IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

SCHOOL BOARD OF VOLUSIA COUNTY,

Appellant,

v. Case No. 5D20-66

FLORIDA EAST COAST CHARTER SCHOOL,

Appellee.

_____/

Opinion filed January 22, 2021

Administrative Appeal from the Department of Education.

Carol A. Yoon and Theodore R. Doran, of Doran, Sims Wolfe, Ciocchetti & Yoon, Daytona Beach, for Appellant.

Shawn A. Arnold and Braxton A. Padgett, of Arnold Law Firm, LLC, Jacksonville, for Appellee.

ARECES, R., Associate Judge.

Appellant, School Board of Volusia County (the "School Board"), appeals from a final order by the State Board of Education (the "State Board"). In its final order, the State Board unanimously adopted the recommendation of the Charter School Appeal Commission (the "Commission") and reversed the School Board's denial of Appellee Florida East Coast Charter School's (the "Charter School") charter school application. For the reasons stated below, we affirm.

Florida law permits a charter school, whose application has been denied by a school board sponsor, to appeal the adverse decision to the State Board. *See* § 1002.33(6)(c)1., Fla. Stat. (2019). Once notified of an appeal to the State Board, the Commissioner of Education "shall convene a meeting of [the Commission] to study and make recommendations to the State Board." *Id*. In reviewing a school board's decision, the Commission must determine whether the school board had good cause to deny a charter school application. *See* § 1002.33(6), Fla. Stat.; *see also Sch. Bd. of Volusia Cnty. v. Acads. of Excellence, Inc.*, 974 So. 2d 1186 (Fla. 5th DCA 2008). The Commission must then recommend to the State Board that the applicant's appeal be granted or denied. *See* § 1002.33(6)(c)1., Fla. Stat. Once the State Board reaches its decision and a final order is entered, this Court, on a proper appeal, reviews the record to determine if the State Board's final order is supported by competent substantial evidence. *See, e.g.*, *Acads. of Excellence, Inc*., 974 So. 2d at 1187 ("[C]ompetent substantial evidence supports the Commission's conclusion that the School Board did not have good cause to deny [applicant's] application on that basis."); *see also* § 1002.33(6)(d), Fla. Stat. ("The State Board of Education's decision is a final action subject to judicial review in the district court of appeal.").

In this case, the State Board's final order is supported by competent substantial evidence. The School Board, however, contends the State Board erred in adopting the Commission's recommendation because the recommendation was based, at least in part, on new information that had not been a part of the record on appeal. The Charter School, in contrast, contends the Commission was not limited to the record on appeal and was, instead, permitted to gather additional information and ask clarifying questions about the

materials with which it was presented. An interpretation of section 1002.33(6)(e), Florida Statutes, is determinative of this issue.

The days of judicial deference to an agency's interpretation of a statute or rule are over. *See* Art. V, § 21, Fla. Const. Instead, this Court interprets statutes and rules de novo and without deference to an agency's interpretation. *Id.*

Section 1002.33(6)(e) unambiguously allows the Commission to consider information outside the record on appeal. Specifically, the statute provides:

> The [Commission] may receive copies of the appeal documents forwarded to the State Board of Education, review the documents, *gather other applicable information* regarding the appeal, and make a written recommendation to the commissioner.
>
> . . . .
>
> Commission members shall thoroughly review the materials presented to them from the appellant and the sponsor. The [C]ommission *may request information to clarify the documentation* presented to it.

§ 1002.33(6)(e)2.–5., Fla. Stat. (emphasis added).

Notwithstanding the plain language of the statute, the School Board contends the "information" referred to in the phrases "other applicable information" and "information to clarify" is limited to information that is part of the record on appeal. The School Board's argument is unpersuasive for at least two reasons.

First, neither of the pertinent statutory provisions contain the limiting language the School Board asks this Court to read into the statute. This Court will not, under the guise of statutory interpretation, amend the statute to limit the scope of its reasonable and obvious implications. *See State Farm of Fla. Ins. Co. v. Phillips*, 134 So. 3d 505, 507 (Fla. 5th DCA 2014) (when the language of a statute is unambiguous, the "reviewing court

should give effect to the statute's express terms, and its reasonable or obvious implications") (citation omitted); *see also* Antonin Scalia & Bryan A. Garner*, Reading Law: The Interpretation of Legal Texts* 94 (Thomson/West, 1st ed. 2012) ("The absent provision cannot be supplied by the courts.").

Second, Rule 6A-6.0781 of Florida's Administrative Code identifies the materials that must be presented to the Commission as part of any appeal. Those materials include the charter school application, transcripts of all meetings with the school board, and copies of all documents considered by the school board in making its decision. *See* Fla. Admin. Code R. 6A-6.0781(1)(b). Those materials, among others, "constitute the record on appeal." *Id.* The record on appeal is then attached to the written argument and collectively referred to as the "appeal documents." Fla. Admin. Code R. 6A-6.0781(1)(d). The entirety of the record on appeal, therefore, is, as a matter of course, presented to the Commission for its review.[1]

This Court declines the invitation to interpret section 1002.33(6)(e) in such a way as to limit the "other" or "clarify[ing]" information the Commission may "request" or "gather" to information which has *already* been presented to the Commission. Such an interpretation would, in addition to being contrary to the statute's plain meaning, render portions of the pertinent statutory provisions meaningless.[2] *See* § 1002.33(6)(e)2., (6)(e)5., Fla. Stat.

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[1] In fact, the failure to include every listed item is grounds for rejection of the submission. *See* Fla. Admin. Code R. 6A-6.0781(1)(e); *see also* § 1002.33(6)(c)2., Fla. Stat.

[2] The School Board's reliance on dictionary definitions for terms like "clarify" or "applicable" is misguided. This is not a case where some understanding of a term's original meaning would aid this Court in interpreting the statute in a manner consistent

Accordingly, we conclude the Commission was not limited to the information contained within the record on appeal and appropriately considered other clarifying information. The State Board's decision is supported by competent substantial evidence. We affirm all other issues without further discussion.

AFFIRMED.

SASSO, J., concurs.
EVANDER, C.J., concurs in result only.

with how it would have been understood by the legislature that passed the law. *Cf. Wis. Cent. Ltd. v. U.S.*, 138 S. Ct. 2067, 2070 (2018) (using various dictionary definitions in aid of interpreting "money remuneration" as understood in 1937). Nor are the terms "applicable" or "clarify" so technical or uncommon that this Court need refer to Merriam Webster. The School Board's use of dictionary definitions, in this case, results in nothing more than a strict construction of statutory provisions whose plain and ordinary meaning are evident. *See* Antonin Scalia, *A Matter of Interpretation* 23 (Princeton University Press, 6th ed. 1998) ("A text should not be construed strictly, and it should not be construed leniently; it should be construed reasonably, to contain all that it fairly means.").