

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

In Re:

The Learning Connection Charter School	:	
Appeal from Denial of Charter by the	:	Docket No. CAB 2001-1
Chester Upland School District	:	

OPINION AND ORDER

I. Introduction

On November 15, 1999, The Learning Connection Charter School (“Learning Connection”) submitted an application to the Chester Upland School District (“School District”) for a charter to operate a charter school pursuant to Act 22 of 1997, 24 P.S. §§17-1701-A et seq. (Application). A public hearing regarding Learning Connection’s application was held before the School District’s Board of Control on December 22, 1999.¹ (Transcript in certified record). On February 24, 2000, an additional hearing was held, with no evidence presented by Learning Connection, and the Board of Control voted to deny Learning Connection’s application. (Transcript in certified record).

Learning Connection filed a petition with the Delaware County Court of Common Pleas pursuant to 24 P.S. §17-1717-A(i)(2), which included signatures of at least two percent of the residents of the School District. (Petition in certified record). The Court of Common Pleas held a hearing on the sufficiency of the signatures on June 15, 2000, and on January 3, 2001, issued an Order and Opinion finding that the signatures were sufficient. (Opinion and Order in certified record).

¹ On or about June 13, 1994, the Secretary of Education declared the School District a financially distressed district. Pursuant to 24 P.S. §6-692, a Board of Control was appointed to assume control of the affairs of the School District and operate it in place of the school directors.

On January 17, 2001, Learning Connection filed an appeal with the Charter School Appeal Board (“CAB”). CAB appointed a hearing officer and at its April 5, 2001 meeting, CAB heard argument from both parties on this matter. (Transcript of hearing). Upon review of this testimony and the certified record, CAB affirms the School District’s denial of Learning Connection’s application.

II. Findings of Fact

1. On November 15, 1999, Learning Connection submitted an application to the School District for a charter. (Application in certified record).

2. The School District held hearings on the charter application on December 22, 1999 and February 24, 2000. (Transcript of hearings in certified record).

3. On February 24, 2000, the School District’s Board of Control voted to deny Learning Connection’s application. (Resolution in certified record).

4. Pursuant to 24 P.S. §17-1717-A(i)(2), Learning Connection filed a petition, including signatures of at least two percent of the residents of the School District, with the Court of Common Pleas of Delaware County, which found the signatures attached to Learning Connection’s petition sufficient to allow an appeal to CAB.

5. On January 17, 2001, Learning Connection filed an appeal of the School District’s denial of its application with CAB.

6. CAB received the certified record and on April 5, 2001 heard oral arguments by the parties.

7. Learning Connection states in its application that “the Board [of Trustees] will discharge some of its duties through a management contract with Charter Choice, Inc.” (Application, p. 19).

8. Learning Connection's application, however, does not contain a copy of any management agreement between Learning Connection and any educational management company that is expected to provide management services to Learning Connection. (Application in certified record).

9. The School District contends that a management agreement between Learning Connection and a management company was not submitted to the School District. (Transcript of CAB hearing and letter dated March 30, 2001 to CAB from Leo Hackett, Esquire).

10. One of Learning Connection's founders filed an affidavit with CAB stating that he provided copies of a management agreement in effect for the Chester Community Charter School to the School District's Board of Control. (Affidavit dated April 19, 2001).

11. Attached as Exhibit B to Learning Connection's Brief submitted to CAB, are Learning Connection's responses to the School District's Findings of Fact. (Brief in certified record).

12. The School District's Finding of Fact Number 5 stated that Learning Connection failed to provide the Board of Control with a copy of the proposed management agreement between Learning Connection and the company expected to operate the school. (Findings of Facts and Conclusions of Law in certified record)

13. In its response to Finding of Fact Number 5, Learning Connection stated that it provided the proposed management agreement between Charter Choice, Inc. and The Chester Community Charter School on numerous occasions. Learning Connection stated that because a charter had not yet been granted, Learning Connection's Board of Trustees was not formally organized and did not enter into an agreement with Charter Choice, Inc.² In addition, Learning

² Two representatives of the proposed management company are the temporary and only two members of Learning Connection's Board of Trustees. (School District's Finding of Fact Number 3 and Learning Connection's response

Connection represented that an agreement between Learning Connection and the management company would resemble the agreement between Charter Choice and The Chester Community Charter School. (Brief in certified record).

14. The certified record does not contain a copy of any management agreement.

15. There are no documents in the application, including articles of incorporation, evidencing that Learning Connection has been incorporated as a non-profit corporation.³

16. Learning Connection states in its application that it is negotiating for a facility at the following locations: Site of the former St. Hegwick's Church located at 4th and Hayes, the Franklin School or the Sun Center Complex. (Application, p. 22).

17. The application contains no other information about a facility.

III. Conclusions of Law

1. Failure to provide a finalized version of a management agreement between Learning Connection and the management company prevents CAB from determining whether the application comports with the requirements of the Charter School Law. School District of the City of York v. Lincoln-Edison Learning Connection, (Commw. Ct. April 30, 2001).

2. Learning Connection failed to appoint a Board of Trustees to negotiate a finalized version of a management agreement prior to submission of its application to the School District.

in the certified record). Although CAB has not previously stated the need for a Board of Trustees to be appointed prior to submission of an application, this is clearly an important step, particularly when Learning Connection expected to contract with a management company for management services. Since a charter school must present a finalized version of a management agreement (as is discussed in Section IV.A. below), a Board of Trustees is needed to review, negotiate and vote on such an agreement. The Board of Trustees that is to review, negotiate and vote on the management agreement cannot be principals in, or representatives of, the proposed management company.

³Nothing in the Application, or elsewhere in the certified record, demonstrates that Learning Connection is incorporated as a non-profit entity. Although Learning Connection states that it is a non-profit, and the School District has not raised this issue, CAB must make certain that a charter is granted only to a non-profit entity. Therefore, there should be some evidence that Learning Connection has been incorporated as a non-profit, or at a minimum, a copy of proposed articles of incorporation as a non-profit should be provided.

3. The Charter School Law provides that a charter application shall include 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).

4. Learning Connection failed to provide sufficient information about the proposed site of Learning Connection in its application. 24 P.S. §17-1719-A(11).

IV. Discussion

A. Management Agreement

In describing Learning Connection’s proposed management organization, Learning Connection states in its application that “the Board [of Trustees] will discharge some of its duties through a management contract with Charter Choice, Inc.” (Application, p. 19). However, neither the application nor the certified record contains a copy of a management contract with Charter Choice, Inc., or any other entity. The School District has argued that Learning Connection did not provide it with a copy of a management agreement. Learning Connection responded to the School District’s Finding of Fact Number 5 that a copy of the management agreement between Charter Choice, Inc. and the Chester Community Charter School, another charter school apparently managed by this company, was submitted to the School District on numerous occasions. However, Learning Connection did not state or establish that a finalized management agreement existed between Learning Connection and any management company. Learning Connection has asserted that its management agreement would resemble the agreement between Charter Choice, Inc. and Chester Community Charter School.

Based on the Opinion and Order issued by the Commonwealth Court in the case of School District of the City of York v. Lincoln-Edison Charter School, (No. 1886 C.D. Commw. Ct. April 30, 2001), Learning Connection’s application cannot be granted. The Commonwealth

Court held in Lincoln-Edison that, in cases such as this, CAB must have a finalized version of the management agreement in order to determine whether the application comports with the requirements of the Charter School Law. The Board cannot grant a charter based on a ‘model’ agreement or promises that after approval of its application the charter school will enter into an agreement that complies with the law. Lincoln-Edison, at p. 9.

Learning Connection did not provide a finalized version of a management agreement to the School District or to CAB. Therefore, CAB must affirm the School District’s denial of a charter to Learning Connection.

B. Facility

In its application, Learning Connection states, “we are negotiating with the following locations: Site of the former St. Hegwick’s Church located at 4th and Hayes, the Franklin School or the Sun Center Complex.” (Application, p. 22). There is no other information provided about the proposed facility for the charter school. Although CAB has not required charter schools to provide extensive information about proposed facilities, the information provided in Learning Connection’s application is not sufficient to fulfill the Charter School Law.

The Charter School Law requires “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). Learning Connection provided the address for one of the facilities but did not provide any ownership information or any lease arrangements.

In Phoenix Academy Charter School, CAB 1999-10, CAB stated that a lease does not need to be signed for a facility but it must be identified and the ownership and lease arrangements be described in a general way. In Kemetic Institute Charter School, CAB 2000-6, CAB also found the facility information provided by the charter school to be insufficient. In

Kemetic, the charter school stated that it was looking at several locations in the North Central Philadelphia area, including one at 2233-47 W. Allegheny Avenue. CAB stated in its Opinion that Kemetic need not purchase a facility or enter into a lease in order to comply with this section, but it must show some evidence of the likely availability of a particular facility and provide its address and physical description.

The facility information provided by Learning Connection is similar to the information provided in the Kemetic case. Learning Connection failed to show any evidence of the likely availability of a particular facility and its description. Learning Connection also failed to provide any information about ownership or lease arrangements, even in a general way.

Therefore, for the reasons set forth above, CAB must affirm the School District's denial of a charter to Learning Connection.

ORDER

AND NOW, this _____ day of July, 2001, based upon the foregoing and the vote of this Board⁴, the appeal of the Learning Connection Charter School is denied.

FOR THE STATE CHARTER SCHOOL
APPEAL BOARD

Charles B. Zogby
Chairman

⁴At the Board's June 13, 2001 meeting, the appeal was denied by a vote of 5-0 with Bunn, Melnick, Reeves, Shipula and Zogby voting to deny the appeal.