to social-emotional learning, the Content Coach would engage the Life Coach and the Graduation Candidate Advocate (GCA) in accessing appropriate supports/services.

All [students] are evaluated through the WIDA Access test at the end of each school year. Services are adjusted according to student LEP levels. Additionally, the ESOL teacher and/or the [student] can initiate consideration of changes in services and supports based on student performance and needs. Such changes would be made in compliance with applicable laws and regulations.”

Lastly, the Charter Application provides for the staffing plan at the Charter School for English Language Learners as needed where the Charter School attests that it will hire sufficient ESOL certified teachers to provide support for all English Language Learners. As it relates to a "realistic enrollment projection" the Charter School based its projection on that of the School Board, which is estimated to be 8%-9.5%. This section, coupled with the other relevant sections covering these topics, adequately prove that the Charter Application does comply with Section 1002.33(10)(f), Florida Statutes.

#### **IV. *The Charter School's Projected Budget Complies with Florida Statutory Requirements.***

The School Board, in its fourth reason for denial in the June 24, 2021 Denial Letter, provided that the Charter Application did not comply with Sections 1002.33(6)(a)5 & 1002.33(6)(b)2, Florida Statutes. As support for this fourth reason, the School Board alleges that (1) "budgetary projections are not consistent with all key aspects of the application including planning for appropriate instructional seat time to ensure revenue is earned, appropriate staffing

to ensure class size is met, expenses for an SSO or Guardian, transportation expenses, food services expenses and the facility loan commitment letter to validate proposed revenues;" (2) "the application does not provide a realistic assessment of projected sources of revenue and expenses to ensure financial viability of the school due to the Education Service Provider (ESP) retaining 95% of the school's FEFP payments, the lack of accounting for the district's administrative fee, lack of budgeting for the external audit, no ESOL students accounted for in projections and the additional expenses for regional and national support despite 95% of the budget already designated to the ESP;" and (3) "the plan to adjust the budget should non-guaranteed revenues not materialize as planned is minimally addressed in the application and not a sound plan."

First, the reference to the ESP retaining 95% of FEFP payments is patently misleading. The contract between OYSA and the ESP specifically provides that the ESP must pay all of all school staff salaries, benefits, workers compensation, unemployment and premises liability insurance policies, professional development, special education services, accredited curriculum and instruction, school software and hardware, and all programmatic and licensed services. These costs are budgeted from the projected 95% of FEFP received by the Charter School. Simply put, there is no ESP "retaining" of funds as described in the School Board's denial. These services, while funded from the Charter School, will be allocated and fully operated by the ESP.

Second, Section 1002.33(6)(a)(5), Florida Statutes requires that the Charter Application "[c]ontains an annual financial plan for each year requested by the charter for operation of the school for up to 5 years. This plan must contain anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends. The Charter Application



does contain an annual financial plan for each year requested for operation of the Charter School for up to five (5) years. Specifically, pages 362 and 369 of Charter Application provide for this forecast which establishes compliance with Section 1002.33(6)(a)5, Florida Statutes.

V. ***The Charter Application Properly Ensures Governance Guidelines and Standards for the Governing Board of the Charter School in Managing the ESP.***

The School Board, in its fifth reason for denial in the June 24, 2021 Denial Letter, asserts that the Charter Application did not comply with Sections 1002.33(6)(a)5, 1002.33(7)(a)9 & 1002.33(7)(a)1, Florida Statutes. As support for this fifth reason, the School Board alleges (1) "the application states that the Board will review operating results presented by a contracted accounting firm monthly, however, due the 95% of the FEFP being paid to the ESP, the board will retain little authority to exercise oversight over the financial operations of the school;" (2) "the application does not provide a fiscal management system with clear roles and responsibilities for day-to-day operations and board oversight;" (3) "the application does not provide clear provisions for an annual financial audit as this expense is not evident in the budget;" (4) "the application does not clearly articulate public transparency of school financial health, especially given the majority of public funding will be given to the ESP;" and (5) "insurance coverage requirements are not addressed in the application, only that the school will hire an insurance broker to ensure coverage. The insurance broker is not included in the budget."

The first sub-reason cited by the School Board that the governing board of the Charter School will retain "little authority" to oversee the financial operations of the Charter School has no basis in law or fact. First, the Charter School's Board contractually and legally is compelled to exercise total financial operations oversight at the Charter School. Second, its contract with the ESP specifically provides multiple safeguards including the following relevant provisions which refute the School Board's sub-reasons (1), (2), and (4). A copy of the draft ESP Contract with the

Charter School is included with the Charter Application. Further, Pages 85-86 of the Charter Application directly address the fiscal management system with clear roles and responsibilities for day-to-day operations and governing board oversight. As such, page 86 of the Charter Application states that all monthly financial statements will be presented to the governing board in meetings which are open to the public, the statements will be provided to the school district, as the sponsor, as well as posted on the Charter School's website, and the annual budget will be presented to the governing board in public session for discussion and review and will be formally ratified at a subsequent governing board meeting after there has been an opportunity for review and discussion.

Lastly, employee insurance coverage is clearly shown in the "personnel budget" in the Charter Application on page 363, which provides columns for group insurance and also workers' compensation related to employees. On the Expense Budget Detail in the Charter Application page 364, line item marked 'insurance' under "School admin" all other insurance costs relevant to the school, such as property, liability etc., are specified. Hence, the Charter Application and budget clearly identify these projected and budgeted expenses, rendering the District's rationale on this issue inexplicable.

**VI. *The Charter Application Provided a Thorough Overview and Analysis of its Relationship with the ESP.***

The School Board, in its sixth reason for denial in the June 24, 2021 Denial Letter, provided that the Charter Application did not comply with Section 1002.33(6)(a) Florida Statutes. As support for this sixth reason, the School Board alleges (1) "the Board has selected Acceleration Academies, LLC, a for profit management company, as their ESP. The application did not include Addendum B to address the required criteria regarding the ESP; (2) "a draft management agreement is provided in the application and includes language throughout that

provides the ESP authority over the charter school to include 95% of all FEFP funding paid to the ESP;" and (3) "during the capacity interview, concern arose that one of the founders of the ESP is also acting as legal representation for the governing board, disabling an arm's length relationship between the board and the ESP."

Section V of this Brief also addresses the invalid concerns raised by the School Board. However, Florida case law clearly provides that a missing piece of an application, which is found throughout other parts of the application, does not constitute a reason for good cause to deny an application. *See Sch. Bd. of Volusia County v. Acads. of Excellence, Inc.*, 974 So. 2d 1186, 1191 (Fla. 5th DCA 2008)("Based on the testimony and argument presented at the hearing, the Commission had sufficient evidence before it to properly conclude that, although Academies' application was statutorily deficient, such a deficiency was not good cause for denial of the application when Academies recognized the problem and was willing to correct it."). After receipt, the School Board could have also requested the Charter School to provide the addendum. However, the Addendum B data was incorporated into the Application—which additionally included the Board-ESP contract itself. Lastly, at no time has any founder of or counsel for the ESP represented the Charter School governing board in any legal matter. As such, this argument is wholly without merit.

### **Conclusion**

WHEREFORE, for all the foregoing reasons, the Own Your Success Academies, Inc., d/b/a the Hillsborough County Acceleration Academy, respectfully requests that the Charter School Appeal Commission: (1) find that there is insufficient competent and substantial evidence to support the Denial Letter and/or that the School Board's Denial Letter lacked good cause within the meaning of the charter statute to deny the Charter Application; (2) find that the

Charter Application that is the subject of this appeal be approved (or deemed approved based on the School Board's failure to timely vote on the Charter Application) (4) remand the instant Charter Application to the School Board for immediate approval and/or any further necessary proceedings; and (5) award any further relief deemed just and proper, including attorneys' fees and costs pursuant to Section 1002.33(6)(d)(1), Florida Statutes.<sup>3</sup>

Dated: July 22, 2021.

**Certificate of Service**

I hereby certify that a copy of the instant brief with exhibits was served upon the School Board of Hillsborough County, Florida via the Superintendent at the address identified herein via overnight delivery on the date identified immediately above. Further, the instant brief with exhibits have also been submitted to the Agency Clerk for the Department of Education, 325 West Gaines Street, Room 1520, Tallahassee, Florida 32399-0400.

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<sup>3</sup> The Charter School also reserves the right to contest the lack of due process afforded to the Charter School in the School Board's Denial of the Charter Application as the Charter School was not given proper notice nor an opportunity to be heard before the School Board at the June 15, 2021 School Board meeting.