

**COMMONWEALTH OF PENNSYLVANIA  
STATE CHARTER SCHOOL APPEAL BOARD**

|  |   |                              |
|--|---|------------------------------|
| <b>In Re: Renaissance Academy of Pittsburgh,</b> | : |                              |
| <b>Alternative of Hope Edison Charter School</b> | : |                              |
|  | : | <b>Docket No. CAB 2001-2</b> |
| <b>Appeal from Denial of Charter School</b>      | : |                              |
| <b>Application by the School District of</b>     | : |                              |
| <b>Pittsburgh</b>                                | : |                              |

**OPINION AND ORDER**

**I. Background**

This matter is before the Pennsylvania State Charter School Appeal Board (“CAB”) on an appeal by the Renaissance Academy of Pittsburgh, Alternative of Hope Edison Charter School (“RAPAH”) from the denial of its charter school application (“Application”) by the Board of Public Education of the School District of Pittsburgh (“School District”).

**II. Findings of Fact**

1. RAPAH filed its charter school application with the Pittsburgh School District on November 15, 2000.

2. A public hearing was scheduled for December 2000.

3. No one representing RAPAH attended the December 2000 hearing.

4. On January 9, 2001, RAPAH’s president, Mr. Kenneth Stevenson, wrote to the School District explaining that the failure of RAPAH to have representation at the December 2000 hearing was due to Dr. Stevenson receiving the letter subsequent to the hearing date.

5. On February 20, 2001, the School District denied the charter application. A letter stating the reasons for the denial was mailed on February 23, 2001.

6. Pursuant to 24 P.S. § 17-1717-A(i)(2) of the Charter School Law, RAPA H gathered approximately 1,300 signatures on petitions in support of its appeal.
7. On April 24, 2001, pursuant to a stipulation of the parties, Judge Timothy P. O'Reilly of the Allegheny Court of Common Pleas decreed that RAPA H had met the statutory requirements to appeal the denial to CAB.
8. RAPA H filed its appeal with CAB on May 9, 2001.
9. By letter dated May 31, 2001, CAB accepted RAPA H's appeal and assigned a hearing examiner to this matter.
10. On June 12, 2001, after receiving an extension of time, the School District filed its answer to the appeal.
11. The hearing officer held a pre-hearing conference on June 19, 2001.
12. In June 27, 2001, a management agreement was signed between Edison Schools, Inc., and the RAPA H Board of Trustees.
13. At its July 27, 2001 meeting, CAB heard oral arguments regarding RAPA H's appeal.
14. RAPA H's Board of Trustees has contracted with Edison Schools, Inc. to provide curriculum and management services to RAPA H.
15. RAPA H's Board of Trustees will maintain real and substantial authority over the operation of the school.
16. RAPA H plans to use a building located at 130 Larimar Avenue, Pittsburgh, Pennsylvania, for its charter school. The building will require extensive renovations. Plans for the renovations and the cost of the renovations are included in the application.
17. The expected enrollment at the school is 550 students in grades K through 5.

18. The curriculum proposed for the school is comprehensive and can serve as a model for other schools.

### **III. Conclusions of Law**

1. The present appeal is properly before CAB, pursuant to 24 P.S. §§ 17-1701-A, *et seq.*

2. The criteria for evaluating an Application under Section 24 P.S. § 1717-A(e)(2) of the Charter School Law are:

- a. The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under section (d);
- b. The capability of the charter school applicant, in terms of support and planning to provide comprehensive learning experiences to students pursuant to the adopted charter.
- c. The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A; and
- d. The extent to which the charter school may serve as a model for other public schools.

3. There is demonstrated, sustainable support for RPAH. 24 P.S. § 17-1717-A(e)(2)(i).

4. RPAH will provide comprehensive learning experiences to its students. 24 P.S. § 17-1717-A(e)(2)(ii).

5. The record evidences that RAPAHA will operate as a non-profit entity, and therefore, may be granted a charter as provided by the Charter School Law. 24 P.S. §17-1703-A.

6. The Application submitted by RAPAHA provides sufficient information in compliance with 24 P.S. § 17-1719-A of the Charter School Law.

7. The Application submitted by RAPAHA conforms to the legislative intent of the Charter School Law outlined in 24 P.S. § 17-1702-A.

#### **IV. Evidentiary Issues**

Before addressing the merits of the appeal, preliminary evidentiary matters must be addressed. RAPAHA seeks to include two documents in the certified record: 1) the Articles of Incorporation for RAPAHA-Edison Charter School dated March 28, 2001; and 2) the management agreement between Renaissance Academy of Pittsburgh Alternative of Hope – Edison Charter School and Edison Schools, Inc. dated June 27, 2001.

In addition, at CAB's July 30, 2001 hearing, the School District asked that it be permitted to include in the certified record a copy of the proof that notice of the public hearing before the school board regarding RAPAHA's application was posted in the Pittsburgh Post Gazette on November 30, 2000. This request was in response to RAPAHA's argument that the School District had not properly noticed the public hearing regarding its charter application.

##### **A. The Articles of Incorporation**

Pursuant to the Charter School Law, CAB has the discretion to allow the charter school or the School District to supplement the record if the supplemental information was previously unavailable. 24 P.S. §17-1717-A(i)(6). Previously unavailable information must be information

that could not have been acquired prior to the submission of the application to the local board of directors or prior to their vote on the application. Information that was previously unavailable cannot include information that could have been obtained and submitted for inclusion into the record prior to the school board's vote, but was not.

In this case, the Articles of Incorporation did not exist at the time the Application was submitted to the local board of directors or when the hearing was held regarding the Application. However, the Articles of Incorporation could have existed if RAPA had filed for the Articles prior to submission of the Application or prior to the vote of the local board of directors on the Application. Therefore, CAB will not consider the Articles to be information that was previously unavailable and will not admit them as part of the record.

## **B. The Management Agreement**

Prior to the Commonwealth Court decision in School District of the City of York v. Lincoln-Edison Charter School, 772 A.2d 1045 (Pa. Cmwlth. 2001), CAB had accepted as sufficient draft agreements between the non-profit charter and the for-profit management company. In the Lincoln-Edison case, the court held that a finalized agreement had to be in place prior to CAB acting in an appeal.

Thus, prior to the date of the Lincoln-Edison decision, it would not have been possible for a charter school applicant to be aware of the requirement that the agreement be in final form. Therefore, for Applications that were submitted to local boards of directors prior to the decision in Lincoln-Edison, CAB will accept and consider management agreements that were finalized after the decisions of the local boards of school directors. This is a limited exception to CAB's previous rulings on supplemental evidence and is not intended to alter previous rulings.

However, for any Applications submitted to local boards of school directors after the date of the Lincoln-Edison decision, the finalized agreement must be presented to the local board of school directors as part of the application.

Since RAPAHA's Application was submitted to the School District prior to the Lincoln-Edison decision being issued, CAB deems that the finalized agreement in this case was not previously available because RAPAHA did not know that it was required. Thus, CAB has the authority to decide this matter based on the finalized agreement now presented for consideration, and admits the finalized management agreement as part of the certified record.

### **C. Publication of Hearing Notice**

The School District's request to include its notice of posting the hearing date for consideration of RAPAHA's charter application in the Post Gazette must be denied. The copy of the notice of publication was available at the time of the school board hearing and at the time the record was forwarded to the hearing officer in this appeal. However, the School District did not produce a copy of the notice until the July 30, 2001 hearing before CAB. Therefore, the document was previously available, but simply not produced, and therefore, cannot now be admitted as part of the certified record.

### **V. Discussion**

The School District based its denial of RAPAHA's Application on five separate grounds pertaining to the Charter School Law, as follows:

1. The proposed charter school would be operated by Edison Schools, a for-profit institution. A separate organization classified as non-profit under section 501(c)(3) of the tax code has not been established.

2. The proposed charter school does not have evidence of sustainable support by teachers, parents, community, and students.
3. The proposed charter school would not provide the School District with expanded choices in the types of educational opportunities currently being offered by the school system, nor would it be able to serve as a model to other schools in the system.
4. The Application and the interview of charter school personnel underscored a lack of investigation and understanding of the Pittsburgh Public Schools community.
5. The location for the school needs to undergo extensive renovations that may not be completed before the start of the school year in September 2001.

**A. Non-Profit Status**

The Charter School Law provides that a charter may only be granted to a non-profit entity. 24 P.S. §17-1703-A. It clearly provides, however, that a charter school may be established by any for-profit corporation, association, or partnership. 24 P.S. § 17-1717-A(a). CAB concludes that nothing in the Charter School Law prohibits the involvement of for-profit entities in the establishment and operation of a charter school, so long as the school itself is not for-profit and the charter school's trustees have real and substantial authority and responsibility for educational decisions.

The Commonwealth Court has addressed the issue of involvement of for-profit corporations in charter schools:

Nothing in the [Charter School Law] prohibits the involvement of for-profit entities in the establishment and operation of a charter school, so long as the school itself is not for-profit, the charter school's trustees have real and substantial authority and responsibility for the education decisions, and the teachers are

employees of the charter school itself.

West Chester Area School District v. Collegium Charter School, 760 A.2d 452, 468 (Pa. Cmwlth. 2000)

RAPAH had not yet filed an application for non-profit status at the time of its Application to the School District of Pittsburgh. CAB has not previously required that the charter school be incorporated prior to the approval of the charter. Nor, is such required by the Charter School Law. Although CAB stated in its decision in In re: Appeal of Learning Connection Charter School, Docket No. CAB 2001-1, that some evidence of the charter school's non-profit status should be provided, CAB did not state that the Articles of Incorporation had to be filed prior to submission of the Application to the School District. In this case, it is clear from the record that the charter school will operate as a non-profit entity and that the charter school is sufficiently independent of Lincoln-Edison.

The agreement between Lincoln-Edison and RAPAH evidences that RAPAH is in control of the school and that the trustees retain the essential elements of operating the school. CAB concludes that the agreement between Lincoln-Edison and RAPAH is within the bounds set forth in the Charter School Law and rejects the School District's contentions to the contrary.

## **B. Sustainable Support**

RAPAH must show "demonstrated sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing..." 24 P. S. § 17-1717-A(e)(2)(i). This support must be demonstrated when the application is submitted and considered. *Id.*

The School District has argued that sustainable support was not shown since no one attended the public hearing to support the charter school. The support need not be shown at the



public hearing, but may be evidenced in the application. Ronald H. Brown Charter School, CAB Docket No. 1999-1.

In Ronald H. Brown, CAB concluded that the term “sustainable support” means support sufficient to sustain and maintain the proposed charter school as an on-going entity. The petition circulated by RPAH seeking support for the charter school specifically asked about support for RPAH. The petition, as included in the application for the charter, includes more than 800 signatures. In addition, the application shows other support from the community.

In this matter, RPAH has clearly shown a reasonable amount of sustainable support from parents, students and other community members. Thus, the School District’s finding of insufficient support is rejected.

### **C. Model for Other Schools**

The School District has asserted that the proposed charter school does not provide the School District with expanded choices in the type of educational opportunities, and that it would not serve as a model to other schools in the system.

In Lehigh Valley Academy Regional Charter School, CAB Docket No. 2000-12, CAB found that its prior approval of a program may act as precedent for approval of the same program at another charter school. CAB previously found that the Lincoln-Edison program could serve as a model for other public schools. Lincoln-Edison Charter School, CAB Docket No. 2000-11. As a result, CAB likewise finds in this case that the Lincoln-Edison program at RPAH could serve as a model for other public schools within the School District of Pittsburgh.

In asserting that the proposed charter school does not provide the School District with expanded choices, the School District has misconstrued the intent behind the legislative

promotion of charter schools. There is no description in the Charter School Law as to what is meant by expanded choices. As CAB stated in Sugar Valley Rural Charter School, CAB Docket No. 1999-4, “The purpose of the statute is to **encourage** the use of innovative methods, not to exclude charter applicants whose proposed methods may not be as innovative or as different as the school district believes they should be.” (emphasis in original.)

As required under 24 P.S. §17-1717-A(e)(2)(ii) and 24 P.S. §17-1719-A of the Charter School Law, RPAH has set forth in its Application a curriculum that will provide a comprehensive learning experience to its students, and its existence will provide for expanded choices. The School District erred in denying the Application on this ground.

**D. Lack of Understanding of Pittsburgh Public Schools Community**

The School District asserted in its letter of denial that the charter applicant failed to investigate and understand the Pittsburgh Public Schools community. As an example, the School District stated that the School District has a negligible Hispanic population, not 15% as stated in the Application. However, the reference to a 15% Hispanic population was the charter school’s response to a question about the expected demographic of the charter school, not the Hispanic population of the School District. Even if this percentage is inaccurate, it is not a basis for denying a charter.

The School District also stated that RPAH’s application incorrectly stated that the special education population was 10% rather than 15%, and that it demonstrated a clear lack of understanding of the Pennsylvania regulations for special education. However, in its Application RPAH provides sufficient information to evidence that it will comply with special education

requirements. In addition, even if RAPAHA stated a miscalculation of the percentage of special education students in the School District's population, it is not a reason to deny the charter.

The School District further stated that RAPAHA failed to provide a demographic analysis to justify RAPAHA's expected level of enrollment of 550 students. There is no provision in the Charter School Law that requires a charter applicant to provide a demographic analysis for this purpose. As stated above, RAPAHA provided evidence of sufficient community support for the charter school and failure to provide a demographic analysis to justify its proposal for 550 students is not a reason to deny the charter.

#### **E. Facility**

Finally, the Charter School Law requires that an Application for a charter school include a "description of and address of the physical facilities in which the charter school will be located, and the ownership thereof and any lease arrangements." 24 P.S. 17-1719-A(11). The School District went beyond the requirements of the Charter School Law when it evaluated the proposed facility, and based its denial of the charter, in part, on the fact that extensive renovations of the facility would be necessary before the proposed facility could be used as a school. CAB disagrees that this is a ground for denial.

In prior decisions, CAB has held that a detailed facility plan is not required under the Charter School Law. (In Re: Environmental Charter School Appeal from Denial of Charter by Palisades School District, CAB Docket No. 1999-14; In Re: Leadership Learning Partners Charter School Appeal from Denial of Charter School Application by the School District of Philadelphia; CAB Docket No. 2000-8). In Leadership Learning Partners, CAB concluded that, "for approval of a Charter School, the legislature intended this law to be liberally interpreted to

encourage the development and growth of such schools.” RAPAHA provided, in its Application, a street address for the proposed facility. It further acknowledged that substantial renovations were required for the building. That is all that is required by the Charter School Law. CAB finds that RAPAHA met its burden with regard to 24 P.S. §17-1719-A(11). As in Leadership Learning Partners, RAPAHA has acknowledged that work is required at the facility and it proposes to deal with the problem by contracting with an entity that is prepared to be involved with resolving the problem. Nothing on the record indicates that the efforts to renovate the facility will be unsuccessful.

As the School District has pointed out, it will not be possible for renovations to be completed by the beginning of the school year for 2001. CAB has previously granted a charter where a change in location was made necessary by the time involved in the appeal process. Sugar Valley Rural Charter School, CAB Docket No. 1999-4. The fact that renovations cannot be completed for this year is not a basis for denial of the charter. This may simply mean that the charter school’s opening will be delayed beyond the point originally anticipated.

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**ORDER**

AND NOW, this \_\_\_\_\_ day of October, 2001, based upon the foregoing and the vote of this Board<sup>1</sup>, the May 9, 2001 appeal of Renaissance Academy of Pittsburgh, Alternative of Hope-Edison Charter School is hereby AFFIRMED and the School District of Pittsburgh is hereby directed to grant the application and sign the Renaissance Academy of Pittsburgh, Alternative of Hope-Edison Charter School's charter pursuant to 24 P.S. §17-1720-A.

FOR THE STATE CHARTER SCHOOL  
APPEAL BOARD

\_\_\_\_\_  
Charles B. Zogby  
Chairman

<sup>1</sup> At the Board's October 16, 2001 meeting, the appeal was granted by a vote of 6-0 with members Aliota, Bunn, Melnick, Reeves, Shipula and Zogby all voting to grant the appeal.