

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS COMMISSIONER
OF EDUCATION,

Petitioner,

Case No. 20-3936SP

vs.

ACADEMY OF EDUCATION SCHOOL (6979),

Respondent.

_____ /

RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2020),¹ on September 29, 2020, by Zoom video conference in Tallahassee, Florida.

APPEARANCES

For Petitioner: Jason Douglas Borntreger, Esquire
Department of Education
325 West Gaines Street, Suite 1544
Tallahassee, Florida 32310

For Respondent: James Sweeting, III, Esquire
James Sweeting, III, LLC
Post Office Box 215
Churchville, Maryland 21028

¹ All statutory references are to Florida Statutes (2020), unless otherwise noted.

STATEMENT OF THE ISSUE

Whether grounds exist to deny the application of Respondent, Academy of Education School (6979), to participate in the Florida state scholarship programs under chapter 1002, Florida Statutes.

PRELIMINARY STATEMENT

On March 25, 2020, Respondent, Academy of Education School (6979) (the “Academy”), submitted a request to Petitioner, Richard Corcoran, as Commissioner of Education (the “Commissioner”), to participate in the state scholarship programs pursuant to section 1002.421.

On May 21, 2020, the Commissioner issued a letter denying the Academy’s request. To explain its decision, the Commissioner’s letter stated that probable cause existed to believe that “there is fraudulent activity on the part of [the Academy].”

Respondent challenged the Commissioner’s action by timely filing a Petition for Chapter 120 Administrative Hearing on June 15, 2020. Respondent subsequently filed an Amended Petition for Chapter 120 Administrative Hearing on July 28, 2020, as well as a Second Amended Petition for Chapter 120 Administrative Hearing on August 10, 2020. On August 31, 2020, the Commissioner referred this matter to the Division of Administrative Hearings (“DOAH”) for assignment of an Administrative Law Judge (“ALJ”) to conduct a chapter 120 evidentiary hearing.

The final hearing was held on September 29, 2020. At the final hearing, the Commissioner called Phylea Daugherty and Whitney Blake to testify. The Academy called Blaire Bishop,² Ingrid Bishop, and Cassandra Cook as

² To avoid confusion, Blaire Bishop is identified as “Ms. Bishop.” Her mother, Ingrid Bishop, is referred to by her full name.

witnesses. Joint Exhibits 1 and 2 were admitted into evidence. The Commissioner's Exhibits 1 through 19 were admitted into evidence. The Academy's Exhibits 1 through 3 were admitted into evidence.

A two-volume Transcript of the final hearing was filed with DOAH on October 21, 2020. At the close of the hearing, the parties were advised of a ten-day timeframe following DOAH's receipt of the hearing transcript to file post-hearing submittals. The Commissioner timely submitted a Proposed Recommended Order. Following the hearing, the Academy requested an extension of the timeframe to file its post-hearing submittal, which was granted for good cause shown.³ The Proposed Recommended Orders from both parties were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. The Commissioner is the chief educational officer for the State of Florida. The Commissioner is responsible for assisting the State Board of Education in enforcing compliance with the mission and goals of the K-20 education system. *See* § 1001.10(1), Fla. Stat.

2. The Academy is a private school formed in Orlando, Florida. The Academy registered as a private school with the Florida Department of Education (the "Department") in March 2020.

3. On March 25, 2020, the Academy submitted a request to participate in the state educational scholarship programs established under chapter 1002. These programs include the John M. McKay Scholarship for Students with Disabilities Program, the Florida Tax Credits Scholarship Program, the Gardiner Scholarship Program, the Hope Scholarship Program, the Reading

³ The Academy's motion for extension was filed after the expiration of the ten-day deadline it sought to extend, which is contrary to Florida Administrative Code Rule 28-106.204(4). However, the Commissioner did not oppose the undersigned's consideration of Academy's Proposed Recommended Order.

Scholarship Program, and the Family Empowerment Scholarship Program (collectively referred to as the “Scholarship Programs”).⁴

4. The Scholarship Programs distribute state funds to pay tuition for students who come from low-income families or have disabilities. The scholarships help children attend their (private) school of choice. For a school to be eligible to receive money from one or more of the Scholarship Programs, it must comply with the requirements set forth in section 1002.421.

5. The Commissioner's is the state government entity charged with administering and overseeing the Scholarship Programs. Pertinent to this matter, section 1002.421(3) authorizes the Commissioner to deny a private school's eligibility to participate in the Scholarship Programs if it is determined that the owner or operator of the school has exhibited a previous pattern of failure to comply with section 1002.421.

6. After reviewing the Academy's application, on May 21, 2020, the Commissioner issued a letter denying the Academy's request. The Commissioner explained that its decision was based on the (alleged) inappropriate relationship between the Academy and another private school named Agape Christian Academy (“Agape”). Agape was the subject of prior discipline from the Commissioner regarding its improper activity involving the Scholarship Programs.

7. As background information, Agape was founded as a private school in 2002, and remained operational until 2018. Agape was housed in a building located at 2425 N. Hiawasse Road, Orlando, Florida.

8. From 2015 through 2018, Ingrid Bishop served as president of Agape's corporate entity. Also during this time, Cassandra Cook was an employee of Agape, and served on Agape's board of directors.

9. After its formation, Agape requested, and was granted, eligibility to participate in the Scholarship Programs.

⁴ See §§ 1002.385, 1002.39, 1002.394, 1002.395, 1002.40, and 1002.411, Fla. Stat.

10. In March 2016, however, the Commissioner initiated an action to revoke Agape's eligibility. The revocation was based on the Commissioner's findings that Agape was operating from an unapproved location and had filed a fraudulent annual fire inspection report with the Department.

11. Thereafter, in August 2016, Agape and the Commissioner entered into a Settlement Agreement wherein the Commissioner allowed Agape to remain eligible for the Scholarship Programs on a probationary status, if Agape agreed to reimburse the Commissioner for past scholarship funds received while not in compliance with state law.

12. Soon thereafter, however, Agape breached the terms of the Settlement Agreement. Consequently, on May 11, 2018, the Department issued a Final Order terminating Agape's authority to participate in the Scholarship Programs. The Commissioner further ordered that:

Agape's ... officers, directors, principal, or controlling persons [are] ineligible to participate in the Gardiner, McKay or Florida Tax Credit Scholarship Programs for a period of ten years from the date of the Final Order.

13. Regarding the action against the Academy, as articulated in its May 21, 2020, letter, the Commissioner bases its decision to deny the Academy's application on the following reasons:

1) The Academy's relationship with Cassandra Cook: Ms. Cook was employed as an officer, director, principal, or controlling person of Agape. Pursuant to the Agape Final Order, Ms. Cook is ineligible to participate in the Scholarship Programs for ten years. The Commissioner asserts that the circumstances surrounding the creation of the Academy indicate that the Academy is "operating as a proxy or surrogate for Agape and/or Cassandra Cook." Consequently, the Academy's association with Ms. Cook renders the Academy ineligible to participate in the Scholarship Programs.

2) The Academy's relationship with Ingrid Bishop: Ingrid Bishop was employed as an officer, director, principal, or controlling person of Agape.

Pursuant to the Agape Final Order, Ingrid Bishop is ineligible to participate in the Scholarship Programs for ten years. The Commissioner asserts that the circumstances surrounding the creation of the Academy indicate that the Academy is “operating as a proxy or surrogate for Agape and/or ... Ingrid Bishop.” Consequently, the Academy’s association with Ingrid Bishop renders the Academy ineligible to participate in the Scholarship Programs.

3) The relationship between Academy officers or employees and Ingrid Bishop: The Academy intends to employ Blaire Bishop, Braelyn Bishop, and Brooke Bishop in some capacity. All three women are related to Ingrid Bishop (her daughters). The Commissioner’s position is that the relationship between these Academy personnel and Ingrid Bishop renders the Academy ineligible to participate in the Scholarship Programs.

4) The Academy’s relationship with Northwestern Learning Center, Inc. (“Northwestern”): In addition to Agape, the Commissioner previously denied Northwestern’s eligibility to participate in the state scholarship programs. Northwestern’s denial was based on its relationship with Ms. Cook. The Academy intends to set up its school on property owned by Northwestern. The business relationship between the Academy and Northwestern (and Ms. Cook) renders the Academy ineligible to participate in the Scholarship Programs.

14. In short, the Commissioner believes that the same parties who owned and operated Agape (Ingrid Bishop and Ms. Cook) are behind the formation of the Academy. This time, however, Ingrid Bishop’s children (Blaire, Braelyn, and Brooke Bishop) are the named officers, directors, principals, or controlling persons. The Commissioner alleges that Blaire Bishop is not the legitimate owner/operator of the Academy, and the Academy’s “true” founders (Ingrid Bishop and Ms. Cook) are fraudulently conducting a shell game in “an effort to circumvent the Department’s Final Order.”

15. To support its position, the Commissioner first called Phylea Daugherty to testify regarding the Commissioner’s investigation into the

connection between Agape and the Academy. As a “site visit specialist” for the Department’s Office of Independent Education and Parental Choice (“IEPC”), Ms. Daugherty is tasked with visiting private schools that apply to participate in the Scholarship Programs. She explained that a school must pass her inspection prior to becoming eligible to receive scholarship funds for its students.

16. Ms. Daugherty expressed that the Academy’s application raised concerns when her office noticed that the Academy’s facilities were located close by a school (Agape) whose eligibility to receive scholarship funds had been revoked. Her office also noted that the last name of the person who signed the Academy’s application (“Bishop”) matched the name of an individual who the Commissioner had deemed ineligible to participate in the Scholarship Programs.

17. That being said, Ms. Daugherty divulged that, aside from the possible issues regarding the relationship between the Academy and Agape (the schools’ locations and biologically related officers or employees), the Academy’s application was complete. Therefore, nothing else on the face of the application explicitly indicated that the Commissioner should deny it.

18. Whitney Blake, a Compliance Specialist for IEPC, also testified regarding the Commissioner’s decision to deny the Academy’s application. As part of her responsibilities, Ms. Blake reviews applications from Florida private schools that request to take part in the Scholarship Programs.

19. Echoing Ms. Daugherty’s testimony, Ms. Blake expressed that the Academy’s application raised two concerns: 1) the Academy’s intended location suggested a close association with a sanctioned entity (Agape), and 2) the fact that the Academy’s officers and employees might be related to the officers or employees of another school (Agape) whose authority to participate in the Scholarship Programs was revoked.

20. Ms. Blake explained that the Commissioner’s Final Order from May 11, 2018, banned Ingrid Bishop and Ms. Cook from participating in the

Scholarship Programs for a period of ten years. Consequently, neither Ingrid Bishop nor Ms. Cook may personally serve as officers, directors, principals, or controlling parties at any other private school that is authorized to accept scholarship funds.

21. In June 2018, however, Ms. Cook⁵ became involved in a new school that registered with the Department called Orlando Christian Academy (“Orlando Christian”). Soon thereafter, Orlando Christian applied to participate in the Scholarship Programs. In November 2019, after discovering its association with Ms. Cook, the Commissioner denied Orlando Christian’s application.

22. Moreover, Ms. Blake testified that Orlando Christian’s listed address, 2425B N. Hiawassee Drive, Orlando, Florida, is situated very near the Academy’s intended address of 2332 N. Hiawassee Drive, Orlando, Florida. This address is also close to Agape’s former location at 2425 N. Hiawassee Road, Orlando, Florida.

23. In addition, based on Orange County, Florida, property records, the current owner of 2332 N. Hiawassee Drive is Northwestern. Ms. Cook served on Northwestern’s board of directors from 2017 through 2019. (Ms. Cook is not listed as an officer or director on Northwestern’s annual corporate report for 2020.) Northwestern acquired the property in 2012 from Agape via a quitclaim deed executed by Ingrid Bishop. Ms. Blake expressed that the facts and circumstances surrounding the Academy’s formation insinuate a similar attempt by Ms. Cook to start another private school to unlawfully take advantage of the state scholarship funds.

24. Ms. Blake testified that based on all the circumstantial evidence connecting the Academy to Agape, Northwestern, Ms. Cook, and Ingrid

⁵ Ms. Cook has used several names over the past twenty years including Cassandra Cook Wood, C. D. Wood, and Sandra Wood. When Orlando Christian applied for scholarship eligibility in 2019, Ms. Cook identified herself as “Sandra Wood.”

Bishop, the Commissioner had serious cause for concern that Ms. Cook and/or Ingrid Bishop were also involved in the administration, management, and operation of the Academy. According to Ms. Blake, such “undue participation” by prohibited persons in the Academy’s attempt to obtain scholarship funds is grounds to deny the Academy’s application.

25. Despite these facts, Ms. Blake acknowledged that no former officer, director, principal, or controlling party from Agape is included or referenced in any corporate document related to the Academy’s formation or application. In particular, neither Ingrid Bishop nor Ms. Cook are listed on any Academy corporate records.

26. Further, Ms. Blake repeated Ms. Daugherty’s statement that, other than the Academy’s proposed location and the fact that Ingrid Bishop is related to the Academy’s officers and employees, the Academy’s application does not contain information that would cause the Commissioner to automatically deny it.

27. At the final hearing, the Academy argued that the Commissioner’s decision to deny its application is based on false and unsupported assumptions regarding the relationship between the Academy’s founders and officers (Blaire, Braelyn, and Brooke Bishop) and Agape’s founders and officers (Ingrid Bishop and Ms. Cook). The Academy charges that the Commissioner unfairly ties Ms. Bishop to the sins of her mother, with no proof that Ingrid Bishop is connected to the Academy in any way.

28. Blaire Bishop testified on behalf of the Academy. Ms. Bishop founded the Academy and serves as president of its board of directors. She also intends to fill the role of the Academy’s first principal.

29. Ms. Bishop described herself as a product of her community. She attended Agape from kindergarten through high school. Upon graduation from college at Florida A&M University (“FAMU”) in 2018, she returned to Orlando and is pursuing a master’s degree in educational leadership from the University of Central Florida.

30. Ms. Bishop expressed that she now finds herself in a position to give back to the community in which she grew up. She has dreamed of opening a school for some time. Ms. Bishop voiced that she created the Academy as a way to provide educational opportunities for underprivileged children who live in northwest Orlando.

31. Ms. Bishop explained that, currently, the Academy is still in the development and planning stage. She envisions opening her school with about 100 students. She would like to offer classes from kindergarten through high school. At this time, however, she has not hired any employees. Neither has she enrolled any students. She anticipates, however, that her two sisters, Braelyn and Brooke Bishop, who have agreed to serve as officers of the Academy's corporate entity, will also have a role with the school.

32. Ms. Bishop conveyed that, from an administrative standpoint, she is ready to open the Academy. However, to effectively operate as a private institution, her school will be dependent upon money from the Scholarship Programs. The vast majority of the low-income children she hopes to attract cannot afford private school tuition. Consequently, scholarship money is essential to help fund their enrollment. Ms. Bishop estimates that each student who qualifies for a scholarship will receive approximately \$4,500 - \$5,000 a year, which will be forwarded to the Academy if its application is approved. Ms. Bishop disclosed that she cannot feasibly run her school unless the Commissioner allows it to participate in the Scholarship Programs.

33. Ms. Bishop expounded that, with the financial assistance awarded through the Scholarship Programs, the Academy will offer free, private school education to low-income students living nearby. Consequently, the Commissioner's decision to disallow the Academy from accepting scholarship funds only serves to negatively impact needy children in the Orlando area.

34. Ms. Bishop urges that she independently founded the Academy, and her school has no connection with the now-defunct Agape or any of its previous officers, directors, or employees. Ms. Bishop insists that the

Academy is not a strawman or surrogate for Agape. She has not allowed anyone associated with Agape to help her incorporate or organize her school. Specifically, Ms. Bishop testified that neither her mother nor Ms. Cook have played any role in creating the Academy. They have not provided any financial assistance to the Academy. Neither will they receive any benefits or compensation from Academy income or resources.

35. In addition, Ms. Bishop asserted that she was not involved in, nor did she have any connection with, the administration, creation, or management of Agape. Ms. Bishop further testified that she was not personally bound by, named, identified, or referenced in the Settlement Agreement between Agape and the Commissioner. Accordingly, she argues it is fundamentally unfair to deny the Academy the ability to participate in the Scholarship Programs based on the breach of an agreement to which she was not a party.

36. Regarding the Academy's location, Ms. Bishop explained that she is interested in leasing the building located at 2332 N. Hiawassee Drive, which is currently owned by Northwestern. Ms. Bishop explained that the property would provide a great location for the Academy. It is located within her community and was previously used as a school.

37. Further, while the building the Academy may use is situated across the street from the former Agape site (2425 N. Hiawassee Drive), Ms. Bishop proclaimed that, other than being located in close proximity with each other, there is no connection between the two schools. Further, while setting up in the 2332 N. Hiawassee Drive location will require her to rent property from Northwestern, no one associated with Northwestern helped her create the Academy. Neither does she plan on conferring with or employing anyone who currently works for Northwestern, or who previously worked for Agape.

38. Ms. Bishop's testimony describing the relationship between the Academy and Agape, Northwestern, Ingrid Bishop, and Ms. Cook was credible and is credited. Ms. Bishop spoke with conviction, and no documents or other witness testimony refute her representation that she was not

involved in the administration or management of Agape. Neither does the competent, substantial evidence prove that any individual associated with Agape or Northwestern will be involved in the administration or management of the Academy.

39. Ingrid Bishop testified at the final hearing to support the Academy's application. Ingrid Bishop is Ms. Bishop's mother.

40. Ingrid Bishop and her husband, Richard (Ms. Bishop's father), founded Agape. Ingrid and Richard Bishop also lead the Agape Assembly Baptist Church ("Agape Church"). Agape Church is located at 2425 N. Hiawasse Drive, which was the same location as the Agape school. Ingrid Bishop expressed that Agape served as an outreach ministry for the Agape Church.

41. According to Ingrid Bishop, Agape was founded in 2002 as an independent non-profit corporation. The school's initial board members included Ingrid Bishop, Richard Bishop, and Cassandra Cook. These three individuals remained Agape's corporate officers through the school's dissolution in 2018, and are subject to the Commissioner's 2018 Final Order.

42. Mirroring her daughter's intentions for the Academy, Ingrid Bishop explained that Agape's goal was to provide a private school option for low-income children and children with disabilities from the local community. Ingrid Bishop relayed that 98 percent of the students who matriculated at Agape were from underprivileged families. Based on that population, Agape's ability to operate relied heavily on the funds its students received through the Scholarship Programs. Ingrid Bishop further stated that Agape elected not to charge tuition to any student. Instead, the school relied on the scholarship funds as its sole source of revenue. At its peak, Agape averaged about 300 students on scholarships during a school year.

43. Ingrid Bishop freely recounted that Agape ran into trouble with the Commissioner in 2016 based on a fire inspection report that one of her employees had allegedly forged. Agape and the Commissioner subsequently

entered into the Settlement Agreement. Ingrid Bishop signed the Settlement Agreement on behalf of Agape.

44. Regarding her daughter's involvement in Agape, Ingrid Bishop credibly testified that Ms. Bishop never served as an employee, administrator, agent, or director of Agape. Ms. Bishop's only interaction with Agape was when she attended the school as a student from kindergarten through high school.

45. Ingrid Bishop further asserted that her daughter had no involvement in the underlying issues between Agape and the Commissioner. She conveyed that Ms. Bishop graduated from Agape high school in 2014 and was a student at FAMU in Tallahassee when the Commissioner began its investigation into Agape. Neither did Ms. Bishop play any part in Agape's decision to settle with the Commissioner or negotiating the terms of the Settlement Agreement.

46. Ingrid Bishop acknowledged that Agape has not been an active school since 2018. After the Commissioner revoked Agape's authority to receive funds from the Scholarship Programs in 2017, Agape could only effectively operate for one more year. Agape's corporate entity was administratively dissolved in September 2018.

47. Finally, Ingrid Bishop convincingly represented that Ms. Bishop is acting completely independently in creating the Academy, as well as drafting the Academy's application to participate in the Scholarship Programs. Ingrid Bishop asserted that she has not been included in her daughter's designs and plans for the Academy. She denied that she will work for the Academy in any capacity. Neither will she have any financial interest in the school.

48. Similarly, Ingrid Bishop commented that the location the Academy selected to use, 2332 N. Hiawassee Road, is not the same location as Agape. It is across the street. Ingrid Bishop disclosed that Agape, at one point, leased this site to use as a separate facility for its high school, but it currently does not own or use this property.

49. As a final declaration, Ingrid Bishop readily recognized that her involvement in the Academy's affairs would jeopardize her daughter's efforts to run her own school. Therefore, she has deliberately avoided any participation in the Academy's formation. Ingrid Bishop expressed that she understands that she must keep Agape's past dispute with the Commissioner completely separate from her daughter's application for scholarship funds.

50. Ms. Cook also testified to support Ms. Bishop's representation that the Academy is not connected to either Agape or herself. Ms. Cook declared that she has no involvement or relationship with the Academy. She was not consulted when Ms. Bishop formed the school. Neither has Ms. Bishop asked Ms. Cook to work there.

51. Regarding her relationship with Ms. Bishop, Ms. Cook relayed that she has known Ms. Bishop since she was a student at Agape.

52. Addressing her time with Agape, Ms. Cook admitted that she worked for the school in a number of roles between 2003 and 2018. Her responsibilities included administrator and dean of students. However, she declared that Ms. Bishop was not involved in the administration or management of Agape. Ms. Cook never saw Ms. Bishop in the Agape administrative offices when she was in school there.

53. Regarding Orlando Christian, Ms. Cook stated that this school was to be located at 2425B N. Hiawassee Road in a building just next to the Agape Church. However, neither Orlando Christian nor the Agape school occupied the same proposed site as the Academy (2332 N. Hiawassee Road).

54. Finally, Ms. Cook confirmed that Northwestern owns the property located at 2332 N. Hiawassee Drive, where the Academy may be located. However, Ms. Cook offered that she no longer serves on Northwestern's board of directors. She represented that in 2019, she was dismissed from the board due to lack of participation.

55. During the final hearing, Ms. Cook's testimony came across as self-serving and lacking in details. However, no evidence or testimony directly

refutes her representation that she is not involved, and will not be involved, in the Academy's formation, administration, management, or operation. Accordingly, Ms. Cook's testimony is credited to the extent that it was corroborated by Ms. Bishop and Ingrid Bishop.

56. Based on the competent substantial evidence presented at the final hearing, the greater weight of the facts do not establish that the Academy is inappropriately associated with Agape, Ingrid Bishop, Ms. Cook, or Northwestern, or that the Academy is "operating as a proxy or surrogate for Agape and/or Cassandra Cook and/or Ingrid Bishop." Neither do the facts in the record show that the Academy is attempting to perpetrate a fraud on the Commissioner in order to qualify for scholarship eligibility by concealing or misrepresenting its relationship with Agape, Ingrid Bishop, Ms. Cook, or Northwestern.

57. Consequently, the Academy demonstrated that the preponderance of the evidence does not support the Commissioner's decision to deny the Academy's application based on the reasons cited in the Commissioner's letter, dated May 21, 2020. Accordingly, the Commissioner should continue to process the Academy's application under section 1002.421, and, if appropriate, grant the Academy eligibility to participate in the Scholarship Programs.

CONCLUSIONS OF LAW

58. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 1002.421(3)(c)2.c.

59. The Academy brings this action challenging the Commissioner's decision to deny the Academy's application to participate in the Scholarship Programs.

60. Section 1002.421 governs a private school's eligibility to participate in the Scholarship Programs. Section 1002.421(3) states that the Commissioner:

(a) Shall deny, suspend, or revoke a private school's participation in a scholarship program if it is determined that the private school has failed to comply with this section or exhibits a previous pattern of failure to comply.

* * *

(b) May deny, suspend, or revoke a private school's participation in a scholarship program if the commissioner determines that an owner or operator of the private school is operating or has operated an educational institution in this state or in another state or jurisdiction in a manner contrary to the health, safety, or welfare of the public or if the owner or operator has exhibited a previous pattern of failure to comply with this section or specific requirements identified within respective scholarship program laws.

* * *

(c)1. In making such a determination, may consider factors that include, but are not limited to, acts or omissions by an owner or operator which led to a previous denial, suspension, or revocation of participation in a state or federal education scholarship program; [or] an owner's or operator's failure to reimburse the department or scholarship-funding organization for scholarship funds improperly received or retained by a school[.]

61. The burden of proof in this matter falls on the Academy to prove that it is eligible to participate in the Scholarship Programs. *See Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778 (Fla. 1st DCA 1981); *see also Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co.*, 670 So. 2d 932, 935 (Fla. 1996) ("The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue."). Tailored to the specific dispute in this matter, the Academy must show that the allegations

set forth in the Commissioner's letter from May 21, 2020, do not support the denial of its application.

62. The preponderance of the evidence standard is applicable to this action. § 120.57(1)(j), Fla. Stat.

63. As stated above, the preponderance of the evidence in the record does not support the reasons articulated in the Commissioner's letter dated May 21, 2020, to deny the Academy's application to participate in the Scholarship Programs. As reviewed in paragraphs 6 through 14 above, the genesis of the Commissioner's denial is the Final Order issued on May 11, 2018, which barred Agape, as well as Agape's officers, directors, principals, or controlling persons, from any involvement in the Scholarship Programs for a period of ten years. The denial letter specifically identified Ingrid Bishop and Ms. Cook as two individuals associated with Agape who are ineligible for scholarship programs.

64. As expressed by the Commissioner's two witnesses at the final hearing, the Academy's application raised concerns within the Commissioner's office that Ms. Cook and Ingrid Bishop were attempting to circumvent the 2018 Final Order. The Commissioner's apprehension is based on two factors: (1) the Academy's officers and directors (Blair, Braelyn, and Brooke Bishop) are related to Ingrid Bishop; and (2) the Academy's proposed school building is located close to Agape's former facility, and the lease of this building may benefit an individual associated with Agape (Ms. Cook). The Commissioner argues that these connections suggest that the Academy is attempting to obfuscate its true owners in a manner that would allow ineligible individuals to wrongfully take advantage of the Scholarship Programs.

65. However, while links clearly do exist between the Academy and Agape (Blair Bishop is undeniably Ingrid Bishop's daughter, and the Academy may locate its school on property Agape owned in 2012), the totality of the evidence adduced at the final hearing does not establish that the people who

intend to run the Academy are, or will be, the same people who ran Agape. No documentary evidence reveals that the officers, directors, principals, or controlling persons of Agape will serve in a corporate capacity or ownership position with the Academy. No testimony discloses that the Academy has, or will, employ any former Agape employees. No records demonstrate that Agape's officers or employees have a financial interest in or will profit from the Academy. No facts in the record directly show that Blaire Bishop consulted Agape officers or employees when founding the Academy.

66. More to the point, no substantive evidence produced at the final hearing indicates that either Ingrid Bishop or Ms. Cook will play any role in the administration, management, or ownership of the Academy. Although it might be reasonable to assume that Blaire Bishop has discussed the creation of the Academy with her mother, no testimony establishes that Ingrid Bishop (or Ms. Cook) has rendered any advice or provided any counsel regarding the Academy's future operations or Ms. Bishop's educational aspirations. In short, the evidence and testimony in the record does not substantiate the Commissioner's suspicions that the Academy is merely a front, proxy, strawman, or surrogate for Agape, Ingrid Bishop, or Ms. Cook. Neither do the facts confirm that the Academy, through Blaire Bishop, has knowingly attempted to conceal its relationship with Agape or its officers, directors, principals, or controlling persons.

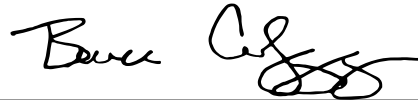
67. Consequently, the preponderance of the evidence in the record does not support the reasons specifically relied upon in the Commissioner's denial letter as a basis to deny the Academy's application to participate in the Scholarship Programs. The evidence does not establish that either the Academy or the individuals who own and will operate the Academy (Blaire Bishop and her two sisters) have failed to comply, or have exhibited a previous pattern of failing to comply, with section 1002.421. Accordingly, based on the facts found in this matter, the Academy met its burden of

proving that the Commissioner should proceed with its review of the Academy's application to participate in the Scholarship Programs.⁶

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Commissioner withdraw its letter, dated May 21, 2020, indicating its intent to deny the Academy's application and continue to review the Academy's eligibility to participate in the Scholarship Programs under chapter 1002.

DONE AND ENTERED this 8th day of December, 2020, in Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of December, 2020.

⁶ This Recommended Order should not be interpreted to mean that the Commissioner should automatically approve the Academy's application. As the Commissioner emphasized in its Proposed Recommended Order, the Academy must still complete several additional steps in order to gain eligibility to participate in the Scholarship Programs under chapter 1002. The focus of this administrative proceeding is restricted to the allegations and issues specifically raised in the Commissioner's letter, dated May 21, 2020, which notified the Academy of the Commissioner's intended action to deny the application.

COPIES FURNISHED:

Robert Leroy Ehrhardt, Esquire
Department of Education
Suite 1544
325 West Gaines Street
Tallahassee, Florida 32399
(eServed)

James Sweeting, III, Esquire
James Sweeting, III, LLC
Post Office Box 215
Churchville, Maryland 21028
(eServed)

Jason Douglas Borntreger, Esquire
Department of Education
Suite 1544
325 West Gaines Street
Tallahassee, Florida 32310
(eServed)

Chris Emerson, Agency Clerk
Department of Education
Turlington Building, Suite 1520
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Matthew Mears, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Richard Corcoran
Commissioner of Education
Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 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.