

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

In Re: Lincoln-Edison Charter School :
Appeal from Denial of Charter by the : **Docket No. CAB 2000-11**
School District of the City of York :

OPINION AND ORDER

I. Introduction

This matter is before the Pennsylvania State Charter School Appeal Board (“CAB”) on an appeal by the Lincoln-Edison Charter School (“Charter School”) from the denial of its charter school application (“Application”) by the Board of School Directors (“Directors”) of the School District of the City of York (“School District”).

II. Findings of Fact

1. On November 15, 1999, the Charter School filed an application for a charter school with the Directors of the School District. *Charter School Application* in Certified Record.
2. On December 17, 1999, the Charter School supplemented its application to the School District by filing certain documents with the Directors. *See Application Fact Sheet, Federal Grant Application Addendum to Commonwealth of Pennsylvania Charter School Application, Public Charter School Program Assurances for Public Charter Schools and a budget for a Charter School Start-Up Grant* in Certified Record.

3. The Directors of the School District held a public hearing on January 13, 2000 in order to take testimony concerning the Charter School Application. *“Rough Notes” Taken by Superintendent Jack C. Van Newkirk* in Certified Record.
4. The Charter School was incorporated as a domestic, nonprofit corporation on January, 13, 2000. *Articles of Incorporation for Lincoln-Edison Charter School* in Certified Record.
5. Edison Schools, Inc. (“Edison”) is a for-profit Delaware corporation. *Charter School Application* at 927.
6. The Directors of the School District heard testimony concerning the Charter School Application at one of their regular meetings held on March 15, 2000. *Minutes of Regular Board Meeting, March 15, 2000*, in Certified Record.
7. After discussion on March 15, 2000, the Directors voted 7 to 1 to deny the Charter School Application. *Id.*
8. By letter dated April 3, 2000, the School District’s solicitor communicated the denial of the Charter School’s application to the Charter School, citing 25 reasons (numbered 1 through 26, missing 19) for the denial. *April 3, 2000 Letter of Gregory H. Gettle (“April 3, 2000 Rejection Letter”)* in Certified Record.
9. The Charter School filed a petition with the York County Court of Common Pleas pursuant to 24 P.S. §17-1717-A(i)(5). *Petition for a Determination of the Sufficiency of a Petition to the Pennsylvania Department of Education Charter Appeal Board* in Certified Record.

10. By decree dated May 10, 2000, Senior Judge Joseph E. Erb held that the petition filed by the Charter School was sufficient. *Discussion and Decree of Judge Erb* in Certified Record.
11. By letter dated May 12, 2000, the Charter School filed its appeal of the School District's denial of a charter with the CAB, which received the appeal on May 15, 2000. *Appeal of Lincoln-Edison Charter School* in Certified Record.
12. By letter dated May 15, 2000, the School District filed a petition with the CAB, which requested that the CAB not consider the appeal filed by the Charter School. *Petition* in Certified Record.
13. By letter dated May 22, 2000, Ernest N. Helling, Assistant Chief Counsel, Pennsylvania Department of Education, acknowledged receipt of the Charter School's appeal and notified the parties that David Bleicken was appointed as the hearing officer for the appeal. *May 22, 2000 Letter of Ernest N. Helling* in Certified Record.
14. By letter dated May 23, 2000, the Charter School's counsel filed a response to the School District's petition that the CAB not consider the Charter School's appeal. *May 23, 2000 Letter of Attorney Fennick* in Certified Record.
15. By letter dated May 24, 2000, the School District's solicitor filed an answer to the Charter School's appeal. *Answer* of the School District in Certified Record.
16. Oral argument was heard before the CAB at its June 15, 2000 meeting, at which time the School District withdrew its petition to dismiss the Charter School's appeal. *See generally* Transcript of Argument before the CAB at 65 – 128.

17. Both the School District and the Charter School waived their rights to an evidentiary hearing. *Id.*

III. Conclusions of Law

1. The CAB has jurisdiction in this matter.
2. The Charter School Application demonstrates sustainable support for the charter school plan by teachers, parents, other community members and students. 24 P.S. §17-1717-A(e)(2)(i).
3. The Charter School Application demonstrates the Charter School's ability, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter. 24 P.S. §17-1717-A(e)(2)(ii).
4. The Charter School Application provided sufficient information in compliance with 24 P.S. §17-1719-A and it conformed to the legislative intent outlined in 24 P.S. §1702-A.
5. The Charter School will serve as a model for other public schools.

IV. Discussion

a. Standard and Scope of Review

On appeal, the CAB reviews the decision of a local board of school directors to deny a charter school application based on the record certified to it by the board of school directors. 24 P.S. §17-1717-A(i)(6). The CAB may permit a local board of school directors or a charter school applicant to supplement the record certified from below with information that was previously unavailable. *Id.* Unlike a court of appeals, the CAB need only give “due consideration to the findings of the local board of directors”, *id.*, and has the authority to disagree with those findings in its written decision. *Id.*

The School District argues that the standard of review appropriate for an appellate court should be used in this proceeding. *School District's Brief* at 19. Previously we have held that, "the CAB's standard of review is not limited to that of an appellate court." *In Re: Collegium Charter School, Docket No. CAB 1999-9* at 23. The School District's argument in this regard is thus rejected.

b. School District's Answer to Charter School's Appeal

In its answer to the Charter School's Appeal, the School District raised an issue that it has failed to address during the remainder of the appeal process and thereby abandoned. The School District essentially contests the decree entered by the Court of Common Pleas below which enabled the Charter School to appeal the School District's decision to the CAB. *School District's Answer* at 1-2 in Certified Record. However, the Charter School Law, 24 P.S. §17-1701-A *et seq.* ("Charter School Law"), "does not give [the CAB] the power to review decisions of the Court of Common Pleas." *In Re: Environmental Charter School, Docket No. CAB 1999-14* at 7. Thus, this issue has not only been abandoned by the School District, it is also without merit.

c. For-Profit Status of Edison

Several of the reasons for the denial set forth in the April 3, 2000 Rejection Letter are based on the for-profit status of Edison and its relationship to the Board of Trustees of the Charter School. *See* Reasons 3, 7, 8, 9, 10, 24, and 25 in *April 3, 2000 Rejection Letter*. The crux of the School District's objection is that Edison, a for-profit corporation, will exercise too much control over the proposed charter school and that it will, in fact, be running the school, rather than the Board of Trustees. The School District cites to the model management agreement in the Application and argues that it provides for over-arching control of the Charter School,

which would be tantamount to granting a charter to a for-profit entity, something the Charter School Law expressly forbids. *Transcript of Argument Before CAB* at 84 - 85 (argument of Mr. Foust); *School District's Behalf* at 9 – 18.

In contrast, the Charter School argues that its Board of Trustees will retain ultimate control over the Charter School and cites to specific parts of the proposed management agreement between itself and Edison which it believes support this proposition. *Charter School's Brief* at 15 – 17; *Charter School's Reply Brief* at 4 – 7. More significantly, at argument, the Charter School indicated that the proposed management agreement was just that, a proposal, the terms of which were under negotiation between Edison and the Charter School. Moreover, the Charter School represented that the agreement ultimately entered into would conform with the Charter School Law.

This Board has previously held that a charter school may contract with a for-profit corporation to deliver educational services. In *In Re: Collegium Charter School*, Docket No. CAB 1999-9, this issue was discussed at length:

The Charter Law provides that a charter may only be granted to a nonprofit entity. 24 P.S. §17-1703-A. The Charter Law also provides that a charter school may be established by a for-profit corporation, association or partnership. 24 P.S. §17-1717-A(a). A charter school may also enter into contracts for services, equipment and supplies, and may acquire real property. 24 P.S. §17-1714-A(a)(3), (5). The CAB finds that nothing in the Charter 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 educational decisions, and the teachers are employees of the charter school itself.**

In Re: Collegium Charter School at 24 (emphasis added). See also *In Re: Ronald H. Brown Charter School* at 10 (conclusion of law #2). Applying this rationale to the facts of this case, the CAB disagrees with the School District's findings and conclusions on this point.

1. Charter School is Nonprofit

There is no question that the Charter School incorporated itself as a nonprofit corporation. The Charter School's articles of incorporation clearly and expressly indicate that it was incorporated on January 13, 2000 as a Pennsylvania nonprofit corporation. *See Articles of Incorporation* in Certified Record.

2. Charter School Has Real and Substantial Authority and Responsibility for the Educational Decisions

The Charter School Law vests the Board of Trustees of a charter school with broad authority to govern the charter school. 24 P.S. §17-1716-A. The question presented in this case is whether the proposed model management agreement between the Charter School and Edison strips the Board of Trustees of its fundamental control over the charter school. We hold that it does not.

The model management agreement between the Charter School's Board of Trustees and Edison expressly recognizes that the Charter School's Board of Trustees, "is responsible for overseeing the operations of the Charter School" (*Application* at 928), and that the management services provided by Edison are governed by applicable laws, subject to the agreement and "further subject to the oversight of the Board." *Id.* In addition, the Board of Trustees may terminate the agreement after the first academic year if Edison has not made progress toward student academic achievement, *Application* at 938 (Section 11.1(1)), or at any time if Edison substantially breaches any of the material terms and conditions of the management agreement. *Application* at 939 (Section 11.1(2)). Thus, we find that the Board of Trustees would retain fundamental control over the Charter School.

In contrast, the School District makes much of certain provisions in the proposed management agreement that it interprets as vesting Edison with too much authority. For

instance, the School District argues that Edison need only submit an annual budget to the Board of Trustees but that Board approval of the annual budget is not required under the management agreement. *School District's Brief* at 15. This argument fundamentally misconstrues the relationship between Edison and the Charter School. The Charter School Law vests the Board of Trustees with the authority, *inter alia*, to, “decide matters related to the operation of the school, including, but not limited to, budgeting . . .” 24 P.S. §17-1716-A(a). Nowhere in the proposed management agreement does the Charter School agree to delegate its decision-making authority on budget related matters to Edison. Therefore, no reference to the Board of Trustees’ authority to decide on budgets is necessary in Section 6.3 of the proposed management agreement (concerning “budgets”) because such authority was never delegated to Edison.

Other sections of the model management agreement do delegate some of the authority of the Board of Trustees to Edison. For instance, Edison is authorized to: (i) adopt and enforce rules and regulations and procedures for the Charter School, *Application* at 930 (Section 4.6); (ii) receive funds applied for by the Charter School as mutually agreed upon by Edison and the Charter School, *Id.* at 933 (Section 6.1(b)); (iii) apply for and receive grant money on its own or in conjunction with the Charter School, *Id.* at 934 (Section 6.5); (iv) determine staffing levels, select, evaluate, assign and discipline personnel and, with the approval of the Board of Trustees, select the Charter School principal. *Id.* at 935 (Sections 7.1 and 7.2). In addition, Charter School employees will be compensated according to Edison’s compensation policies, trained according to Edison’s methods and work under personnel policies determined by Edison. *Id.* (Sections 7.3, 7.5, and 7.6). Thus, Edison will exercise significant responsibilities regarding the day-to-day operations of the Charter School. However, the Charter School Board maintains ultimate control.

We have previously recognized that lay individuals seeking better educational opportunities for their children by establishing a charter school should not be expected to have the ability to operate such a school:

[t]he CAB concludes that it is unrealistic to expect individuals who wish to provide alternate educational opportunities in their local school districts to themselves be professional educators or experts in the field of education. For a charter school founder and trustees to contract with commercial educational service providers for the expertise and skills needed to operate a school, as well as for the proprietary curriculum and educational materials and methods that match the trustees' visions and goals, is reasonable and well within the structure of the Charter Law.

In Re: Collegium Charter School at 24. The model management agreement indicates that Edison will exercise significant control over the Charter School, but such control is necessary if Edison is to be able to use its expertise to provide new educational opportunities to the children in question. Edison's influence and control over much of the personnel and other day-to-day matters at the Charter School is directly related to the fact that Edison, and not the Board of Trustees, possesses the expertise required to operate a charter school. Most significantly, nothing in the model management agreement indicates that the Board of Trustees will not retain ultimate responsibility for the Charter School.

The School District also objects to the fact that the model management agreement authorizes Edison to provide notice to the Board of Trustees of any, "substantial modifications to the Edison School Design at the Charter School." *Application at 929* (Section 4.1). The School District argues that this procedure removes control of the curriculum from the Board of Trustees because such changes do not require their prior approval.

What the School District fails to appreciate is that such notice will enable the Board of Trustees to determine whether such change constitutes a substantial breach of the management

agreement and warrants termination of the agreement pursuant to Section 11.1. This arrangement fosters the kind of creativity and flexibility that the General Assembly intended to foster in charter schools. It is the express legislative intent of the Charter School Law that charter schools should, *inter alia*:

(3) Encourage the use of different and innovative teaching methods.

* * * * *

(5) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.

24 P.S. §17-1702-A(3), (5). Given the legislative intent of the Charter School Law, the ability to change how education is provided to students at the Charter School should be encouraged. The only caveat to this encouragement is that the Board of Trustees should retain the authority to terminate the agreement if such change is so far afield from the kind of educational experience originally intended to be delivered at the Charter School by the parties. We hold that the Board of Trustees has retained such authority in this case.

In addition, the School District objects to the way that Edison will be compensated for its services. Pursuant to the model management agreement, rather than taking an up-front fee, Edison “shall retain any excess of revenues over expenditures as its compensation for the services provided under the Agreement.” *Application* at 934 (Section 6.2). The School District complains that this arrangement will create, “an incentive for Edison to skimp on what has been promised. Edison may also make [sic] profit by not spending all of the money raised by the Trustees through contributions.” *School District’s Brief* at 15.

This argument is mere speculation. Nothing in the record indicates that Edison intends to “skimp” on its promises. In fact, the model agreement contains numerous performance promises by Edison concerning the education program it will provide and the student and teacher outcomes to be achieved. Thus, we cannot concur with the School District’s assertion. Based on the language of the model management agreement, it is equally likely that Edison will make its profit, if any, by running an efficient and effective charter school that provides a sound education for less money than is used by the School District.

3. The Teachers Are Employees of the Charter School Itself

Based on the certified record from the School District, there is no question that Edison and the Charter School both intend that the teachers at the Charter School will be employees of the Charter School itself and not employees of Edison. As the pertinent provision of the model management agreement states:

[a]ll personnel working at the Charter School shall be employees of the Charter Holder, except the business services manager and such other employees mutually agreed on by Edison and the Charter Holder.

Charter School Application at 935 (Section 7.1). Since teachers will be “personnel working at the Charter School,” the model management agreement indicates that the teachers at the Charter School will be employees of the Charter School. At the March 15, 2000 meeting of the Directors, Director Foust complained about provisions in the model management agreement that involve Edison making certain personnel decisions and policies, and providing an option for some Charter School staff to receive stock options in Edison. *Meeting Minutes of Regular Board Meeting, March 15, 2000 at 7.* But as we noted above, the very same model management agreement expressly states that the Charter School personnel, with limited exceptions, will be

employees of the Charter School. *Application* at 935. We are therefore satisfied that the teachers at the Charter School will be employees of the Charter School.

For the foregoing reasons, we disagree with the Directors' findings that Edison's for-profit status requires disapproval of the Application.

d. School District's Related Concerns About Relationship Between Charter School and Edison

In addition to the School District's objections to Edison's for-profit status, the School District intimated that the relationship between Edison and the Charter School is "questionable." *April 3, 2000 Rejection Letter* at 1 (reason #3). By this ambiguous statement, the School District seems to object to what the School District terms as, "[t]he recruitment by Edison Schools, Inc., a for-profit entity, of individuals to request a Charter School which will benefit Edison Schools, Inc." *Id.* at 2 (#8). Even if the School District's assertion that Edison recruited the Charter School's founding coalition is correct, this would not be a valid reason for rejecting the Charter School's application. "[N]othing in the Charter Law prohibits the involvement of for-profit entities in the establishment and operation of a charter school ..." *In Re: Collegium Charter School* at 24 (emphasis added), *see also*, 24 P.S. §17-1717-A(a). The Charter School Law permits individuals, teachers, parents, corporations, associations, partnerships, **or any combination thereof**, to establish a charter school. *Id.* Thus, the Charter School Law expressly permits the kind of joint venture that the School District alleges exists between Edison and the Charter School. Therefore, we find the School District's position to be erroneous.

e. Support by Teachers, Parents and Community Members

The School District below also denied the Charter School application because it found a, "[l]ack of demonstrated sustainable support by teachers, parents and particularly community members." This is the first appeal to the CAB involving the conversion of an existing school.

To effect a conversion of an existing school, the Charter School Law requires applicants to show that:

- (i) More than fifty per centum of the teaching staff in the public school have signed a petition in support of the public school becoming a charter school; and
- (ii) More than fifty per centum of the parents or guardians of pupils attending that public school have signed a petition in support of the school becoming a charter school.

24 P.S. §17-1717-A(b)(2)(i) and (ii). The Application includes the signatures of numerous individuals who are represented to be parents. *Application* at 873 – 901. In addition, the signatures of 19 members of the teaching staff of Lincoln Elementary School are also appended to the Application. *Id.* at 903 – 905. The district did not dispute these signatures in its denial letter.

On appeal, however, the School Directors now explain their general objection of “[l]ack of demonstrated sustainable support by teachers, parents and particularly community members,” *April 3, 2000 Rejection Letter* at 1 (#2), as an attack on the *bona fides* of the signatures of the parents or guardians presented in the Application. We reject this attempt to change the district’s basis for denial. Based upon our review, we are satisfied that the Charter School met its burden below to prove that it had the support of 50% of the parents or guardians of students at Lincoln Elementary School and 50% of the teachers as required by 24 P.S. §17-1717-A(b)(2).

The School District argues that the Charter School is still required to prove that it has the support required of all charter school applicants. *See*, 24 P.S. §17-1717-A(e)(2)(i). We agree. However, we conclude that when an applicant seeking to convert an existing public school proves that it has the support of 50% of the parents or guardians of pupils and 50% of the teachers, it has met the requirements of the Charter Law to show community support for its plan. Since conversion applicants must demonstrate exceptionally strong support for the proposed

charter school from teachers and parents or guardians of students in the school pursuant to 24 P.S. §17-1717-A(b)(2), they need not provide any additional evidence of support to meet the requirements of 24 P.S. §17-1717-A(e)(2)(i).¹ In light of the foregoing, we hold that the Charter School met its burden to prove community support pursuant to 24 P.S. §§17-1717-A(b)(2) and (e)(2)(i).² We hereby reject the finding of the School District to the contrary.

f. Lease of Facility

The School District also denied the Charter School Application because it contained “[i]nsufficient leasing arrangement and maintenance plans for the school building and grounds.” *April 3, 2000 Denial Letter* at 3 in Certified Record (reason #22). The Charter School Law requires an application to contain “a] description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.” 24 P.S. §17-1719-A(11). We have previously held in the context of a non-conversion charter school application that:

[t]he Charter Law does not require that a lease be signed for a facility but requires that the facility be identified and the ownership and lease arrangements be described in at least a general way. 24 P.S. §17-1719-A(11).

In Re: Appeal of Phoenix Academy Charter School, Docket No. CAB 1999-10 at 21-22 (emphasis added). We affirmed a school district’s denial of a charter when the applicant failed to provide any information about a facility, including leasing information. *Id.* at 22. Similarly, we have

¹ In addition the School district asserts that 14 people spoke in favor of the *Charter School* at the January 13, 2000 public hearing while two spoke against it. *School District’s Brief* at 4 – 5. According to the School District, of the 14 speakers in favor of the Charter School, 3 were parents, 6 were teachers, one was the current principal of Lincoln Elementary School and four were members of the community. *Id.* The Charter School argues that approximately 15 people spoke in favor of their application at the January 13, 2000 hearing. *Charter School’s Brief* at 4. Thus, the parties agree that approximately 15 people spoke in favor of the Application at the January 13, 2000 hearing.

² The Charter School urges us to consider community support for its application from the signatures it filed with the Court of Common Pleas. *Charter School’s Brief* at 5. We have previously rejected this argument and do so again in this case. See *In Re: Hills Academy Charter School, Docket No. CAB 1999-12* at 16.

affirmed the objections of a school district to a charter application (again, in a non-conversion context) when the charter applicant failed to provide, *inter alia*, even proposed leases for a facility. *See In Re: Vitalistic Therapeutic Center Charter School, Docket No. CAB 1999-6* at 10. Thus, under our precedents governing non-conversion charter school applications, the failure to provide any leasing information has been grounds for this Board to affirm the objections of a School District.

In an application to convert an existing public school to a charter school, the identity of the facility to be used by the charter school is not in doubt since the facility is the subject of the application itself. In this case, the Application clearly identifies Lincoln Elementary School as the proposed facility to be used by the Charter School. *Charter School Application* at 29. There is no suggestion in the certified record that Lincoln Elementary School is unsuitable to the task of serving as a facility for the Charter School. In fact, Director Foust asserted at oral argument before us that Lincoln Elementary School is, “the newest elementary school in the school district.” *Transcript of Argument Before CAB* at 87. Thus, the only question is whether the School District erred when it denied the Charter School Application for failing to provide enough information about leasing arrangements for the facility. We hold that it did.

The Application does include evidence of the terms and conditions under which the Charter School would use the Lincoln Elementary School. The model management agreement provides details about the condition the building must be in, costs related to additional or upgraded electrical or networking service, access to the building by all parties concerned, and the kind of equipment the School District shall supply including, but not limited to, desks, furniture and the like. *Application* at 932. The model management agreement also provides for capital repairs, improvements, security, transportation and food. *Id.* at 933. In addition, the model

management agreement specifies Edison’s ability to make building adaptations and Edison’s responsibilities concerning cleaning and maintenance. *Id.* at 932; *see also Application* at 29 – 30. We also conclude that the Application contemplates a lease instead of a sale since the model management agreement states that, “[t]itle to the School Facilities shall not be transferred to Edison or the Charter Holder.” *Id.* Therefore, we hold that these provisions of the model management agreement describe the lease arrangements “in at least a general way.” *In Re: Appeal of Phoenix Academy Charter School, Docket No. CAB 1999-10* at 21-22.

We also note that it may be very difficult for a charter school applicant to provide extensive details about the leasing of a building from the school district that owns the building when the school district is, as in this case, opposed to the conversion. While an actual rental agreement, the cost of the rental agreement and other such provisions are not provided, the Model Management Agreement provides enough information to satisfy the requirement of the Charter School Law.

g. Financial Planning and Auditing

The School District also denied the Charter School Application because of:

- 1. Inadequate financial analysis and financial budget for the operation of the Charter School.
- * * * * *
- 18. No 3 year financial plan for the Charter School which follows guidelines for budget development in the Commonwealth of Pennsylvania
- * * * * *
- 20. Lack of budget statement showing the minimum number of students needed for the Charter School to remain financially viable

April 3, 2000 Rejection Letter at 1 – 2. See also Minutes of Regular Board Meeting, March 15, 2000 at 6 and February 25, 2000 Memorandum from Financial and Administrative Review Team at 2, both in Certified Record.

The Charter School Law requires that a charter school application include, “[t]he financial plan for the charter school and the provisions which will be made for auditing the school under section 437.” 24 P.S. §17-1719-A(9). The budget submitted by the Charter School in its application is simple but sufficient to satisfy the requirement of the Charter School Law. The budget provides a sufficient basis from which to conclude that the Charter School has considered fundamental budgeting issues and has determined that it will have the necessary funds to operate. See *Application* at 965 – 971. More detail is not required by the Charter School Law. The Charter School expects approximately 746 students to attend the Charter School, *Application* at 20, and expects to receive \$4,528,448 from the Commonwealth of Pennsylvania to operate. *Id.* at 969. There is no evidence in the certified record and no citation in the School District’s Brief to any requirement for the Charter School to submit a financial plan for three years or to submit the budget statement required by the School District. For these reasons, the Board’s findings concerning the Charter School’s financial plan and budget are rejected.

h. Selection for, and Composition of, Board of Trustees

The School District also denied the Charter School Application because of the structure and selection process for the Trustees of the Charter School Board. *April 3, 2000 Denial Letter at 1, 2*. What the Directors mean by this statement is unclear. There was no discussion of this concern at the March 15, 2000 meeting of the Directors. See Meeting Minutes of *Regular Board*

Meeting, March 15, 2000 at 2 - 9. The only clue to this concern was provided by Director Foust during his presentation before us when he said:

[t]he selection of the members of the board of trustees is very loosely defined, and almost totally blind to the need to involve the community's residents. **Granted, the bylaws met the letter of the law for trustee membership**, but the intent of the selection process here really didn't get to the heart of that neighborhood and that community.

Transcript of Argument Before CAB at 82 (emphasis added).

Although a charter school must be accountable to parents, the public and the Commonwealth, 24 P.S. §17-1715-A(2), there is no requirement that members of a charter school's board of trustees must come from the community to be served by a charter school. Indeed, Mr. Foust admitted as much. With regard to selecting a board of trustees, the Charter School Law requires a charter school application to include, "[t]he proposed governance structure of the charter school, including a description and method for the appointment or election of members of the board of trustees." 24 P.S. §17-1719-A(4). There is no reference in the Charter School Law to any kind of residency requirement. The proposed method of appointment or election of the members of the board of trustees is found in Article IV of the Charter School's proposed bylaws. *See Application* at 956-57.

Similarly, the Directors cited a, "[l]ack of connection between the proposed Trustees with the community and the school district," *April 3, 2000 Denial Letter* at 2 (reason no. 11), as reason for denying the Charter School Application. As noted above, there is no requirement in the Charter School Law that members of a charter school's board of trustees live in the area to be served by the charter school. Nonetheless, Article IV, Section 4 of the Charter School's proposed bylaws requires one of the members of the board of trustees to be a parent or guardian of a child attending the school. *Application* at 957. In addition, the resumes of the first trustees

of the Charter School indicate that they are all residents of the city of York with the possible exception of Mr. Sneddon whose home address does not appear to be indicated. *Application* at 914-924. Included in their number are also the current mayor of the City of York, Mr. Robertson, and Mr. Sneddon, the former editor and publisher of the York Dispatch/York Sunday News. *Id.*

In light of the foregoing, the School District's allegation of a lack of connection between the members of the board of trustees and the community and school district lacks both a basis in law and substantial evidence to support it. Thus, we reject it.

i. Gifted Students

Another stated ground for denial of the Application was because of its alleged, “[f]ailure to address programs for gifted students.” *April 3, 2000 Denial Letter* at 1 (reason #5). To the contrary, however, we find that the Charter School Application does specifically address programs for gifted students:

[a]lthough Lincoln-Edison Charter School will not provide a pullout program for gifted and talented students, the entire program is designed to support their unique learning needs – from school organization to high academic standards, the emphasis on deep exploration, and the sophisticated use of technology.

Edison offers a rich curriculum that provides gifted and talented students unlimited opportunities for exploration of the topics that interest them most.

[T]alent/choice classes, which are developed locally, allow students to take special-interest courses such as tap dancing and public speaking, which they select every 8 or 9 weeks. These classes provide students with additional opportunities to explore areas in which they have special talent or interest.

Charter School Application at 13. Thus, the School District's objection that the Application failed to address programs for gifted students lacks any foundation.

j. Technology and Meetings of the Board of Trustees

The School District's sixth reason for denying the Charter School Application is identified as the, "By Laws permitting meetings of the Charter School Board by telephone instead of requiring in-person meetings." *April 3, 2000 Denial Letter* at 2. The School District cites to no authority for this objection and we can find none. The School District tries to somehow argue that allowing participation at a trustee's meeting by telephone, "does not foster community and parental involvement in the Charter School." *School District's Brief* at 18. Article IV, Section 15 of the Charter School's bylaws permits trustees to attend board meetings by telephone. *Charter School Application* at 958. This is wholly permissible.³

No provision of the Charter School Law prohibits trustees from attending board meetings by telephone conference call or other communications media. In addition, the Charter School is incorporated pursuant to the Nonprofit Corporation Law of 1988, 15 Pa.C.S. § 5101 *et seq.*, which expressly permits attendance at meetings by telephone conference or other similar equipment.⁴

Under the legal authority identified above, use of telephonic meeting is clearly permissible and the School District erred in raising this objection.

³ Although the board of trustees of a charter school must comply with the Sunshine Act, 24 P.S. §17-1716-A(c), it is well settled that a meeting required to be held under the Sunshine Act may take place by telephone conference call using a speaker phone. *BABAC v. Pennsylvania Milk Marketing Board*, 613 A.2d 551 (Pa. 1992).

⁴ As the pertinent provision states:

[e]xcept as otherwise provided in the bylaws, one or more persons may participate in a meeting of the incorporators, the board of directors or another body, or the members of a nonprofit corporation by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at the meeting.

15 Pa.C.S. §5708.

k. Parent and Community Involvement in Charter School Governance and Involvement of Community Groups in Charter School Planning Process

The School District objected to what it perceived was the Charter School Application's, "[l]ack of parents and community members involved with the governance of the Charter School." *April 3, 2000 Denial Letter* at 2. The School District's use of this criterion is within the legislative intent of the Charter School Law, since charter schools are required to be:

accountable to the parents, the public and the Commonwealth, with the delineation of that accountability reflected in the charter. Strategies for meaningful parent and community involvement shall be developed and implemented by each school.

24 P.S. §17-1715-A(2).

The Application provides for the kind of parent and community involvement required by the Charter School Law. As the pertinent provision states:

[f]amily members also will have a role in shaping parts of the school's program and policies. Toward this end, parents will organize a Parent Advisory Council (PAC) that will meet regularly to discuss school issues and to hear families' concerns and suggestions. The PAC will have representatives for each academy and house. It will meet regularly to provide assistance as needed to support schoolwide goals and directions, communicate the concerns and ideas of families, and have input on some policy decisions.

The school also will reserve at least one seat on the school's Board of Directors for a parent.

Application at 27. Parental involvement is strongly encouraged and parents are even invited to call their children's teachers in the classroom since the Charter School will install a telephone for each teacher in his or her classroom. *Application* at 17-18.

The Application also explains that the Charter School's Board of Trustees will be open to the surrounding community and will specifically, "seek the expertise, advice, and involvement of

families and local citizens. This support will reinforce its educational mission at home and throughout the community.” *Application* at 17. The Charter School will also regularly survey students, parents and staff. *Charter School Application* at 15.

Therefore, the School District’s objection to an alleged lack of parent and community involvement with the governance of the Charter School is hereby rejected.

The School District also cites to a, “[l]ack of evidence of parental and community organizations involved in the planning process of the Charter School, as evidenced, in part, by testimony at the public hearing and in narrative in the application,” *April 3, 2000 Rejection Letter* at 2, as a reason for denying the Charter School Application.

The Charter School Law requires that a charter school application must include, “[i]nformation on the manner in which community groups ***will be*** involved in the charter school planning process.” 24 P.S. § 17-1719-A(8) (emphasis added). This requirement is prospective. It only requires an applicant to explain how it will involve community groups in the charter school planning process in the future and after a charter is granted.

The Application states that:

[t]he Lincoln-Edison Charter school administration and Board will seek the expertise, advice, and involvement of families and local citizens. This support will reinforce its educational mission at home and throughout the community.

Edison will hold public meetings to inform the community members about its curriculum and philosophy. During those meetings, the management team as well as the Board will gather input from attendees regarding the plans for the school and the needs that those attending would like to see addressed. Once the school is operational, the school’s principal will convene a Parent Advisory Council (PAC) that will meet regularly to discuss school issues and hear concerns and suggestions.

Application at 25. The Charter School has met its burden and the School District's findings in this regard are hereby rejected.

l. Annual Report to School District

The School District cited a, "failure to provide for the submission of an annual report to the School District describing the extent to which the Charter School is meeting its goals," *April 3, 2000 Rejection Letter* at 2, as a reason for denying the Application. Section 17-1728-A of the Charter School Law requires a charter school to submit an annual report to the chartering school district and to the Secretary of Education in a form prescribed by the Secretary. The charter school is required, by law, to submit such a report, but it is not required to state in its application that it will do so. Therefore, this finding of the School District is rejected.

m. Student Discipline Policy and Expulsion

The School District cites an alleged, "[f]ailure to provide sufficient student discipline policy and expulsion criteria," *April 3, 2000 Rejection Letter* at 2, as a reason for denying the Application.

Quite to the contrary, the Application contains a satisfactory student discipline policy. *Application* at 37-38, 1005-1011. In addition, 24 P.S. §17-1732-A(b) requires charter schools to comply with 22 Pa.Code § 12.1 *et seq.* which governs, *inter alia*, exclusions from school. This is sufficient and adequate and the School District's findings are hereby rejected.

n. Homebound Instruction

The School District cites an alleged, "[f]ailure to provide for homebound instruction for expelled students," *April 3, 2000 Denial Letter* at 2, as a reason for denying the *Application*. Some provision for the homebound education of expelled students will have to be made, but it is not necessary for every single facet of an academic program to be included in a charter school

application. While of some importance, detailing the kind of education the charter school will provide for expelled children is the kind of detail that can wait until after an application is approved. It is enough to note that 24 P.S. §17-1732-A(b) requires charter schools to comply with 22 Pa.Code § 12.6(e) (concerning educating expelled students under age 17). The School District's objection along these lines is thus rejected.

o. Enrolling Students for 1 Year

The School District also objects to an alleged, “[f]ailure to make a commitment to enroll students for a 1 year period,” *April 3, 2000 Rejection Letter* at 2. There is no such requirement in the Charter Law.

Charter schools are required to provide a minimum of 180 days of instruction or 900 hours of instruction per year at the elementary level. 24 P.S. §17-1715-A(9). In addition, 990 hours of instruction per year are required at the secondary level. *Id.* The Application indicates that students will be enrolled at the Charter School for more than the time required by the Charter School Law. Thus, the School District's finding is rejected.

p. Complaint Procedures

The School District cites as a reason for denying the Charter School Application, that “[p]rocedures for complaints by students, parents and employees is primarily through Edison Schools, Inc., instead of the Charter School Board and/or the Charter School Board Administration.” *April 3, 2000 Rejection Letter* at 3.

The Charter School Law only requires an application to include, “[p]rocedures which shall be established to review complaints of parents regarding the operation of the charter school.” 24 P.S. §17-1719-A(10) (emphasis added). Although complaint procedures for parents are the only ones specifically required to be submitted in an application, a school district could

certainly consider complaint procedures for students and employees as part of the school's governance structure. *See* 24 P.S. §17-1719-A(4) and pages 7-11.

As noted above, the Charter School may hire Edison to perform certain tasks for it, including handling complaints from parents. The Application explains the complaint procedure for parents but makes it clear that parents may ultimately take any issue to the Charter School's Board of Trustees. *Application* at 18. The complaint procedure simply highlights that the Board of Trustees remains in ultimate control of the Charter School while leaving some of the details to Edison. This is wholly acceptable.

As noted previously, the Board of Trustees remains in ultimate control of the Charter School. It is wholly permissible for the Charter School to delegate some aspects of the governance of the Charter School to Edison so long as the Board of Trustees remains in ultimate control. For these reasons, the School District's objection to the Charter School's complaint procedures is hereby rejected.

q. Number of Certified and Non-Certified Staff

The School District objects to the Application because of alleged, “[i]nsufficient evidence of the number of certified and non-certified staff and the qualifications for non-certified staff.” *April 3, 2000 Rejection Letter* at 3.

The Charter School Law requires an application to include, “[t]he proposed faculty and a professional development plan for the faculty of a charter school.” 24 P.S. §17-1719-A(13). In addition, the Charter School Law requires that, “[e]ach charter application shall list the ***general qualifications*** needed to staff any noncertified positions.” 24 P.S. §17-1724-A(b) (emphasis added).

The Application gives every indication that it will comply with the Charter School Law. The faculty and other personnel are identified. *Charter School Application* at 989. A professional development plan is explained. *Id.* at 34-35, 49-51. The “general qualifications,” 24 P.S. §17-1724-A(b), needed to staff non-certified positions are the same qualifications intended to govern all positions. *Application* at 49 – 52. While some of the qualifications for staff positions at the Charter School may be somewhat non-traditional (e.g. “sense of mission,” “openness toward others,” “joy of discovery,” *id.* at 93), these are the kinds of innovations encouraged by the Charter School Law. *See* 24 P.S. §17-1702-A(3) (“[e]ncourage the use of different and innovative teaching methods.”)

The School District’s specific objection to the lack of specific evidence about numbers of certified and non-certified personnel is misplaced. The Charter School Law requires that, “[a]t least seventy-five per centum of the professional staff members of a charter school shall hold appropriate State certification,” 24 P.S. §17-1724-A(a). But this requirement could only be met *after* a charter has been granted. That is why the Charter School Law only requires applications to provide the “general qualifications needed to staff any noncertified positions,” 24 P.S. §17-1724-A(b), and not specific numbers of teachers. In any event, it appears from the application that the Charter School intends to hire only certified teachers when it states, “Edison will recruit certified teachers from the school district of the City of York and from across the nation if necessary.” *Application* at 36.

For the foregoing reasons, the School District’s objection to the sufficiency of numbers of certified and non-certified staff is hereby rejected.

r. Liability of Board of Trustees and School District

The School District cited as a reason for denying the Application that:

[t]he application has failed to provide that the Board of Trustees of the Charter School shall be solely liable for any and all damages of any kind concerning the operation of the Charter School and that the School District of the City of York shall not be held liable.

April 3, 2000 Rejection Letter at 3. No such statement is required by the Charter School Law.

The Charter School Law requires an application to include:

[h]ow the charter school will provide adequate liability and other appropriate insurance for the charter school, its employees and the board of trustees of the charter school.

24 P.S. §17-1719-A(17). The Charter School Application indicates that the Charter School will obtain commercial general liability insurance, automobile liability insurance, employee dishonesty insurance, and educators legal liability insurance. *Application* at 974. The model management agreement also indicates that the Charter School will obtain liability, property and workers' compensation insurance. *Application* at 941-942. The Charter School has provided the required information and it is sufficient.⁵

The School District's objections to the lack of statements concerning liability are rejected.

⁵ The language sought by the School District is totally unnecessary since the Charter School Law provides the school district with the protection it seeks. The relevant provisions states in pertinent part:

[t]he board of trustees of a charter school and the charter school shall be solely liable for any and all damages of any kind resulting from any legal challenge involving the operation of a charter school. Notwithstanding this requirement, the local board of directors of a school entity shall not be held liable for any activity or operation related to the program of the charter school.

24 P.S. §17-1727-A.

ORDER

AND NOW, this _____ day of July, 2000, based upon the foregoing and the vote of this Board,⁶ the appeal of the Lincoln-Edison Charter School is affirmed and the School District of the City of York is directed to grant the application and sign Lincoln-Edison Charter School's charter pursuant to 24 P.S. §17-1720-A.

FOR THE STATE CHARTER SCHOOL
APPEAL BOARD

Eugene W. Hickok, Jr.
Chairman

⁶ At the Board's July 19, 2000 meeting, the appeal was granted by a vote of 4-2, with members Aliota, Bunn, Reeves, and Hickok voting to grant the appeal and members Melnick and Shipula voting to deny the appeal.