

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

**In Re: Roberto Clemente Elementary** :  
**Charter School** :  
 : **Docket No. CAB 2012-10**  
**Appeal from the Denial of Charter** :  
**by Allentown School District** :

**OPINION**

**I. Background**

This matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on appeal by Roberto Clemente Elementary Charter School (“RCECS”) from the denial of its Charter School Application (“Application”) by the Allentown School District (“District”).

**II. Procedural History**

On November 12, 2010, RCECS filed its Application to open a charter school in the District for students in kindergarten through grade 5. A public hearing was held before the District’s Board of School Directors (“Board”) on December 6, 2010. On February 24, 2011, the Board denied the Application and issued a decision by Resolution finding that the Application was seriously deficient in two broad categories.

In the first category, the District found that the Application failed to demonstrate: the financial feasibility of the charter school in that Applicant:

- (a) failed to budget for a certified psychologist, which is a requirement under 22 Pa. Code § 14.123 making the budget lack an entire professional salary (N.T. 49); and

(b) failed to adequately provide for funding of its after-school tutoring program.

(N.T. 67-68),

In the second category, the District found that the Application failed to demonstrate that the Applicant was capable of (in terms of support and planning):

- (a) providing comprehensive learning experience to students;
- (b) using different and innovative teaching methods;
- (c) providing expanded choices of educational opportunities not available in the Allentown School District; and
- (d) insuring accountability for meeting measurable academic standards.

(Record at 258-263)

On February 16, 2012, the Court of Common Pleas of Lehigh County issued a Decree upholding the sufficiency of RCECS's Petition to Appeal the denial of a charter.<sup>1</sup> On August 24, 2012, Applicant filed a Petition for Appeal with CAB.<sup>2</sup> The District filed an Answer to the Appeal on October 10, 2012. The matter was assigned to a hearing officer for the development of a record. A prehearing conference was held during which the parties agreed to a schedule for filing the reproduced record, including additional documents, and concluding with the filing of briefs and proposed findings of fact. On January 8, 2013, Applicant filed its Brief in Support of the Appeal and Proposed Findings of Fact and on February 8, 2013, the District filed its Brief in

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<sup>1</sup> The School District appealed the Decree to the Commonwealth Court. *In re: Petition to Appeal the Denial of the Charter School Application of the Roberto Clemente Elementary Charter School Pursuant to 24 P.S. § 17-1717-A(i)*, No. 413 C.D. 2012. On August 10, 2012, the Court in an unreported decision issued an Order affirming the decree of the Lehigh County Court and transmitting the Petition to Appeal to CAB.

<sup>2</sup> The parties in their papers on the District's Motion to reopen the record dispute filings of the appeal to CAB. The filing dates in this opinion are the dates of receipt by CAB.

Support of the Appeal and Proposed Findings of Fact. Applicant filed its Reply Brief on February 19, 2013.

After the close of the record, the District, on April 11, 2013, filed a Motion to Accept Supplemental Evidence, namely the Audit Report by Auditor General Eugene DePasquale issued on March 7, 2013<sup>3</sup> of the Roberto Clemente Charter School which was originally chartered on September 7, 1999 as a middle school and high school (“RCCS”). RCECS filed a response in opposition. The hearing officer issued an Order on April 25, 2013 denying the Motion on the ground that the proffered evidence did not constitute a material change of fact or law with regard to the question before the Board, namely the sufficiency of the Application under the CSL.<sup>4</sup> On May 9, 2013, the District filed an Appeal of that Order and supporting brief. RCECS then filed a response to the appeal on May 17, 2013.<sup>5</sup>

### **III. Findings of Fact**

1. On November 12, 2010, RCECS submitted a Charter School Application (“Application”) to operate an elementary school in the Allentown School District (“District”) for grades K through 5. (Record at 7)<sup>6</sup>
2. On December 6, 2010, a public hearing was held before the Board of Directors of

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<sup>3</sup> According to the Audit Report the audit covered the period from September 22, 2006 through November 18, 2010.

<sup>4</sup> Act of March 10, 1949, P.L. 30, *as amended*, added by the Act of June 19, 1997, 24 P.S. § 17-1701-A *et. seq.*

<sup>5</sup> The Motion is denied as being untimely and also because it is irrelevant in that it concerns another charter school and not the charter application before CAB in the instant matter.

<sup>6</sup> Record refers to the agreed upon record before the District; page numbers refer to the Bates stamp of

the District. (Record at 338)

3. On February 24, 2011, the Board voted to deny the Application, and in accordance therewith issued a Resolution stating its findings and the basis for its denial. (Record at 255-263)

4. Applicant proposes to enroll 320 students in grades K through 5 for the first year in a renovated elementary school in the City of Allentown. (Record at 84)

5. Applicant seeks to create a continuity of instruction from grades K through 12 for its core Latino students by providing for an elementary school in addition to the already existing RCCS High School and Middle School ("RCCS"). (Record at 2-7)

6. After 10 years of serving students in Middle and High School, RCCS found that students come to school with significant gaps in learning for both Spanish as a native language and English language learners, and that to be successful at RCCS students need to establish a sound academic foundation in both English and Spanish at the kindergarten and grade school levels. (Record at 3)

7. The goal of RCECS is to mirror a school culture that is consistent with the RCCS goal of ensuring that its students at the post-high school level are "college ready." (Record at 3)

8. The RCECS Application includes a budget which sets forth its revenues and expenditures. Its expenditures include regular and special education, physical plant, staffing and a line item expense of \$5,000 for psychological services. (Record at 250-252)

9. RCECS proposes an education program different from the District's education program in the following respects:

a. RCECS will have a dual-language immersion program of instruction in both English and Spanish. (Record at 18-20; 488-493)

b. The Early College Model Program of RCECS will encourage primary school students to begin thinking about attending college by exposing students to types of colleges and the college experience. (Record at 8-10, 18-20, 81-83, 316)

c. RCECS will use the Padres Comprometidos (“Committed Parent”) program to help parents encourage their children to think about and plan for college. (Record at 268, 315)

d. RCECS will be a small learning community compared to the District’s elementary schools. (Record at 84, 1177)

e. RCECS will use a mathematics curriculum different from that used by the District. (Record at 25-29, 271, 414)

10. The RCECS application contains a description of its program for English language learners. (Record at 20-21, 490-498)

11. RCECS founders indicated that the school will provide for testing and instruction of special education students. (Record at 395-397)

12. The RCECS application and supporting material contain a detailed description of the assessments to be used by the school to measure student proficiency and achievement. (Record at 12, 72-73, 519-1151)

13. The RCECS application and supporting material contain a detailed description of the mathematics curriculum, which comports with applicable academic standards. (Record at 510-514, 721-722)

14. The RCECS application and supporting material contain a detailed description of its proposed science curriculum. (Record at 29-30, 515, 723-789)

15. RCECS plans to apply for a grant to offer an after-school tutoring program similar to a grant which the founders obtained for another charter school; and the application for this grant cannot be made until after the RCECS charter has been granted. (Record at 404-405)

#### **IV. Conclusions of Law**

1. The appeal is properly before the State Charter School Appeal Board under the Charter School Law ("CSL"). 24 P.S. § 17-1717-A(f).

2. CAB has the authority under the CSL to agree or disagree with the findings of the school district based upon its review of the certified record. 24 P.S. § 17-1717-A(i)(6).

3. The RCECS Application and supporting material demonstrate that RCECS can be a model for other public schools and can provide different and innovative teaching methods and offer expanded choices in education.

4. The RCECS Application and supporting material contain a financial plan that complies with 24 P.S. § 17-1719-A(9).

5. The RCECS Application and supporting material demonstrate that the school can provide comprehensive learning experiences to its students. 24 P.S. § 17-1717-A(e)(2)(ii).

6. The RCECS Application meets all of the requirements of the CSL.

## **V. Discussion**

### **A. Introduction**

The founders of RCECS<sup>7</sup> have proposed a charter school for kindergarten and elementary school students that will extend the educational program of the Roberto Clemente Middle School and High School. The elementary school would employ the same educational focus of addressing the educational challenges of students for whom English is a second language, typically Hispanic students, who are a growing sector of the public school population in the District.

The two key elements of focus are a language program and a college readiness program. The dual language program is a bilingual program in both English and Spanish. It seeks to promote fluency in both languages by integrating the instruction of English with instruction in Spanish. Students will be grouped according to their language proficiency with approximately 75 percent of instruction in English. (Record at 489) The goal of the program is for students who start in kindergarten to be completely bilingual and bi-literate by the fifth grade in English and Spanish. (Record at 18) The dual language program will be evaluated through programs from the Center for Applied Linguistics and Johns Hopkins University. (Record at 19, 490)

Public support for the school is evidenced by 345 signatures in support of the Application and 491 pre-enrollments. (Record at 278)

### **B. Standard of Review**

The CSL provides:

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<sup>7</sup> Founders of the school include Dr. Lynn Columba, professor of education at Lehigh University; Lupe Pearce, a founder of the existing Roberto Clemente Middle and High School; Damien Romero, assistant principal; and Carlina Amory, a sixth grade math teacher. (Record at 279-286, 348-349)

In any appeal, the decision made by the local board of directors shall be reviewed by CAB on the record as certified by the local board of directors. CAB shall give due consideration to the findings of the local board of directors and specifically articulate its reasons for agreeing or disagreeing with those findings in its written decision.

24 P.S. § 17-1717-A(i)(6).

The Commonwealth Court has held in the case of the denial of a charter school application that “[t]he General Assembly has unquestionably granted [CAB] the authority to substitute its own findings and independent judgment for that of the local board.” *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 461 (Pa. Cmwlth. 2000).

Therefore, while giving due consideration to the vote of the School Board, CAB will independently review the record in accordance with the requirements of the CSL.

Section 1717-A(e)(2) of the CSL provides that an application is to be evaluated based on the following criteria:

- (i) 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 subsection (d).
- (ii) 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.
- (iii) 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.
- (iv) The extent to which the charter school may serve as a model for other public schools.

24 P.S. § 17-1717-A(e) (2).

Section 1702-A of the CSL provides:

It is the intent of the General Assembly, in enacting this article, to provide opportunities for teachers, parents, pupils and community members to establish



and maintain schools that operate independently from the existing school district structure as a method to accomplish all of the following:

- (1) Improve pupil learning.
- (2) Increase learning opportunities for all pupils.
- (3) Encourage the use of different and innovative teaching methods.
- (4) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- (5) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- (6) Hold the schools established under this act accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

24 P.S. § 17-1702-A.

### **C. Financial Plan**

The District in its decision found that the proposed budget of RCECS was “seriously deficient” based on the failure to adequately budget for the services of a school psychologist and for a tutoring program.

#### **1. Planning for Psychological services**

Based upon our review, we conclude that the RCECS Application did include a description of the responsibilities of a psychologist and a line item for psychological services. (Record at 42, 250, Expense Code 2100-300/330) Thus, the issue posed by the District must be construed to concern the adequacy of the RCECS financial plan. At the District hearing, the District specifically asked whether RCECS intended to hire a school psychologist. RCECS answered that the RCCS uses the professional services of the Carbon Lehigh Intermediate Unit

which provides psychological services to RCCS' middle and high school students. RCECS stated that it intended to use the services of the Intermediate Unit for its student population as well. (Record at 397)

In its brief, the District factors an estimated student enrollment with the predicted percentage of that number of students who might need the services of a school psychologist and concludes that the \$5,000 budgeted for the projected 32 students needing services would result in the availability of less than three hours of professional services based upon the \$55 hourly rate of the Intermediate Unit psychologist that RCECS proposes to use. (District Brief at 6) On this basis the District argues that the RCECS plan is inadequate.

The CSL requires that the charter school submit a financial plan as part of its application. 24 P.S. § 17-1719-A(9). However, the financial plan need only show that the charter school has considered fundamental budgeting issues and has the necessary funds to operate. In *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195 (Pa. Cmwlth. 2004), the school district found that the financial plan was inadequate because there was no money dedicated for physical education, the teacher salaries were too low, and the charter applicant budgeted an inadequate amount for computers and art supplies. The Court concluded that the CSL does not require such specifics in the budget as long as the school board or CAB, upon appeal, can determine that the applicant is capable of providing a comprehensive learning experience for students. *Id.* at 202.

It is undisputed that the RCCS has employed the services of the Intermediate Unit for assessment of students with special needs, including psychological services. The inference of the testimony at the hearing was that the budgeted amount for the elementary school was based upon

the experience and expenditures of RCCS. RCECS has budgeted \$235,247 for special education instruction and \$134,461 for student support services. (Record at 250). This certainly appears to be sufficient. The District relies on *Family Choice Charter School* (CAB 2007-6), where the Board denied a charter based in part on the failure of the applicant to provide for special education in its budget. Distinct from *Family Choice*, however, in this case RCECS did provide for both special education and support services in its budget. Thus, based upon the record before it, CAB rejects the findings of the District and concludes that the financial plan of RCECS is adequate, that RCECS did consider all fundamental issues in preparing its budget, and that its proposed budget will have sufficient operating funds.

**2. Adequacy of Funding for After-School Tutoring**

With regard to the after-school tutoring program, the District concluded that the budget was not adequate because there was no “assurance that funding would be received.” (Record at 259) The Application noted that RCECS intended to offer an after-school tutoring program from 3:10 p.m. to 5:00 p.m. as part of its extracurricular activities, noting that funding for the program had not yet been obtained. (Record at 76-77) RCECS’ anticipated source of funding for the after school program was not included in its budgeted revenues.

At the hearing RCECS explained that RCCS had an existing grant from the 21<sup>st</sup> Century Program and that RCECS intended to apply for a similar grant once the charter was approved. RCECS staff explained that new students and students who scored below 70 percent in any core subject would be required to attend the tutoring program. (Record at 404-405) The District relies on CAB’s decision in *Capital Academy Charter School* (CAB 2007-2). There CAB found “speculative from a budgeting perspective” mandatory summer school based on funding from the

district which had been denied by the district. *Capital Academy* at 12-13. CAB finds that the facts of *Capital Academy* are distinguishable from the discernable record here. In this case, CAB finds that a fair reading of the record demonstrates that RCECS intended to apply for a grant for the after-school program after it had obtained a charter, and that the mandatory aspect of the program would only take effect after funding was realized. CAB concludes that the record does not support the District's conclusion that the lack of existing funding for the proposed after-school tutoring program was an essential component of the budget of RCECS. This basis for finding the proposed budget inadequate is thus also rejected.

**3. Comprehensive Learning Experiences**

The CSL requires that the Application demonstrate that the school will provide comprehensive learning experiences to students and encourage the use of different and innovative teaching methods, expanded choices and accountability. The District found that the RCECS proposal was the same or inferior to the programming offered by the District and thus was not comprehensive, different, innovative or expansive of educational opportunities already available in the District. The bases upon which the District made this finding will be addressed *seriatim*.

**a. Cultural Diversity/Early College Model**

The District found that RCECS would not provide innovative or expanded educational choices because of its intent to serve a primarily Latino population and deprive those students of the benefit of the diverse student population of many cultures available in the District. The ability of a public school to provide a diverse student population from which students can learn and grow cannot be denied. Indeed, it is one of the hallmarks of a public school education.

However, CAB has noted that charter schools are frequently focused on the needs of a particular student population. Thus, in the past, CAB has found that while a charter school application that focuses on the needs of Spanish-speaking students may result in a homogenous grouping of students, that fact does not create a legal impediment to the approval of the application under the CSL. *Vida Charter School*, (CAB 2009-2). So long as a charter school applicant does not discriminate against any particular group in its educational plan, the fact that a school has as its mission serving children of Spanish immigrants in the District cannot form the basis for denial of an application. *See Young Scholars of Western PA Charter School* (CAB 2010-3). In this case, the record is clear that the school will not discriminate against or favor an applicant for admission on the basis of race or national origin.

The District also contends that RCECS will not serve as a model for other public schools and is not innovative because the District offers programs similar to those that that RCECS proposes such as its Early College Model. The District does not contend that it offers a Padres Comprometidos Program or one similar to it to involve parents of immigrants in expanding the education horizons of students.

In *Montour School District v. Propel Charter School—Montour*, 889 A.2d 682 (Pa. Cmwlth. 2006), the Court held that similarities alone are insufficient to support a finding of noncompliance with the CSL when there is substantial evidence of uniqueness. Noting that the legislative intent behind the CSL is “to establish and maintain schools that operate independently from the existing school district structure as a method to accomplish ... [and e]ncourage the use of different and innovative teaching methods...” 24 P.S. § 17-1702-A(2), the Court concluded that the applicant offered an educational experience that is unique and different from that in the

District's public schools in keeping with the intent of the CSL. *Id.* at 685. CAB reaches the same conclusion in this case.

**b. Dual Language Immersion (English as a Second Language (ESL))**

RCECS proposes a dual language immersion program that seeks to achieve proficiency in both Spanish and English. RCECS also seeks to develop a school-wide culture of college preparedness by involving parents in the school's early college program through the Padres Compromeditos Program and a college preparedness program. The District points to the fact that both it and RCECS have the same goals of achieving proficiency in English for English as second language students and encouraging all students to pursue post-secondary education. It also points to the high degree of success of its English language proficiency program. (Record at 392)

The dual language immersion program is different from the English language immersion program in both its method and achievement goal. The applicant's program would provide a bridge to English proficiency. RCECS anticipates that students will be proficient in both languages at the conclusion of the fifth grade. Such a result would be unique and different from the District. Similarly, the RCECS early college program enlists immigrant parents through the Padres Compromeditos Program to become partners in the education goals of their children.

For these reasons, CAB concludes that the school will provide comprehensive learning experiences to students and encourage the use of different and innovative teaching methods and expanded choices.

**c. Academic Curriculum**

In its findings, the District also noted that the Applicant's claim of small class sizes—26 to 27 students—is similar to Allentown School District's class sizes in its elementary schools. In a similar vein, the District contends that students would receive a more comprehensive and rigorous math education with the District's curriculum than the Saxon Math textbook series of RCECS. (N.T. 76) Conversely as to the science curriculum, the District found the RCECS program was so "ambitious" as to not be feasible within the 30 minutes per day allotted by the Applicant.

It is undisputed that the Applicant proposes, and the District has, a class size that is roughly equal. By the District's own characterization RCECS will provide educational opportunities different from those provided by the District, one asserted not to be as rigorous as the District (math) and the other overly ambitious (science). The sum of these assertions is that RCECS offers a class size equal to the District; and their math and science classes are different. These similarities and differences are not, in CAB's view, so significant as to support the conclusion reached by the District that RCECS Application is deficient.

**d. Adequate Yearly Progress (AYP)**

RCECS, in its application to the District, relied on the success of the RCCS high school in achieving Adequate Yearly Progress ("AYP") in the No Child Left Behind Act as evidence that its proposed school for kindergarten and elementary students will provide a comprehensive learning environment for students. (Record at 7) The District suggests that the AYP of RCCS was achieved through the safe harbor provisions of the Act and thus casts further question as to whether RCECS can provide a comprehensive learning environment for students. The record is

devoid of any evidence from which a finding of fact could be drawn concerning the application of the safe harbor provisions to RCCS's AYP. In any event, this aspect of AYP is not, without further information, relevant to an evaluation of the Application.

CAB agrees with RCECS that the AYP record of RCCS should not be used as a basis for denial of RCECS's Application.

**e. RCECS Statement Regarding PSSA Scores**

In its application RCECS stated that, as part of its curriculum, it will work with students from other schools so that the District can improve its overall PSSA (Pennsylvania System of School Assessment) scores. The District concluded that such an activity would not provide an innovative opportunity for prospective RCECS students. (Record at 460)

As with regard to the AYP issue discussed above, CAB finds the factor of PSSA scores is, at best, tangential to the issues before CAB; and the District's disagreement with this aspect of the charter's proposal is certainly insufficient grounds to support denial of the Application.

**f. Applicant's Program for English Language Learners (ELL) (ESL)**

The District contends that because its program for English language learners has a "very high proven success rate," the RCECS programming is neither "innovative" nor comprehensive. The District also contends that because RCECS proposes to provide English language learners instruction in a social and casual setting, the District's academically-based program is better than that of RCECS. RCECS contends that these assertions of the District are not relevant to whether RCECS has satisfied the criteria for having its charter approved.

CAB has previously recognized that every aspect of a charter school is not required to be different from the school district. *See City College Prep*, (CAB 2006-1). Further, CAB has



noted that “[t]he 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.” *Sugar Valley Rural Charter School*, (CAB 1999-4).

The Dual Immersion Program is a program that provides instruction in both English and Spanish regardless of whether the student is an English Language Learner. (Record at 18-20, 488-491). CAB notes that it has previously found in *Vida Charter School*, (CAB 2009-2 at 13), that a similar dual immersion program could be innovative and serve as a model. Thus, CAB reaches a similar conclusion here and finds that the RCECS program is sufficiently innovative.

**g. Applicant’s Program for Special Education**

The District, in its findings, relied on a statement of RCECS that it would use its partnership with the Carbon Lehigh Intermediate Unit to conduct appropriate testing regarding the provision of services to special education students to conclude that the partnership did not constitute a plan to address the needs special education students. (Record at 59-60, 261-262)

In *Pocono Mountain Mathematics and Science and Technology Charter School*, (CAB 2004-5), the school district found the application failed to address how the charter school would meet the needs of special education students. CAB reasoned that “[b]ecause students with disabilities require individualized accommodations and programs, a charter school cannot know the specific accommodations that it will need to make for these children until they have enrolled.”

The RCECS application describes in general terms its plan for evaluating special education students, developing programs, hiring teachers and providing services. (Record at 42-45) During the hearing, school district members and administrators asked the founders of

RCECS to provide further details of their plan to meet the needs of special education students. In their response, the founders noted that its sister school had a strong partnership with the Carbon Lehigh Intermediate Unit upon which RCECS intended to rely as a resource in providing special education services. The CAB finds that the record thus provides sufficient detail to comply with the requirements of the CSL.

**h. Sufficiency of Applicant's Assessment Plan**

Finally, we address an issue raised regarding the sufficiency of RCECS' assessment plan. The CSL rather succinctly requires that the application state the methods of assessing whether students are meeting educational goals. 24 P.S. § 17-1719-A(5).

The District found that the Applicant did not provide a detailed explanation or plan for implementing its assessments or how 4Sight assessments would be used as a diagnostic tool or benchmark. (N.T. at 65) As the District noted, the legislative intent of the CSL is to "hold schools accountable for meeting measurable academic goals and provide a method to establish accountability...." 24 P.S.A. §17-1702-A(6). The charter school application must state the methods of assessing whether students are meeting educational goals. 24 P.S. §17-1719-A(5).

At the hearing, RCECS was asked to provide examples of assessments it would conduct. Professional staff testified that the school plans to use the quarterly benchmark tests of the Success for All program which has quarterly benchmark tests and 4Sight. (Record at 400) The District, in its brief, summarily characterizes this testimony as showing that Applicant was unable "to testify comprehensively and intelligently with respect to diagnostic assessments." (District Brief at 11) However, in its Application RCECS adequately described its plan to evaluate student performance periodically to evaluate performance and achievement including

administering the mandated state assessments. (Record at 72-73) Thus, this final objection is also found to be meritless by CAB and is rejected.

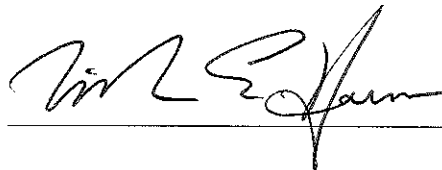
COMMONWEALTH OF PENNSYLVANIA  
STATE CHARTER SCHOOL APPEAL BOARD

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ORDER

AND NOW, this 2<sup>nd</sup> day of August, 2013, based upon the foregoing and the vote of this Board,<sup>1</sup> the Petition to Appeal the Denial by the Allentown School District of the charter application of the Roberto Clemente Elementary Charter School is **GRANTED**;

AND the District is directed to issue a Charter in accordance with the Charter School Law.



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Date Mailed: 8/5/13  
mailed 8/2/13

<sup>1</sup> At the Board's July 30, 2013 meeting the appeal of the Roberto Clemente Elementary Charter School was granted by a vote of 6 to 0, with Members Harner, Lawrence, Magnotto, Marks, Munger and Yanyanin voting to grant the appeal. Board Member Barker was absent.