




CHARTER SCHOOLS

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Charter Schools Generally

[§§ 1002.33 & 1002.331]

- All charter schools are public schools [§ 1002.33(1)]
- Section 1002.33(2) provides the purpose of Charter Schools and guiding principles
- Charter Schools are exempt from many public-school regulations [§ 1002.33(16)]
- A charter school shall organize as, or be operated by, a nonprofit organization, but may be operated by a municipality or other public employer [§ 1002.33(12)(i)]
- Governing board
 - *Either appointed by the non-profit organization; or*
 - *Elected officials of a municipality*

Charter Schools Generally

[§ 1002.33(9)]

- Requirements for Charter Schools
 - *Must be nonsectarian*
 - *Must not discriminate*
 - *Permissible enrollment preferences are described in § 1022.33(10)*
 - *Must satisfy financial reporting and budgeting obligations*
 - *Must not charge tuition or registration fees*
 - *Must report annual progress to its sponsor*
 - *Must not levy taxes or issue bonds secured by tax revenues*
 - *But may receive proceeds from a bond in the way of a loan*
 - *Must meet certain parental notification and communication requirements*

Charter School Application Process

Application Process

- Process varies depending on type of applicant
 - *Standard Charter School*
 - *Conversion Charter School*
 - *High-Performing Charter School*
 - *Virtual Charter School*

Who can apply?

[§ 1002.33(3)]

- New Charter Schools
 - *Application may be made by an individual, teachers, parents, a group of individuals, a municipality, or a legal entity organized under Florida law*
- Conversion Charter Schools
 - *Application shall 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 2 years*
 - *A public school-within-a-school that is designated as a school by the district school board may also apply to convert to charter status*
 - *Private schools, parochial schools, and home education programs are not eligible to apply for charter school status*

Unlawful Reprisal

[§ 1002.33(4)]

- “Unlawful reprisal” against an employee because he or she is either directly or indirectly involved with an application to establish a charter school is prohibited
- Complaints of unlawful reprisal are submitted to FDOE

General Application Overview

[§ 1002.33(6)(a)]

- A person or entity seeking to open a charter school shall apply using the model FDOE application form
- Generally, the application must include an educational plan, a business plan, and applicant information
- 22 Sections, includes page limits, limits on exhibits
- No longer one deadline for applications, rather they may be submitted year-round

Application Timeline

Day 1	Applicant submits model application form to sponsor for charter schools to be opened at a time determined by the applicant
Before approving or denying application	Sponsor must provide at least 7 calendar days to applicant for technical or nonsubstantive corrections and clarifications
Within 15 days of receipt of an application	Sponsor shall report to the Department of Education the name of the applicant entity, the proposed charter school location, and its projected full-time equivalent
Within 90 calendar days of receipt of application	Sponsor shall by a majority vote approve or deny the application, unless the sponsor and the applicant mutually agree to temporarily postpone the vote to a specific date
Within 10 Calendar Days of vote	Sponsor shall report to the FDOE the approval or denial of an application; if approved, report must include projected full-time equivalent; if denied, sponsor must also provide letter of denial and supporting documentation to applicant

Application Evaluation Process

- Sponsors evaluate charter school applicants using the model Florida Charter School Application Evaluation Instrument [Rule 6A-6.0786(2), F.A.C.]
- Typically:
 - *Applications are submitted to a review committee*
 - *A “Capacity Interview” is held with the governing board of the applicant charter school to present their plan and to answer questions about their proposal*
 - *A meeting of the review committee is held to discuss the application and make a recommendation*

Application Denials

- Denials of charter school applications must be based on Good Cause, which is not defined in § 1002.33
- § 1002.33 requires that local school boards have a legal basis for the denial. *School Board of Palm Beach County v. Florida Charter Education Foundation, Inc.*, 213 So. 3d 356 (Fla. 4th DCA 2017)
 - “The State Board reviews *de novo* whether the school board’s determination was supported by competent, substantial evidence that meets this “good cause” legal standard.” *Id.*
 - The State Board is not limited to the record on appeal, and it is “permitted to gather additional information and ask clarifying questions about the materials with which it was presented” in determining whether an application was denied for “good cause.” *School Board of Volusia County v. Florida East Coast Charter School*, 312 So. 3d 158 (Fla. 5th DCA 2021)

Appeals Timeline

§ 1002.33(6)(c)

The CSAC may reject an appeal for failure to comply with procedural rules, in which case the applicant shall have 15 calendar days to resubmit an appeal

Within 30 calendar days of denial	Applicant may appeal denial of its application or failure to act on an application to the FBOE
Within 30 days of filing of appeal	Sponsor shall submit any response to the appeal to the FBOE
At least 7 calendar days before the appeal is heard	Commissioner of Education shall convene a meeting of the Charter School Appeal Commission (CSAC) to study and make recommendations to the FBOE about its pending decision and forward its recommendation to the FBOE
Within 90 calendar days after an appeal is filed	FBOE shall by majority vote accept or reject the decision of the sponsor and shall remand the application to the sponsor with its written decision



CHARTER CONTRACT

Charter Contract

- The FDOE model contract template must be used as the charter contract. Proposed deletions to the form must be shown as strike-through text and proposed additions to the form must be underlined [Rule 6A-0786, F.A.C.]
- Sponsor cannot impose “unreasonable rules or regulations that violate . . . flexibility” [§ 1002.33(7)]
- The sponsor has 30 days after application approval to provide a proposed charter contract. The applicant and the sponsor then have 40 days to negotiate and notice the charter contract for final approval [§ 1002.33(7)(b)]
- FDOE mediation is available to address disputes other than a dispute regarding a charter application denial [§ 1002.33(7)(b)]

Charter Contract, CONT.

- A charter school may appeal a Sponsor's decision to an ALJ who has final authority [§ 1002.33(7)(b)]
 - *Tampa School Development Corp. v. Hillsborough County School Board, DOAH Case No. 11-2183.* (good discussion of "reasonableness")

Term

- Initial terms are generally 5 years. Public entities, financing needs unique to an approved charter and lab charters are eligible for 15-year initial terms [§ 1002.33(a)(12)]
- Charter shall provide for “cancellation” if insufficient progress has been made in student achievement and if it is unlikely the objectives can be achieved before expiration of the charter [§ 1002.33(a)(12)]

Contract Provisions

[Model Form;
Rule 6a-6.0786]

- Term of the Charter
- Process for Charter Renewal, Termination, and Modification
- Education Program and Curriculum
- Academic Accountability
- Student grade levels and eligibility
- Maintenance of Student Records
- Due Process Procedures (504, IEP, etc.)
- Dismissal Procedures
- Student Code of Conduct and Parent Contract
- Federal, State and Local Revenue Sources
- Budget, Financial Records and Reports, and Financial Management
- School Facilities
- Transportation Requirements
- Food Services
- Insurance and Indemnification
- Governance
- Human Resource Policy
- Required Reports and Documents
- Misc. Provisions (Severability, Choice of Laws etc.)
- In the Appendix: The application, Governance Documents, ELL Plan, and if applicable the management contract.

Modifications and Amendments

- A charter may be modified if mutually agreed upon; this may include consolidation of multiple charters [§ 1002.33(7)(d)]
- Charter may file suit follow § 1002.33(7)(b) if it believes a proposed amendment was improperly denied

Sponsor Policies

- The sponsor may not apply its policies to a charter school unless mutually agreed upon by each party. If an agreed upon policy is later amended, the version of the policy in effect at the time of execution of the charter shall remain in effect [1002.33(5)(1)(d)]
- See, *Imhotep*, 947 So.2d 1279 for additional discussion on Sponsor policies

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CHARTER SCHOOL REQUIREMENTS

Performance Requirements

[§ 1002.33(9)(n)]

- When a charter school receives a grade of “D” or “F”
 - *Governing board must submit a school improvement plan (SIP) to its sponsor*
- Three consecutive grades below a “C”
 - *Must choose and implement one of four corrective action plans*
- Two consecutive grades of “F”
 - *Charter school’s charter contract is automatically terminated*
 - *Subject to certain **rare** exceptions*

Ethics

- Governing Boards are restricted from employing certain relatives [§ 1002.33(24)]
- Charter School Governing Board Members are subject certain sections of Ch. 112 Florida Statutes [§ 1002.33(26)]
- Restrictions related to management companies, relations, employment of relatives

Eligible Students

[§ 1002.33(10)]

- Charter Schools are open to eligible students who submit a timely application unless the applications exceed school capacity, grade capacity, or program capacity, in which case all applicants will have an equal chance through random selection
- Charter Schools may give preference to:
 - *Children whose siblings are enrolled in the school*
 - *Children of school employees and governing board members*
 - *Children who completed VPK with the school the previous year*
 - *Children of active-duty service members*
 - *Children who attended or are assigned to a failing school*

Eligible Students, CONT.

- May limit enrollment to target:
 - *Children in specific age groups*
 - *Students at risk of dropping out or academic failure*
 - *Students enrolling in a charter school-in-the-workplace or charter school-in-a-municipality*
 - *Students residing within a reasonable distance of the charter school*
 - *Students who meet reasonable academic, artistic, or other eligibility standards established by the school consistent with its mission and purpose. Students articulating pursuant to an articulation agreement between charter schools*
 - *Students living in a development in which the developer has met the requirements of [§ 1002.33(10)(e)(7)]*

Eligible Students, *CONT.*

- Disabled and ELL students shall have equal opportunity to be selected[§ 1002.33(10)(f)]
- A charter school student is eligible to participate in interscholastic extracurricular activity at the public school the child would otherwise be assigned [§ 1002.33(11)]

Employees

- Employees may collectively bargain [§ 1002.33(12)(b)]
- District employees may take leave to work in a charter while retaining seniority/district benefits [§ 1002.33(12)(e)]
- Teachers must be certified under chapter 1012 and undergo background screening [§ 1002.33(12)(f),(g)]
- For tort liability, the governing body and employees shall be governed by § 768.28 [§ 1002.33(12)(h)]
- A Hope operator may employ school administrators and instructional personnel that do not meet § 1012.56 requirements if they are not ineligible under § 1012.315 [§ 1002.333(6)(d)]
- Subject to:
 - Personnel provisions related to compensation, workforce reductions, and performance evaluations for administrators [Ch. 1012]

Facilities

- Charter Schools must comply with the state building code, but not SREF [§ 1002.33(18)(a)]
- A local government cannot impose more stringent requirements [§ 1002.33(18)(a)]
- Charter schools are exempt from building permit fees, impact fees, exactions, service availability fees, and assessments for special benefit [§ 1002.33(18)(d)]
- If district property is available because it is surplus, marked for disposal, or otherwise unused, it shall be provided for charter school use the same way it would be available for other public schools [§ 1002.33(18)(e)]
- Charter Schools are eligible for capital outlay funding pursuant to 1013.62 [§ 1002.33(19)]



SPONSOR
OBLIGATIONS



Services

- Sponsor has a list of services it is to provide to charter schools set forth in § 1002.33(20)(1)
- A sponsor may withhold an administrative fee for the provision of services; the calculations for these fees are shown in [§ 1002.33(20)(a)(2)]
- A sponsor may provide additional services to the charter school by contract at a rate no greater than the cost to provide the service. [§ 1002.33(20)(b)]

Sponsor Duties

[§ 1002.33(5)]

- Sponsor may be a district school board, a state university, or a Florida College System institution
- Sponsor duties are described in subsection (b), and include
 - *Monitoring and reviewing progress*
 - *Monitoring the revenues and expenditures of the charter school*
 - *Ensuring the charter school's participation in state accountability system*
 - *Submission of an annual report to the Department of Education*

Sponsor Liability

- Sponsors are not liable for certain civil damages under state law resulting from a charter school action. A Sponsor's duty to monitor does not create a private cause of action [§ 1002.33(5)]
- A charter school shall indemnify the state from certain liabilities [§ 1002.33(14)]
- A charter school may not pledge the credit or taxing power of the state or sponsor [§ 1002.33(14)]

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NON-STANDARD CHARTER SCHOOLS

Conversion Charter Schools

- Standard Charter School Model Application is used to convert an existing school into a charter school
- § 1002.33(3)(b) provides additional requirements for conversion charter schools
- Ineligibility for Municipalities
 - *A municipality is not authorized to apply for a conversion charter school*
 - *See Atty. Gen. Op. 2013-06*

High-Performing Charter Schools

[§ 1002.331(1)]

- A charter school is a high-performing charter school if it:
 - *Received at least two school grades of “A” and no school grades below “B” during each of the previous 3 school years or received at least two consecutive school grades of “A” in the most recent 2 school years that the school received a grade; or*
 - *Receives, during its first 3 years of operation, funding through the National Fund of the Charter School Growth Fund, and it has received no school grade lower than a “C” during each of the previous 3 school years that the school received a grade; and*
 - *Received an unqualified opinion on each required annual financial audit in the most recent 3 fiscal years; and did not receive a financial audit that revealed one or more of the financial emergency conditions set forth in § 218.503(1) in the most recent 3 fiscal years for which such audits are available.*
- Virtual charter schools are not eligible for high-performance designation
- Status granted (or ungranted) by the Commissioner of Education

High- Performing Charter School Status

[§ 1002.331(2)]

- A High-Performing Charter School is authorized to:
 - *Increase its student enrollment once per school year to more than the capacity identified in the charter, so long as enrollment does not exceed facility capacity;*
 - *Expand grade levels within K-12 to add grade levels not already served;*
 - *Submit a quarterly, rather than monthly, financial statement to its sponsor;*
 - *Consolidate under a single charter multiple high-performing charter schools in the same district operated by the same governing board; and*
 - *Receive a modification of its charter to a term of 15 years or a 15-year charter renewal*

High- Performance Charter School Replication

[§ 1002.331(3)]

- A high-performing charter school may submit an FDOE High-Performing Replication Application in any school district to establish and operate a new charter school that will be “*substantially similar*” to its educational program
- Two applications for a charter school to be opened within Florida may be submitted at a time determined by the school
 - *A subsequent application may not be submitted unless each applicant school commences operations, or an application is withdrawn*
- More than one charter school may be established by a high-performing charter school within this state in any year if it operates in the area of a persistently low-performing school and serves students from that school

Replication of a High- Performing Charter School

- “Substantially similar” has been interpreted as having the same characteristics and being alike in substance or essentials to the school it is replication
 - See, *School Board v. Somerset Academy, Inc.*, 232 So. 3d. 383 (Fla. 4th DCA 2017)
 - See, *School Board of Lucie County v. Somerset Academy, Inc.*, 238 So. 3d 344 (Fla. 4th DCA 2017).

Appeal Submitted by a High- Performing Charter School

- Within 90 calendar days of appeal, the FBOE shall determine whether sponsor's denial was in accordance with § 1022.33(6)(b)3.b
 - *Provides that an application submitted by a high-performing charter school may only be denied if the sponsor demonstrates by clear and convincing evidence that certain conditions exist*
- Other procedural requirements still apply

Virtual Instruction Programs

[§ 1002.45(d)]

- A “Virtual Instruction Program” (“VIP”) is a program of instruction provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both
- A virtual charter school may provide full-time or part-time virtual instruction for K-12 students residing within the school district sponsoring the virtual charter school
- A virtual charter school may (1) contract with the Florida Virtual School, (2) contract with an approved VIP provider, or (3) enter into an agreement with a school district to allow the participation of the virtual charter school’s students in the school district’s virtual instruction program

Virtual Charter Schools

[§§ 1002.33, 1002.45, 1002.455]

- An existing charter school that is seeking to become a virtual charter school must amend its charter or submit a new application using the model Virtual Charter School Application
- Virtual charter schools are exempt from facilities requirements, capital outlay funding eligibility, transportation requirements, and maximum class size limitations



TERMINATION OF CHARTER



Non-Renewal and Termination

- A charter continues even past the term set forth in the contract until it is terminated
- The Sponsor must make student achievement the most important factor when deciding to review or terminate a charter [§ 1002.33(8)(a)]
- Other reasons for termination may include failure to participate in the accountability system, failure to meet generally accepted standards of fiscal management, or a material violation of law [§ 1002.33(8)]
- A charter is terminated automatically if the school earns two consecutive grades of “F” [§ 1002.33(9)(n)(3)]
- A Sponsor must terminate the charter of a school that fails to conduct background screening requirements [§ 1002.33(12)(g)(5)]
- A charter school can voluntarily terminate [§ 1002.33(7)(19)(c)(2)(e)]

90 Day Termination/ Non-Renewal

- A Sponsor must provide notice to a school of termination or non-renewal within 90 days. The School has 14 days from receipt of the notice to request a hearing [§ 1002.33(8)(b)]
- See, *Palm Beach County School Board, Petitioner v. Excel Leadership Academy, Inc.*, DOAH Case No. 13-1148 – Note that § 1002.33(8)(a) no longer includes “good cause” as a basis for termination

Immediate Termination

- A charter may be immediately terminated only if there is an immediate danger to the health, safety, or welfare of the students [§ 1002.33(8)(c)]
- A school may request a hearing within 10 days of receiving notice of immediate termination from the sponsor

Post-Termination

- After termination or non-renewal, a school shall be dissolved and any unencumbered public funds, except for capital outlay and federal grant funds, shall revert to the sponsor [§ 1002.33(8)(d)]
- The school is responsible for its own debts in the event of termination/non-renewal [§ 1002.33(8)(e)]
- Upon initial notification of non-renewal/termination, a charter school cannot spend more than \$10,000 per expenditure without prior written approval of the sponsor, except for attorney's fees [§ 1002.33(9)(o)]
- An independent audit must be completed within 30 days of notification of termination/non-renewal



APPLICABLE STATUTES
AND FLORIDA
ADMINISTRATIVE
RULES

Exemptions from Statutes

- § 1002.33(16) exempts charter schools from all statutes in chapters 1000-1013, except:
 - *Those specifically applying to charter schools*
 - *The student assessment program and school grading system*
 - *The provision of services to students with disabilities*
 - *Those pertaining to civil rights, including antidiscrimination provisions*
 - *Student health, safety, and welfare provisions*
- Identifies 15 other specific statutes and subsections with which charter schools must comply
 - *Including the Sunshine law and public records laws*

Florida Administrative Rules

- Rule 6A-6.0786 - Forms for Charter School Applicants and Sponsors
- Rule 6A-1.0081 - Monthly Financial Statements and Financial Conditions
- Rule 6A-1.099827 - Charter School Corrective Action and School Improvement Plans
- Rule 6A-6.0787 - Ballot Process for Teacher and Parent Voting for Charter School Conversion Status
- Rule 6A-10.086 - Bathroom and Locker Room Policy
- Rule 6A-6.0791 - Special Magistrate for Unresolved Welfare Complaints at Charter Schools
- Rule 6A-1.0018 - School Safety Requirements and Monitoring
- Rule 6A-6.03028 - FAPE
- Rule 6A-2.0020 - Eligibility for Charter School Capital Outlay
- ▶ ***Not an exhaustive list**

Other School Choice Options

- McKay Scholarship
 - *Provides opportunity to attend public school other than assigned OR public funding for a student with disabilities to attend private schools [§ 1002.39]*
- Hope Scholarship
 - *Provides public school students that have been subject to bullying or harassment an opportunity to transfer to another public school or request a scholarship for the child to attend an eligible private school [§ 1002.40]*
- Opportunity Scholarship
 - A student may request and receive an opportunity scholarship to enroll in and attend a different public school if by assigned attendance area the child has attended a public school that has earned a grade of F, three consecutive grades of D, or has been assigned to such a school for the coming year [§ 1002.38]
- Florida Tax Credit Scholarship
 - *Taxpayers make voluntary contributions to nonprofit scholarship organizations to fund private school tuition for certain disadvantaged students [§ 1002.395]*

QUESTIONS?

- Contact me at sarnold@arnoldlawfirmll.com.
- Office number: 904 731-3800
- If you are studying for the exam:
 - Start Early
 - Study the things you don't know first
 - Several very dense areas, can be their own CLE. Be able to issue spot.
 - Good luck!