

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

Renewal Application of the Lincoln Charter School : **Docket No. CAB 2005-3**
:

OPINION

I. Findings of Fact

1. Lincoln Charter School (Lincoln) is a non-profit corporation with a registered address of 158 South Richland Avenue, York, Pennsylvania 17404.

2. The School District of the City of York (York District) is a second class school district, having its principal place of business at 329 South Lindbergh Avenue, York, Pennsylvania 17403.

3. Lincoln received a charter on August 11, 2000.

4. Article 6.2 of Lincoln's management agreement with Edison

Schools, Inc. provides:

6.2. Operation and Board Expenses Except as otherwise provided in this agreement, from the funds remitted by the charter holder to Edison, Edison shall pay the cost associated with operating the charter school in conformity with the Edison school design, as detailed in the budgets approved by the board pursuant to Section 6.3 below. Edison shall implement its "50/50 sharing plan" at the charter school according to regular Edison fiscal policies. Accordingly, if, due directly to the efforts of the local management team at the charter school (i.e., the principal, business service manager, etc.), the financial performance of the school exceeds the targets set by Edison, half of any savings generated by such performance will be reserved by Edison to be

spent on program enhancements at the charter school consistent with the Edison school design

5. On September 7, 2001, York District, by letter, requested 18 items necessary to complete its monitoring of Lincoln for the 2000-2001 school year.

6. On November 6, 2001, Lincoln, by letter, responded to York District's September 7, 2001 letter by informing York district that (a) some of the documents were not available, (b) some of the documents had been forwarded to the Pennsylvania Department of Education for its monitoring, (c) while Lincoln disputed York District's right to request records, it would nonetheless provide those records, (d) some of the records were attached, (e) some of the records were not attached, but were available for inspection and copying at Lincoln, (f) some of the information could best be obtained by interviewing Lincoln staff, who would be made available upon request, and (f) some of the records did not exist.

7. On January 16, 2002, the York District, by letter, indicated that it found Lincoln's November 6, 2001 letter unresponsive to York District's September 7, 2001 information request, and York District renewed its request for the same records.

8. On April 18, 2002, Lincoln responded, by letter, to York District's January 16, 2002 letter by providing additional information and offering to meet to resolve the matter.

9. On June 10, 2002, York District, by letter, requested information from Lincoln that was still outstanding from its previous request.

10. On October 3, 2002, Lincoln provided additional information in response to York District's requests, and again offered to meet to resolve the matter.

11. On June 17, 2004, Lincoln's Counsel, Daniel M. Fennick, transmitted to York District's counsel, Gregory H. Gettle, a lease for the charter school building for the amount of \$12,000.00 per year.

12. On October 13, 2004, Lincoln's Counsel, Daniel M. Fennick, informed York District by letter that the Lincoln board accepted York District's offer to lease the charter school building for \$1,000.00 per month, and that retroactive amounts due would be paid from an escrow account, as determined by the Commonwealth Court.

13. On October 1, 2004, Lincoln filed an application for charter renewal with York District.

14. On November 5, 2004, York District sent a letter indicating its reasons for non-renewal and scheduling a hearing for November 15, 2004.

15. After hearings on November 15, November 30, and December 13, 2004, the York District board members voted on December 15, 2004 to pass a resolution denying the request.

16. On February 12, 2005, Lincoln filed this appeal.

17. On March 16, 2005, York District voted to adopt an adjudication, that set forth the reasons for non-renewal and served the adjudication on Lincoln the following day, March 17, 2005.

18. Members of Lincoln's Board of Trustees failed to file timely Statements of Financial Interest, as required by the State Ethics Law, 65 Pa. C.S. 1101, et seq.

II. Conclusions of Law

1. The Charter School Law (CSL), Act of June 19, 1997, No. 22 (24 P.S. 17-1701-A, *et seq.*) governs the non-renewal of a charter.

2. Section 1729 of the CSL sets forth the bases upon which a school district's board may non-renew a charter, which are:

(1) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.

(2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.

(3) Failure to meet generally accepted standards of fiscal management or audit requirements.

(4) Violation of provisions of this article.

(5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.

(6) The charter school has been convicted of fraud.

24 P.S. 17-1729-A(a)(1)-(6).

3. In determining whether a school district's non-renewal of a charter is appropriate, the CAB shall give due consideration to the findings of the school district's board and specifically articulate its reasons for agreeing or disagreeing with the board. 24 P.S. 17-1729-A(d); *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (Pa. Cmwlth. 2000).

4. In determining whether the revocation of a charter was appropriate, the CAB shall review the record made in the proceeding below and may supplement the record at its discretion with information that was previously unavailable. 24 P.S. 17-1729-A(d).

5. Because the statutory standards for review of charter non-renewals are the same as those involved in the review of charter denials, the CAB shall make a de novo review of York District's determination. *Compare* 24 P.S. 17-1717-A(i)(6) *with* 24 P.S. 17-1729-A(d); *West Chester*.

6. The CSL requires York District to state the grounds for the non-renewal with reasonable specificity and to give reasonable notice to Lincoln's governing board of the date on which a public hearing concerning the non-renewal will be held. 24 P.S. 17-1729-A(c).

7. York District must conduct the hearing, present evidence in support of the grounds for non-renewal stated in its notice, and give Lincoln reasonable opportunity to offer testimony before taking final action. 24 P.S. 17-1729-A(c).

8. York District must take formal action to non-renew Lincoln's charter at a public meeting pursuant to the act of July 3, 1986 (P.L. 388, No. 84), known as the "Sunshine Act," after the public has had thirty (30) days to provide comments to the board. *Id.* All proceedings of the local board pursuant to this subsection are subject to the Local Agency Law, 2 Pa.C.S. Ch. 5 Subchapter B. 24 P.S. 17-1729- A(c).

9. York District met its statutory obligations under 24 P.S. 17-1729-A(c).

10. The CSL places the burden of proof on the York District to present compelling evidence to substantiate its reasons for non-renewal. 24 P.S. 17-1729-A(c).

11. The record in this matter does not support the non-renewal of Lincoln's charter.

III. Discussion

The York District can decide not to renew Lincoln's charter for the following reasons only:

(1) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.

(2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa.Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.

(3) Failure to meet generally accepted standards of fiscal management or audit requirements.

(4) Violation of provisions of this article.

(5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.

(6) The charter school has been convicted of fraud.

24 P.S. 17-1729-A.

The CSL requires York District to state the grounds for the non-renewal with reasonable specificity and give reasonable notice to Lincoln's governing board of the date on which a public hearing concerning the non-renewal will be held. *Id.* York District must conduct the hearing, present evidence in support of the grounds for non-renewal stated in its notice, and give Lincoln reasonable opportunity to offer testimony before taking final action. *Id.*

York District must then take formal action to non-renew Lincoln's charter at a public meeting pursuant to the act of July 3, 1986 (P.L. 388, No. 84), known as the "Sunshine Act," after the public has had thirty (30) days to provide comments to the board. *Id.* All proceedings of the local board pursuant to this

subsection are subject to the Local Agency Law, 2 Pa.C.S. Ch. 5 Subchapter B, which means that the board must provide Lincoln with sufficient time to respond to the allegations, a record of all proceedings must be kept, and all adjudications must be in writing. *Id.*

York District met its statutory obligations under 24 P.S. 17-1729- A(c). First, On November 5, 2004, York District notified Lincoln, by letter, of its preliminary reasons for non-renewal. York District then conducted hearings November 15, November 30, and December 13, 2004, where it presented its evidence and gave Lincoln reasonable opportunity to offer testimony. York District then prepared a formal, written adjudication and took formal action to adopt its reasons for non-renewal in a public meeting on March 16, 2005. All this took much more than thirty days, and the public had ample time and opportunity to comment.

We also find no authority or justification to quash Lincoln's appeal as premature, because Lincoln reasonably relied upon the reasons for the non-renewal that had been presented to it, which were the same as ultimately contained in the written adjudication, and no harm has accrued to York District by reason of having the appeal precede the written adjudication.

York District's stated reasons for non-renewal are that (1) Lincoln violated material terms of the conditions, standards, or procedures contained in its written

charter by failing to apply the “50/50 sharing plan” mentioned in the management agreement and incorporated into the charter, (2) Lincoln failed to meet the requirements for student performance set forth in 22 Pa. Code, Chapter 5, and in its charter, based on the PSSA test scores and standards of the No Child Left Behind Act for math and reading for the school years 2001-2002 through 2003-2004, (3) Lincoln failed to meet generally accepted standards of fiscal management or audit requirements, because Lincoln failed to make lease payments to the York District, (4) Lincoln violated the CSL by failing to provide the York District with access to its records, and (5) Lincoln violated applicable law by failing to file statements of financial interest as required by the State Ethics Act. We note that other reasons for the non-renewal decision have been given in various documents, which we have considered, but we will only specifically address those briefed by counsel.

The CSL places the burden of proof on the York District to present compelling evidence to substantiate its claims. 17-1729- A(c). With respect to the 50/50 Sharing Plan, the record does not contain sufficient evidence to substantiate York District’s allegations. The York District relied on Article 6.2 of Lincoln’s management agreement, for its interpretation that the 50/50 sharing plan should have been applied. Article 6.2, in relevant part, provides as follows:

6.2 Operational and Board Expenses. *** Edison will implement its “50/50 Sharing Plan” at the Charter School according to regular Edison fiscal policies. Accordingly, if, due directly to the efforts of the local management team at the Charter School (i.e., the principal, business services manager, etc.), the financial performance of the school exceeds the targets set by Edison, half of any savings generated by such

performance will be reserved by Edison to be spent on program enhancements at the Charter School consistent with the Edison School Design. Upon reasonable advance request, Edison shall provide evidence to the Charter Holder that the Charter School is in compliance with the requirements, terms and conditions of all funds remitted to Edison and shall provide all reports, data, and information reasonably necessary for the Charter School to meet any reporting, certification or other requirements for such funding.

The record, is replete with conflicting testimony about whether this provision applies, how it could be applied, and whether Lincoln has the authority to unilaterally apply it. The most compelling testimony is that of Lincoln's auditor, who testified that "it would be difficult to determine whether or not financial criteria have been met at this point, given that there is [sic] approximately \$700,000.00 of expenses that are still in question at this time," N.T. November 30, 2004 pp. 22-23. CAB takes official notice of the fact, as will also be discussed later in this opinion, that the parties continue to litigate whether and how much rent may be due for the building in which the school operates. The monetary gap between the parties on these issues is substantial, and lends credence to the auditor's comment. Thus there is simply too much uncertainty surrounding the interpretation of the provision, and therefore, we cannot conclude that Lincoln failed to comply with it.

With respect to York District's claim that Lincoln failed to meet applicable test standards, the record again fails to support the allegation. In particular, the York District concentrates its efforts on establishing that York District's students do as well or better on standardized tests, but York District's analysis omits any discussion of the requirements of the Department of

Education's regulations at 22 Pa. Code, which are the applicable requirements under Section 17-1729-A. For example, 22 Pa. Code 4.12(f) provides:

(f) School districts (including charter schools) and AVTSs shall assess the attainment of academic standards developed under subsections (a) and (c) and any other academic standards which they develop and describe in their strategic plans under § 4.52(c) for purposes of high school graduation and strategies for assisting students to attain them. Plans for assessment developed by school districts (including charter schools) and AVTSs will take into account that academic standards in subsections (a) and (c) may be attained by students in various ways and shall be assessed in various ways. Children with disabilities may attain the academic standards by completion of their Individualized Education Programs under the Individuals with Disabilities Education Act and this part.

Schools are required to assess the attainment of their students, and to work to achieve high standards, but no specific statistical level of attainment is required to retain a charter under the CSL. We find from our review of the record that Lincoln has assessed the attainment of its students, and has been successful in improving that attainment to at least the same level as the York District's schools. Consequently, the record does not support York District's allegation that Lincoln failed to meet the applicable requirements for student performance.

York District then claims that Lincoln's charter should not be renewed because it failed to make required lease payments. The record shows, however, that the lease amount is in dispute and Lincoln has made a good faith effort to make these payments by preparing a lease, attempting to comply with the Commonwealth Court's decisions in *School District of the City of York v. Lincoln-Edison Charter School*, 798 A.2d 295 (Pa. Cmwlth. 2002) and December

30, 2004 Memorandum Opinion filed in docket nos. 1131 C.D. 2004 and 1224 C.D. 2004, and placing rent money in escrow. The parties continue to actively litigate the issue of the fair market value of the lease before the Pennsylvania Supreme Court at the time of this writing. *See* School District of the City of York's Brief in Opposition to Lincoln Charter School's Application for Renewal of Charter, pp. 15-16, and the Petition for Allowance of Appeal attached to that brief as Appendix C. It is unreasonable to expect Lincoln to be able to document compliance with lease requirements that have yet to be finalized.

York District's next reason for non-renewal is that Lincoln failed to provide records to York District when requested. Our review of the record shows that this dispute occurred in 2001 and 2002. Since then, the record shows no instances where York District complained of inadequate access to Lincoln's records. Moreover, we find that Lincoln offered reasonable access to its records under the circumstances in 2002, and that non-renewal for this reason would not be justified.

York District's final reason for non-renewal is that Lincoln failed to comply with the State Ethics Law, 65 Pa. C.S. 1101, *et seq.*, which requires public officials to file statements of financial interest by May 1 of each year. Lincoln admitted at oral argument that it failed to file these statements, and that it now realizes that the statements were required. There is no doubt that failure to comply with the State Ethics Law is a serious matter, and that we have previously

determined that such a violation, in conjunction with other serious violations, constitutes grounds for charter revocation. *In re: Thurgood Marshall Academy Charter School v. Wilkinsburg School District*, No. CAB 2001-5. Nonetheless, under the circumstances of this case we find that the Ethics Law violation does not, standing alone, constitute sufficient grounds to non-renew the charter of a school that has otherwise behaved reasonably.

IV. Conclusion

For the reasons stated above, we find that the record does not support the non-renewal of Lincoln's charter. We therefore specifically reject the several grounds for non-renewal proffered by the York District and hold that the York District's non-renewal is hereby reversed.

