

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

STATE CHARTER SCHOOL APPEAL BOARD

In Re: The Lighthouse Cyber Charter School :
:
Appeal from Denial of Application : Docket No. CAB 2008-04
by the Department of Education :

OPINION

I. INTRODUCTION

This matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter “CAB”) on appeal by the Lighthouse Cyber Charter School (hereinafter “Lighthouse”) from the denial of its revised cyber charter school application by the Department of Education (hereinafter “PDE”). As with other charter schools, CAB has jurisdiction over appeals of cyber charter schools whose applications are denied by PDE. Act 88 of 2002 amended the Charter School Law (hereinafter “CSL”) to make specific provision for cyber charter schools. *See* 24 P.S. §§17-1741-A – 17-1751-A. This act altered some of the pre-existing charter school requirements and also added some new requirements applicable only to cyber charter schools. *Id.* Among the changes made by Act 88 of 2002 are several differences regarding the appeal process before CAB, including the requirement that the Secretary of Education recuse himself from hearing, considering and deciding the appeal. 24 P.S. §17-1746-A(b). Secretary Zahorchak has done so in this case. N.T. at 49.¹

¹ The term “Notes of Testimony,” abbreviated, hereinafter as “N.T. at ___” refers to the transcript of the November 25, 2008 hearing in this matter.

II. FINDINGS OF FACT

1. Lighthouse filed an application to establish a cyber charter school with PDE on October 1, 2007. *See* Certified Record, Document #1.²
2. PDE held the required public hearing on December 6, 2007 and, on January 28, 2008, issued its Opinion and Order denying the application. *See* Cert. R. #4.
3. On February 27, 2008, Lighthouse submitted a revised application for PDE's consideration. *See* Cert. R. #5.
4. The revised application was also denied by PDE in an Opinion and Order issued on April 24, 2008. *See* Cert. R. #6.
5. PDE's Opinion explained the reasons for PDE's denial of the revised application as follows:
 - a) Inadequate description of business practices and management structure polices;
 - b) Lack of specificity in the curriculum and inconsistent alignment to Pennsylvania's standards;
 - c) Failure to include Pa's English language proficiency standards in the proposed instruction and assessment of students who are English language learners; and
 - d) Failure to adequately describe how the school planned to identify the student information system it would be using. *See* Cert. R. #6 at 2.
6. On June 12, 2008, Lighthouse filed an appeal with CAB. *See* Cert. R. #7.

² Hereinafter, citations to any document contained in the Certified Record filed with CAB will be referenced by document number as "Cert. R. # ____." If the referenced document contains page numbers and the citation is to a specific page, the page number will be noted.

7. The appeal was accepted, a hearing officer was assigned and PDE filed an Answer to the appeal on July 18, 2008. *See* Cert. R. #8.
8. Lighthouse made a request to supplement the record before the hearing officer and the request was denied.
9. On November 19, 2008, Lighthouse filed an appeal with CAB of the denial of its request to include supplemental information in the record.
10. Briefs were filed by the parties and the appeal was presented to CAB at its meeting on November 25, 2008. *See* Cert. R. #9, 10 and 11.
11. On November 25, 2008, CAB heard argument from the Charter School and PDE regarding the appeal. *See generally*, Notes of Testimony.
12. The presentations by Lighthouse's counsel and witnesses centered on arguing that Lighthouse had been treated differently than other cyber charters in the application review process.
13. In contrast, PDE witnesses discussed the specific reasons for the Department's denial of the application.
14. The revised application clarifies the relationship between Foundations, Inc. and Lighthouse and provides sufficient information regarding the components of the business manager services package, which Lighthouse proposes to procure from Foundations.³

³ The revised application submitted by Lighthouse clarified that the school's Board of Directors would have final authority in all matters and that it would direct the work of Foundations as a contractor. It also included a detailed description of Foundations' Business Manger Service Package, which is the management service package the school seeks to purchase if granted a charter. Cert. R. #5 at 4, 63.

15. Rather than address the curricular issues raised by PDE, Lighthouse argues that PDE's concerns lack both legal and practical support. *See* Cert. R. #5 at 9.
16. The revised application does not substantiate the school's enrollment projections and remains insufficient to allow for a determination of their reasonableness.
17. Lighthouse's resubmission does not explain why the school proposes to use the Provost student information system and how the anticipated cost of using that system was derived. *See* Cert. R. #5 at 6.

III. CONCLUSIONS OF LAW

1. CAB has jurisdiction in this matter. 24 P.S. §17-1746(a).
2. The Charter School Law (hereinafter "CSL"), as amended 24 PS § 17-1701-A *et seq.*, governs the application process, the approval process and the operation of charter schools, as well as cyber charter schools in Pennsylvania.
3. Section 1744(f) of the CSL, 24 P.S. § 17-1744-A(f), sets forth the criteria to be applied by PDE in the evaluation of a proposed cyber charter school application:
 - a) The demonstrated, sustainable support for the cyber charter school plan by teachers, parents or guardians and students;
 - b) The capability of the cyber charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students;
 - c) The extent to which the programs outlined in the application will enable the students to meet Pennsylvania's academic standards;

- d) The extent to which the application meets the requirements of section 1747-A; and
 - e) The extent to which the charter school may serve as a model for other public schools.
4. The hearing officer correctly excluded from the record the information Lighthouse proposed to include as supplemental information, insofar as that information was previously available and his decision in this regard is upheld.
 5. Lighthouse has failed to demonstrate the capability, in terms of support and planning, to provide comprehensive learning experiences to all students.
 6. Lighthouse has failed to provide adequate information regarding how the curricula it proposes using will enable its student's to meet Pennsylvania's academic standards, particularly those students who are English language learners (ELLs).
 7. The Lighthouse application has failed to meet the requirements of section 1747-A in several respects.
 8. Based upon the above-noted shortcomings, CAB finds that Lighthouse has also failed to demonstrate how it will serve as a model for other public schools.

IV. DISCUSSION

Exclusion of Supplemental Evidence

Before addressing the merits of Lighthouse's substantive appeal, it is necessary to dispose of the appeal of the hearing officer's procedural ruling of October 23, 2008. At issue are two groups of documents: (1) documents regarding existing cyber charter schools, including lists

of enrollment statistics and (2) email correspondence between the Lighthouse founders and PDE staff. Both groups of documents were excluded from the record by the hearing officer because he found them to have been previously available. The standard for allowing the introduction of supplementary evidence during CAB's review of a cyber charter appeal is that the supplementary information may be introduced into evidence "if the supplemental information was previously unavailable." 24 P.S. §17-1746(b). The hearing officer applied this standard in ruling the supplementary evidence inadmissible. We find that this ruling was correct because the CSL allows for no exceptions.

However, for the sake of completeness, we shall address Lighthouse's argument. Lighthouse appears to argue that it should be permitted to supplement the record before us with these documents, notwithstanding the fact that they were previously available. It appears to be Lighthouse's position that PDE's denial of its application was arbitrary and capricious. Lighthouse bases this argument on assertions that other cyber charter schools were not held to the same requirements, as those to which it is being held. Thus, it seeks to include in the record, documents from other cyber charter schools in an effort to substantiate its argument that the denial of the Lighthouse appeal application was arbitrary and capricious. What PDE did in the case of another cyber charter application is neither relevant nor dispositive on appeal.

CAB's jurisdiction and responsibility are to review PDE's decision on the record certified by PDE. *See* 24 P.S. §17-1746(b)(1). In conducting its record review, CAB must apply and be bound by the criteria set forth in section 1745(f) of the CSL. 24 P.S. §17-1746(b)(4). Because the statutory parameters of our review do not include consideration of what PDE may have done in the case of another application, and because the documents in question were previously available, we uphold the hearing officer's refusal to include these documents in this

hearing record. Likewise, we uphold the exclusion of the e-mail correspondence sought to be included by Lighthouse. It is unclear why Lighthouse now seeks to include these items in the record, when they were available during the time when Lighthouse's application was under consideration by PDE.

Lighthouse Has Failed To Provide Adequate Information Regarding The Required Application Components Under The Charter School Law

Section 1747-A of the CSL requires that an application to establish a cyber charter school contain sixteen (16) elements, including: (1) the curriculum and how that curriculum will satisfy the State Board of Education's academic standards; and (2) the level of anticipated enrollment during each school year. 24 P.S. §§ 17-1747-A(1),(11). Both of the above elements were found by PDE to have been inadequately satisfied in the application and revised application filed by Lighthouse.

First, regarding the curriculum, it is clear from the record that Lighthouse proposed to purchase and use several "off-the-shelf" curricula in its school. Lighthouse asserts that these curricula are either aligned to the state's standards or include software that may produce such an alignment. However, PDE raised several concerns about the curriculum that were never adequately addressed by Lighthouse. PDE found that Lighthouse did not demonstrate how the curricula would be linked together and how the different curricula would be aligned to each other, in addition to their individual alignment to state standards. *See* N.T. at 64. In contrast, Lighthouse argues that this type of alignment is not required by the CSL and alleges that this type of alignment has not allegedly been required of other cyber charter applicants. Lighthouse's arguments are attempts to deflect, rather than to address, the issue. The specific CSL curricular requirement is that an application must include "the curriculum to be offered and how it meets the requirements of 22 Pa. Code Ch. 4..." 24 P.S. §§ 17-1747-A(1). This requirement is not

satisfied by simply including curricula in the application, each of which have been aligned with the academic standards. The application is to describe how that curriculum is aligned to the state standards, and PDE is authorized as the application evaluator, to review how that alignment is accomplished and to determine whether the alignment is proper. From the submission of the initial application, it is clear that PDE was significantly concerned, and rightfully so, about the curriculum component of this application. The curriculum is one of the key elements of any application, since it is the roadmap for teacher instruction and the guide for student learning. CAB has previously held that applications are required to “describe a curriculum of some substance.” *In re: Environmental Charter School*, CAB Docket No. 1999-4 at p. 14. Thus, a cyber charter school’s curriculum must be thoughtfully designed and completely integrated and aligned. PDE concluded that the curriculum in this application, even as amended, failed in this regard and we agree.

The second deficiency of the application was enrollment projections. The issue with the applicant’s original projections was that Lighthouse provided no explanation to substantiate its enrollment projections of 400, 500, 700, 850 and then 1000 for each of the first five years of the school’s existence. *See*, N.T. at 63-64, Cert. R. #4 at 3-4. Absent such an explanation, PDE was unable to determine whether these projections were realistic and whether they supported the school’s financial plan.⁴ Although Lighthouse asserted that it addressed this issue in its resubmitted application, which contained a budget addendum, it did not do so. The Budget addendum does not explain the basis for the enrollment projections. *See* Cert.R. #5 at 4-5, 13. Without such information, PDE cannot find that these application requirements have been met. Having reviewed the record, CAB concurs with this conclusion.

⁴ The application requirements of section 1719-A of the CSL, which include a financial plan, are incorporated into section 1747. 24 P.S. §17-1747-A.

Lighthouse Has Failed To Demonstrate The Capability To Provide Comprehensive Learning Experiences To All Students

Section 1745-A(f)(ii) of the CSL requires PDE, and CAB on appeal, to evaluate each cyber charter application to determine whether the applicant, in terms of support and planning, has the capability to provide comprehensive learning experiences to its students. 24 P.S. § 17-1745-A(f)(ii). In the present case, PDE made several findings or conclusions which, when taken together, support the conclusion that Lighthouse has failed to demonstrate this capability. First, CAB finds that the application shortcomings discussed previously in this opinion demonstrate lack of capability to provide comprehensive learning experiences to students. The fact that Lighthouse has not coordinated and fully aligned its curriculum to the Commonwealth's academic standards certainly brings into question the ability of this proposed cyber charter school to provide a comprehensive education to its students.

This conclusion is further buttressed by PDE's findings regarding the ELL standards and Lighthouse's failure to demonstrate how its curricular offerings will be made accessible for ELL students. N.T. at 64.

The lack of explanation of Lighthouse's enrollment projections and their corresponding impact upon the school's financial plan come into play here as well. CAB finds that such failure does not demonstrate an applicant's ability to provide comprehensive learning opportunities to students.

Finally, but significantly for a cyber charter school, we turn to the issue of technology. PDE found that the application was inadequate because Lighthouse did not explain how it had selected the Provost student information system as the system the founders would ask the Board to adopt for the school. Cert.R. #4 at 2, #6 at 2. In addition, concerns were raised regarding the support to be provided to users and how the costs of this system had been derived. Lighthouse's

revised application pointed PDE to its revised budget for responses and to its original application and also indicated that the final selection of a student information system would rest with the school's Board of Directors. Cert.R. #5 at 6-7. This response misses the mark. Even though the Board will be the final decision-maker, it was certainly reasonable for PDE to ask, as do we, why Lighthouse believed the Provost system was best for its school. The assertion that two other cyber schools use this system is not enough and does not demonstrate the careful and considered analysis to be expected of a school that is preparing to provide comprehensive learning opportunities to its students.

For all of the above reasons, CAB concludes that this applicant has failed to meet this prong of the statutory evaluation criteria and that denial of its application was proper.

**Lighthouse Has Failed to Demonstrate That It Will Serve
As A Model for Other Public Schools**

The CSL requires that a cyber charter school applicant demonstrate the extent to which the school may serve as a role model for other public schools. 24 P.S. § 17-1745-A(f)(1)(v). In the non-cyber context, CAB has previously held that, to serve as a model to other schools, a charter school must in some way expand the curricular choices for students and encourage innovative and unique teaching methods. *City College Prep Charter School*, Docket No., 2006-01. CAB has further held that the CSL requires more than one innovative teaching method in order for a charter school to be considered a model for other schools. *Id.* As noted in the discussion above, Lighthouse has failed to satisfy the requirements of the CSL in several respects. Particularly troubling in this regard are the curricular deficiencies which PDE found to exist, as did we. Since this opinion adopts PDE's findings concerning the curricular deficiencies of the application, we also find that Lighthouse has failed to establish that it will provide its

students with unique and innovative learning opportunities. Therefore, we conclude that Lighthouse would not serve as a model to other public schools.

V. CONCLUSION

Because Lighthouse has failed to demonstrate the capability to provide comprehensive learning experiences to all students; has failed to provide adequate information regarding the required application components under the CSL; and has failed to demonstrate that it will serve as a model for other charter schools, CAB finds that the Pennsylvania Department of Education had sufficient legal grounds, pursuant to the Charter School Law, to deny the application of the Lighthouse Cyber Charter School and enters the following:

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the Pa. Department of Education : :

ORDER

AND NOW, this 17th day of March, 2009, based upon the foregoing and the vote of this Board⁵, the Appeal of the Lighthouse Cyber Charter School is **DENIED**.

For the State Charter School Appeal Board

/s/
Preston C. Green, III
Chairman *Pro Tempore*

Date Mailed: 03/17/2009

⁵ At the Board's February 24, 2009 meeting, the appeal was denied by a vote of 0-5 with members Barker, Reeves, Schweighofer, Shipula and Green voting to deny the appeal.