

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
AUTOMOTIVE TECHNICAL CHARTER	)	Case No. 12-1258
HIGH SCHOOL OF SOUTH FLORIDA,	)	
INC.,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on June 5, 2012, in Fort Lauderdale, Florida, before June C. McKinney, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

Whether Broward County School Board has good cause to non-renew Automotive Technical Charter High School of South Florida, Inc.'s Charter School Agreement.

PRELIMINARY STATEMENT

At a regularly scheduled meeting on March 20, 2012, the Broward County School Board ("Petitioner" or "School Board") voted not to renew the Charter School Agreement existing between it and Automotive Technical Charter High School of South Florida, Inc., ("Respondent" or "Parkway Academy" or "school").

Parkway Academy elected to dispute the reasons for the non-renewal and requested a hearing by letter dated April 2, 2012. Because the school requested a formal proceeding, the matter was referred to the Division of Administrative Hearings ("DOAH").

The presiding administrative law judge set the final hearing for June 5, 2012. Both parties appeared at the appointed place and time.

On June 4, 2012, the undersigned heard Parkway Academy's Motion to Address Preliminary Matter by telephone conference. The undersigned ruled that the burden of proof is on the School

Board, which is asserting the affirmative in this matter by issuing a Notice of Proposed Non-Renewal of Charter School Agreement based on allegations of malfeasance or misconduct.

At hearing, the School Board presented the testimony of three witnesses: Jody Perry, Director of Charter Schools Support; Paul Houchens, Director of Student Assessment and Research; and Diane Rogers, Certification Administrator. The School Board also offered Exhibits numbered 1 through 10, and 13 through 17 that were admitted into evidence. Parkway Academy presented two witnesses: Dr. Christy Hovanetz, Expert in the Area of Educational Assessment and Testing; and Dr. Clarissa Wright, Principal and Executive Director of Parkway Academy. Respondent offered Exhibits numbered 1 through 4, that were admitted into evidence. The undersigned took judicial notice of section 1002.33, Florida Statutes.

The proceeding was recorded, transcribed, and filed with the DOAH on June 26, 2012. Both parties filed timely Proposed Recommended Orders at DOAH, which were considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. On June 19, 2001, the School Board approved the initial Charter School Agreement that allowed Parkway Academy to open. The original contract was effective for a ten-year period, which

ended on June 30, 2011. Parkway Academy was assigned school location number 5181.

2. Parkway Academy serves students from both Broward and Miami-Dade counties. Parkway Academy is located on Broward College Campus and the 2011-2012 school year enrollment was approximately 517 students.

3. Eighty-five students were in Parkway Academy's most recent graduating class and 84 were accepted into college.

4. Charter schools are part of the public school system and are required to follow the same precepts as a public school.

5. During the 2010-2011 school year, the school district conducted a program review of Parkway Academy's Charter to determine if the charter should be renewed.

6. After the first program review conducted during the 2010-2011 school year, the School Board determined that Parkway Academy had academic performance and programmatic deficiencies. As a result of the deficiencies, the School Board only granted Parkway Academy a one-year renewal Charter.

7. Parkway Academy's Charter was renewed for the 2011-2012 school year, permitting the school to operate through June 30, 2012.

8. The Charter Agreement mandated that Parkway Academy "provide educational services in accordance with the terms of [the] charter school agreement."

9. The Charter School Agreement provided the following contractual performance obligations in Section 2.D: "Any non-renewal cancellation or termination of the Charter shall be subject to Section 1002.33(8), Florida Statutes, and the terms of this Charter."

10. Section 2.D.1. of the Charter prohibited Parkway Academy from being designated a "school in need of improvement" for more than two years and provided the following non-renewal provisions:

(a) a failure by the School to participate in the state's education accountability system created in section 1008.31 or failure to meet requirements for student performance stated in this Charter.

\* \* \*

(f) receipt by the School of a state-designated grade of "F" in any Two (2) of Four(4) years or the School is designated as "a school in need of improvement" for more than Two (2) years [more than Five (5) years of failure to make Adequate Yearly Progress(AYP)], in accordance with the provisions of the No Child Left Behind Act of 2001. A "school in need of improvement" is one that has failed to make Adequate Yearly Progress (AYP) for more than Five (5) years in accordance with the provisions of the No Child Left Behind Act of 2001. The equivalent of an "F" grade is defined as the School receiving less than 395 points for elementary and middle schools and less than 790 for high schools on the Florida Grades issued by the Florida Department of Education. Schools that receive a school improvement designation of "Declining" will also be considered the equivalent to an "F"

grade. The foregoing point designations or school improvement ratings shall be amended during the term of this Charter to conform to current state law or rules;

11. Section 2.D.1.a of the Charter delineated what constitutes "good cause" for charter termination or non-renewal and read in pertinent part:

"Good cause" for termination or non-renewal shall include, but not be limited to, the following:

\* \* \*

(2) receipt by the School of a state-designated grade of "F" in any Two (2) of Four (4) years or the School is designated as "a school in need of improvement" for more than "Two (2) years [more than Five (5) years of failure to make Adequate Yearly Progress (AYP)], in accordance with the provisions of the No Child Left Behind Act of 2001. A "school in need of improvement" is one that has failed to make Adequate Yearly Progress (AYP) for more than Five (5) years in accordance with the provisions of the No Child Left Behind Act of 2001. The equivalent of an "F" grade is defined as the School receiving less than 395 points for elementary and middle schools and less than 790 for high schools on the Florida Grades issued by the Florida Department of Education. Schools that receive a school improvement designation of "Declining" will also be considered the equivalent to an "F" grade. The foregoing point designations or school improvement ratings shall be amended during the term of this Charter to conform with the current state or rules.

\* \* \*

(22) any other good cause shown, which shall include without limitation, any material breach or violation by the School of the

standards, requirements or procedures of this Charter such as:

\* \* \*

(c) the School's failure to fulfill all the requirements for highly qualified instructional personnel as defined by the No Child Left Behind Act (NCLB)

\* \* \*

(t) a failure by the School to fulfill all of the requirements for highly qualified instructional personnel as defined by NCLB

12. Section 11.D of the Charter provided the requirements for teacher certification and highly qualified teachers and read in pertinent part:

All teachers employed by or under contract to the School shall be certified and highly qualified as required by Chapter 1012, Florida Statutes and any other applicable state or federal law. Criteria developed by the School for hiring all other staff (administrative and support staff) shall be in accordance with their educational and/or experiential backgrounds that correspond to the job responsibilities they will be expected to perform. If the School receives Title I funds, it will employ highly qualified staff. In compliance with those requirements, the School's teachers shall be certified and teaching in-field and the School's support staff shall have attained at least Two (2) years of college education or have passed an equivalent exam. The School may employ or contract with skilled selected non-certified personnel to provide instructional services or to assist instructional staff members as education paraprofessionals in the same manner as defined in Chapter 1012 and as provided by State Board of Education rule for charter

school Governing Boards; however, in order to comply with NCLB requirements, all teachers in core academic areas must be certified/qualified based on Florida Statutes and highly qualified as required by NCLB. The School agrees to disclose to the parents of its students the qualifications of instructional personnel hired by the School.

13. Parkway Academy's Charter Agreement for the 2011-2012 school year was signed by the parties on or about March 3, 2011, and went into effect July 1, 2011.

14. The School District conducted its next renewal review of Parkway Academy during the last week of October and first week of November of 2011 to determine if the charter school renewal should go beyond the 2011-2012 school year.

15. Diane Rogers ("Rogers"), Personnel Administrator for the Certification Department, audited and reviewed Parkway Academy's instructors and the courses each instructor was teaching. On or about October 26, 2011, Rogers retrieved teacher assignment information from the Data Warehouse<sup>1</sup> and reviewed the instruction assignments and qualifications for the 2011-2012 school year to make a determination if each of Parkway Academy's teachers were certified, teaching in field, out of field, highly qualified, or not highly qualified for the teaching assignments he/she had been given.

16. After completing the teacher review audit, Rogers identified the following five faculty members who lacked

appropriate teacher certification: John Ahrens ("Ahrens"), Valerie Cedant ("Cedant"), Jerry Goodbolt ("Goodbolt"), Talondra Ingram ("Ingram"), and Uriel Williams ("Williams").

17. Rogers found Ahrens was teaching auto mechanics and auto tech but did not have the required Broward certificate. Rogers notified Parkway Academy in November 2011 that Ahrens needed a Broward teaching certificate.

18. Rogers also found that Cedant previously had a temporary certificate, which expired June 30, 2011, and Ingram's temporary certificate had also expired before the 2011-2012 school year. Additionally, Goodbolt was working at the school without ever applying for a teaching certificate.

19. While assessing the Parkway Academy, Rogers also discovered Williams had applied for a certificate from the Florida Department of Education ("FDOE"). FDOE determined his status was ineligible for a Florida educator's certificate in any area. Therefore, Rogers properly categorized Williams as not highly qualified to teach his assignments, Physical Education, Personal Fitness and Health Education, for the school because Williams did not have the basic requirement, a Florida educator's certificate.

20. Rogers also identified the following eight teachers who did not have the required highly qualified<sup>2</sup> status when she did her review: Floyd Barber ("Barber"), Cedant, Ingram,

Gleandael Johnson ("Johnson"), Lee Kornhauser ("Kornhauser"), Hyaptia Mata ("Mata"), Roxanna Smilovich ("Smilovich"), and Manage Vincent ("Vincent").

21. Rogers determined that Cedant was not highly qualified in that Cedant was precluded from the status because she did not have a valid educator's certificate and was also teaching improperly out of field without a valid educator's certificate.

22. Rogers determined that Barber was not highly qualified to teach his assignment, Literature and Arts, since his FDOE certification was in Business Education. Therefore, he was improperly teaching out of field at Parkway Academy.

23. Rogers also found in her review that Johnson had a FDOE certificate in Business Education 6 through 12 but she was assigned to teach Journalism, which requires FDOE certification either in English 6 through 12, Journalism, or English 5 through 9. Therefore, Johnson was not highly qualified to teach Journalism because she was teaching out of field improperly, and she had not met the requirements.

24. Rogers also discovered during her audit that Kornhauser was FDOE certified in Math 5 through 9, which allows him to teach middle school grade level math but he was assigned to teach Business Math and Math for College Readiness, which requires a Mathematics 6 through 12 certification. Therefore, Rogers determined that Kornhauser was not highly qualified to

teach his assigned courses and was improperly teaching out of field.

25. Rogers' review of Mata found that she was FDOE certified in Biology 6 through 12, but she was assigned to teach Earth Space Science, Chemistry, and Physics, all three of which required certifications other than Biology. Rogers determined Mata was not highly qualified to teach the three courses and was improperly teaching out of field.

26. Upon review, Rogers found that Smilovich's FDOE certification was in Biology 6 through 12, but she was assigned to teach Earth Space Science, which requires certification in Chemistry, Physics, Earth Space Science, or General Science 5 through 9. Rogers' audit also determined that Smilovich was not highly qualified for her assigned class, and she was improperly teaching Earth Space Science out of field.

27. Rogers' review also found Vincent was FDOE certified in Biology 6 through 12, but Vincent was teaching Chemistry, which requires a certification in Chemistry 6 through 12. Rogers determined that Vincent was not highly qualified for the teaching assignment and was improperly teaching Chemistry out of field.

28. Parkway Academy employed and had the following instructors teaching out of field for the 2011-2012 school year without the proper credential for the core course of instruction

they were assigned: Cedant, Ingram, Johnson, Kornhauser, Mata, Smilovich, Vincent, and Williams.

29. Seventeen out of the 52 classes at Parkway Academy were being taught out of field.

30. After discovering the teachers who were teaching out of their fields during her audit, Rogers also checked to determine if Parkway Academy had complied with the requirement to notify the parents that their children had teachers providing instruction out of field. Rogers found that Parkway Academy had only notified parents partially regarding Vincent and Mata. She concluded that the newsletter notification was incomplete for Mata because it listed only one of her areas being out of field, and it failed to notify the parents about the other instructors teaching out of field.

31. Rogers concluded her audit by determining that Parkway Academy did not comply with the Charter School Agreement and laws because the school failed to employ teachers who all had valid teaching certificates, failed to have all of its teachers teaching in the appropriate field, failed to correctly designate teachers who were highly qualified to teach core curriculum subject areas, and failed to correctly notify parents that their children were being taught by teachers who were out of field.

32. Rogers emailed Parkway Academy on or about December 1, 2011, and requested updated information on the status of each

deficiency regarding the instructors that lacked the proper certification and/or qualifications that she had discovered during her review.

33. Parkway Academy provided Rogers an email update the next day on each teacher Rogers had listed in the email of December 1, 2011, that was not in compliance, but Parkway Academy never provided Rogers any replacement teachers' names or certifications to verify compliance as she requested.

34. During December 2011, Parkway Academy took the following measures to correct some of the teacher certification and qualification deficiencies. Parkway Academy replaced Cedant, Ingram, and Smilovich with certified, highly qualified teachers. Also, Parkway Academy changed Barber, Johnson, and Kornhauser's core course codes to courses they were certified to teach.

35. Parkway also obtained out of field agreements with Mata and Vincent to teach courses they were not certified to teach while each worked on certification in the area they were teaching.

36. The School Board's Testing and Assessment Department also reviewed Parkway Academy's Charter. Among other things, the Department looked at Parkway Academy's Adequate Yearly Progress ("AYP"), the measure of school performance used to comply with the No Child Left Behind Act of 2001 ("NCLB").

37. The Testing and Assessment Department found that Parkway Academy did not meet AYP for the latest school year 2010-2011, which was reported after the signing of the renewal Charter School Agreement in March 2011.

38. Additionally, the Department determined that the failure to meet the requirements for student performance for the 2010-2011 school year meant Parkway Academy had failed to make AYP for the following eight consecutive years: 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011.

39. Parkway Academy's failure to meet the AYP for eight consecutive years earned the school the status of a "school in need of improvement" for more than two years.

40. Parkway Academy failed to operate in compliance with the Charter School Agreement.

41. The Certification Department's audit review report which showed a failure to use instructors that had the proper certification and/or qualifications for a substantial part of the year, combined with the Testing and Assessment Department's review results that concluded the Respondent was a "school in need of improvement" for more than two years due to failing to make AYP for eight consecutive years, caused a recommendation to be made to the School Board to non-renew Parkway Academy's Charter.

42. On March 20, 2012, the School Board voted not to renew Parkway Academy's Charter. A Proposed Non-Renewal of its Charter notice was sent to Parkway Academy. On April 4, 2012, the School Board received Parkway's letter dated April 2, 2012, requesting a hearing upon the proposed Charter non-renewal, which was forwarded to the DOAH.

43. The day of the formal hearing, Ahrens obtained a vocational certificate, which qualified him to teach auto mechanics and auto tech. Kornhauser neither had applied for nor obtained mathematics certification for grades 6 through 12.<sup>3</sup>

#### CONCLUSIONS OF LAW

44. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to section 1002.33(8)(b)(2), Florida Statutes.

45. Section 1002.33(7)(b)1, provides in pertinent part:

A charter may be renewed provided that a program review demonstrates that the criteria in [the Charter] has been successfully accomplished and that none of the grounds for nonrenewal established by paragraph (8)(a) has been documented.

46. Section 1002.33(8)(a), delineates the causes for nonrenewal or termination of a charter and provides in pertinent part:

(a) The sponsor may choose not to renew or may terminate the charter for any of the

following grounds:

1. Failure to participated in the state's education accountability system created in s. 1008.31, as required in this section, or failure to meet the requirements for student performance stated in the charter.
2. Failure to meet generally accepted standards of fiscal management.
3. Violation of law.
4. Other good cause shown.

47. In this matter, the School Board seeks to non-renew Parkway Academy's Charter based on specific allegations. Accordingly, the School Board has the burden of proving the allegations charged in the Notice of Proposed Non-Renewal of Charter School Agreement against Parkway Academy by the preponderance of the evidence. M.H. v Dep't of Child. & Fam. Servs., 977 So. 2d. 755 (Fla. Dist. Ct. App. 2nd. Dist. 2008).

48. The School Board has sustained its burden in this matter. The Charter School Agreement at issue was signed on or about March 3, 2011, for the 2011-2012 school year. Afterwards, Parkway Academy received another report of failing AYP for the 2010-2011 year, which resulted in Parkway Academy attaining the status of a "school in need of improvement" for more than two years due to its documented eight consecutive years failing to make AYP. Under such circumstances, Parkway Academy's failure to meet the requirements for student performance stated in the school's charter including the status of a "school in need of improvement" establishes good cause for non-renewal pursuant to

section 2.D.1.a(2) and the non-renewal provision of section 2.D.1.f of the Charter School Agreement.

49. Parkway Academy signed the Charter School Agreement on or about March 3, 2011, knowing the 2010-2011 AYP would soon be issued. The school was aware of the six previous years of failure to meet the AYP when it signed the new charter, which specified non-renewal in section 2.D.1.f if the school was not able to comply with the contract. Parkway Academy signed the Charter School Agreement at its own peril. Therefore, the school's contention in its Proposed Recommended Order that the School Board entered into the agreement in bad faith is not persuasive. Additionally, the assertion that AYP should not be considered in this matter and is no longer evaluated is rejected by the undersigned.

50. Section 1002.33(12)(f), addresses the matter of teacher certification and states in pertinent part as follows:

(f) Teachers employed by or under contract to a charter school shall be certified as required by chapter 1012. A charter school governing board may employ or contract with skilled selected noncertified personnel to provide instructional services or to assist instructional staff members as education paraprofessionals in the same manner as defined in chapter 1012, and as provided by State Board of Education rule for charter school governing boards. A charter school may not knowingly employ an individual to provide instructional services or to serve as an education paraprofessional if the individual's certification or licensure as

an educator is suspended or revoked by this or any other state. A charter school may not knowingly employ an individual who has resigned from a school district in lieu of disciplinary action with respect to child welfare or safety, or who has been dismissed for just cause by any school district with respect to child welfare or safety. The qualifications of teachers shall be disclosed to parents.

51. Parkway Academy started the 2011-2012 school year in a probationary status with only a one-year renewal Charter because of previous educational and organizational performance deficiencies. The record is clear that during the year, the students at Parkway Academy did not receive the instruction from credentialed and qualified teachers as the school was obligated to provide and to which they were entitled. The record evidence indisputably shows that Parkway Academy signed the Charter Agreement for the 2011-2012 school year and then employed five non-certified teachers who were either not eligible for an educator's certificate or had an expired, invalid, or no certificate. Additionally, Parkway Academy employed eight instructors during the school year that were teaching out of field; the school failed to notify the parents that their children had teachers who are teaching seventeen of the courses out of field. The school employed nine teachers who were not highly qualified for their positions for a substantial portion of the school year.

52. Even though Parkway Academy remedied the majority of improper teacher certifications and qualifications in December 2011, the remedy does not satisfy the statutory and Charter Agreement obligations Parkway Academy had to employ certified, highly qualified teachers and assign them core courses to teach in their field. Additionally, the uncertified, ineligible teachers never should have been employed. Therefore, good cause exists to demonstrate Parkway Academy failed to comply with the Charter Agreement during the term of the contract by not meeting sections 2.D.1.A(22)(c),(t) and 11.D, and the school violated section 1002.33(12)(f), during a substantial portion of the school year by not having certified and qualified teachers, teaching in the proper fields.

53. The arguments asserted by Parkway Academy are unpersuasive because the school failed to comply with the Charter Agreement and the statutory requirements for teacher certification and qualifications. Any contention by the school that teachers Williams and Cedant were teaching as substitutes is rejected in that a substitute teacher is prohibited from teaching over 30 days consecutively without being fully certified as any other teacher.

54. It is concluded that the School Board met its burden and demonstrated good cause for non-renewal of Parkway Academy's Charter due to its status as a "school in need of improvement"

for more than two years and the school's failure to have certified, qualified instructors, teaching in the proper field for a substantial portion of the year. Also, Parkway Academy failed to notify the parents of the instructors teaching out of field. Therefore, Parkway Academy's Charter should not be renewed by the School Board.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Broward County School Board, enter a final order declining to renew the Charter School Agreement for Automotive Technical Charter High School of South Florida Inc., upon both the statutory and contractual grounds of (1) failure to meet the requirements for student performance stated in Parkway Academy's Charter including the school's status as a "school in need of improvement" for more than two years; (2) failure to use instructors having proper certification and/or qualifications; (3) failure to have teachers teaching in their fields; and (4) failure for Parkway Academy to disclose the out of field qualifications to the students' parents.

DONE AND ENTERED this 10th day of August, 2012, in  
Tallahassee, Leon County, Florida.

*June C. McKinney*

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JUNE C. MCKINNEY  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 10th day of August, 2012.

ENDNOTES

<sup>1</sup> The Data Warehouse is the retrieval system for electronic data. Charter school provide information in TERMS, and electronic storage system. TERMS transmits the information to the Data Warehouse for the School Board's use.

<sup>2</sup> Highly Qualified is a teacher that holds the appropriate certification for the core subject assigned to teach for the particular grade level, which might include passing an appropriate exam or other means of demonstrating subject area expertise.

<sup>3</sup> Rogers' testimony is held to be more credible as to Kornhausers' Mathematics 6 through 12 certification status the day of the hearing.

COPIES FURNISHED:

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#### NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.