

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION**

STATE CHARTER SCHOOL APPEAL BOARD

In Re: Renaissance Academy of Pittsburgh Alternative of Hope (RAPAH) Charter School	: Docket No. CAB 2007-03
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	:
Appeal from the non-renewal of charter by School District of Pittsburgh	:
	:

OPINION

Background

The Renaissance Academy of Pittsburgh Alternative of Hope Charter School (“RAPAH”) was initially granted its charter by order of the State Charter School Appeal Board (“CAB”) in 2001. The term of the charter was to last through the 2006-2007 school year. By letter dated July 17, 2006, RAPAH requested that the School District of Pittsburgh (“Pittsburgh” or “District”) renew the charter for an additional 5-year term. On November 15, 2006, the Pittsburgh Board of Education (“Board”) voted to not renew RAPAH’s charter and on January 29, 2007, Pittsburgh gave RAPAH formal notification of the grounds for non-renewal as well as the date, time and place at which a public hearing concerning the non-renewal would be held. On February 15, 2007, RAPAH filed a direct appeal to CAB alleging that Pittsburgh failed to act in a timely manner in regards to the renewal application. Pittsburgh filed a Motion to Quash and argument was scheduled for April 3, 2007. On March 30, 2007, however, the parties entered into a stipulation; RAPAH waived its request provided that, for the remainder of the charter renewal process, the parties adhere to the stipulated timeline.

On February 23, 2007, a public hearing, at which both RAPAH and Pittsburgh were afforded a full opportunity to be heard, was held. A decision recommending non-renewal

was issued by the hearing officer on April 17, 2007 and, at a legislative meeting of the District on April 25, 2007, the hearing officer's findings were adopted in full by the Board. On May 4, 2007, RAPAHA filed with CAB an appeal of Pittsburgh's decision to not renew the charter. The record was certified and the appeal was heard on May 15, 2007. For the reasons set forth below, we hold that the non-renewal of the RAPAHA charter was proper.

Findings of Fact

1. RAPAHA is a non-profit corporation with its registered address at 120 South Whitfield Street, Pittsburgh, Pennsylvania 15206.
2. The School District of Pittsburgh is a school district of the first class A organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal place of business at 341 South Bellefield Avenue, Pittsburgh, Pennsylvania 15213.
3. RAPAHA's original charter was granted in 2001.
4. The initial charter expired at the close of the 2006-2007 school year.
5. By letter dated July 17, 2006, counsel for RAPAHA notified the District of its intent to renew the charter commencing with the 2007-2008 school year.
6. By letter dated August 24, 2006, the District notified RAPAHA that the renewal process would begin upon the District's receipt of RAPAHA's annual report, including Appendix J.
7. On September 21, 2006, RAPAHA submitted its 2005-2006 Annual Report and Appendix J to the District along with a copy of RAPAHA's 2004-2005 audited financial statements.

8. On October 31, 2006, RAPAHA submitted additional information requested by the District.

9. The District assembled a team consisting of eight District employees and two parent representatives to review the charter application, the 2005-2006 Annual Report, Appendix J and additional documents and to conduct an on-site visit to RAPAHA.

10. On November 8, 2006, the review team made a presentation to the Board regarding RAPAHA's request for renewal and recommended that RAPAHA's charter not be renewed.

11. On November 15, 2006, the Board voted at its regular legislative meeting to accept the recommendation of the review team.

12. By letter dated January 29, 2007, the District provided RAPAHA with formal notice pursuant to the Charter School Law, 24 P.S. § 17-1729-A, of the grounds for non-renewal of the charter and the date, time and place at which a public hearing concerning the non-renewal would be held.

13. The District provided three grounds for not renewing the charter: (a) RAPAHA had committed one or more material violations of the conditions, standards or procedures contained in the charter signed pursuant to Section 1720-A of the Charter School Law, (b) RAPAHA failed to meet generally accepted standards of fiscal management or audit requirements and (c) RAPAHA had violated a provision of law from which it had not been exempted.

14. A public hearing was held on February 23, 2007 in accordance with procedures set forth in the Local Agency Law, 2 Pa. C.S.A. § 551 *et. seq.*

15. Both the District and RAPAHA appeared at the hearing and were represented by counsel.

16. On May 4, 2007, RAPAHA filed this appeal.

Conclusions of Law

1. The Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, 24 PS § 17-1701-A *et. seq.* (“CSL”), governs the application process, the approval process, the operation and revocation/renewal of charter schools in Pennsylvania.

2. Pursuant to §17-1729-A(a) of the CSL, a school district may deny the renewal of a charter based on any of the following:

- (a) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.
- (b) 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.
- (c) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (d) Violation of provisions of [the Charter School Law].
- (e) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
- (f) The charter school has been convicted of fraud.

3. In determining whether a school district’s non-renewal of a charter is appropriate, CAB shall give due consideration to the findings of the local board of school directors and specifically articulate reasons for agreeing or disagreeing with the board. 24

P.S. § 17-1729-A(d); *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 571 Pa. 503, 516-17 (2002).

4. Because the statutory standards for review of charter non-renewals are the same as those for the review of charter denials, CAB shall make a de novo review of the District's determinations. *Compare* 24 P.S. § 17-1717-A(i)(6) *with* 24 P.S. § 17-1729-A(d); *see also West Chester* at 516-17.

5. CSL requires a district to state the grounds for non-renewal of a charter with reasonable specificity and to give reasonable notice to the charter school of the date on which a public hearing concerning the non-renewal will be held. 24 P.S. § 17-1729-A(c).

6. A district must conduct a hearing, present evidence in support of the grounds for non-renewal stated in its notice and give the charter school reasonable opportunity to offer testimony before taking final action. 24 P.S. § 17-1729-A(c).

7. A district must take formal action regarding the non-renewal of a charter school 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 submit comments to the board. 24 P.S. § 17-1729-A(c).

8. CSL places the burden of proof on Pittsburgh to present evidence to substantiate its reasons for non-renewal. *See* 24 P.S. § 17-1729-A(c).

9. The School District of Pittsburgh met its statutory obligations under 24 P.S. § 17-1729-A(c).

10. RAPAH committed material violations of the conditions, standards and procedures contained in the written charter.

11. RAPAHA violated generally accepted standards of fiscal management and audit requirements.
12. RAPAHA violated a provision of law from which it had not been exempted.
13. The record in this appeal supports the non-renewal of RAPAHA's charter.

Discussion

The Pennsylvania General Assembly enacted the Charter School Law to provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system. It was the intent of the Legislature that charter schools would offer diverse and innovative educational techniques while operating independently of the traditional public school system. *See* 24 P.S. § 17-1702-A. The charter school application process is rigorous as the intent of the CSL is to improve educational opportunities for students. *See generally*, 24 P.S. § 17-1719-A; *see also* 24 P.S. § 17-1702-A. When a charter is granted by a local board of school directors, the charter school is required to comply with the terms and conditions of that charter, as well as the information contained in the charter school application, which is incorporated into the charter. 24 P.S. §17-1720-A; *see also* 24 P.S. § 17-1729-A(a)(1).

Section 1729(a) of the Charter School Law sets forth the causes for non-renewal or termination of a charter. Those causes include:

- (1) One or more material violations of any of the conditions, standards or procedures contained in the written charter.
- (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.
- (3) Failure to meet generally accepted standards of fiscal management or audit requirements.

- (4) Violation of provisions of the Charter School Law.
- (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.
- (5) The charter school has been convicted of fraud.

24 P.S. § 17-1729-A(a). In order to legally terminate or not renew a charter, a district must prove that a charter school violated at least one of these provisions.

In the present case, the District voted to not renew RAPAHA's charter; specifically, Pittsburgh asserts that RAPAHA has: (1) committed one or more material violations of the conditions, standards or procedures contained in the charter signed pursuant to Section 1720-A of the Charter School Law, (b) failed to meet generally accepted standards of fiscal management or audit requirements, and (c) violated laws pertaining to criminal record history and child abuse clearance certificates.

In accord with the discussion below, CAB now finds, based upon its independent review of the record that Pittsburgh acted properly in not renewing RAPAHA's charter.

Standard of Review

Before addressing the merits of this appeal, it is necessary to set forth the proper standard of review to be applied by CAB in this matter and to address a procedural issue raised by RAPAHA. Regarding the proper standard of review, Section 1729(d) of the Charter School Law states:

The appeal board shall have the exclusive review of a decision not to renew or revoke a charter. The appeal board shall review the record and shall have the discretion to supplement the record if the supplemental information was previously unavailable. The appeal board may consider the charter school plan, annual reports, student performance and employee and community support for the charter school in addition to the record. The appeal board 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. § 17-1729-A(d). The Pennsylvania Supreme Court, in *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 571 Pa. 503, 812 A.2d 1172 (2002), set forth the proper standard to be applied by CAB when reviewing a district's denial of a charter school application. In *West Chester*, the Court held that CAB must apply a *de novo* standard of review and that such a standard "requires CAB to give 'appropriate consideration' to the findings of the District Board, while making an independent determination as to the merits of the charter school application." *Id.* at 516-17 (affirming the holding of the Commonwealth Court, *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 760 A.2d 452 (Pa. Commw. Ct. 2000)).

Although *West Chester* pertains to CAB's review of a denial of a charter school application, the CSL language regarding the review of a non-renewal of an application is essentially identical. *Compare* 24 P.S. § 17-1717-A(i)(6) *with* 24 P.S. § 17-1729-A(d). Therefore, CAB shall make a *de novo* review; while giving "due consideration" to the findings of the Pittsburgh School District, CAB will independently review each of the bases cited by Pittsburgh for its denial of RAPA's application for renewal of its charter. *See* 24 P.S. § 17-1729-A(d).

The Pittsburgh School District Complied with the Applicable Provisions of the Charter School Law

RAPA's procedural issue is the allegation that Pittsburgh did not act in a timely manner throughout the renewal process and, as such that CAB should independently review its application without regard to Pittsburgh's decision and its reasons for not renewing the charter. Specifically, RAPA argues that: (a) Pittsburgh failed to adhere to

the time line set forth in 24 P.S. §17-1729-A for renewal of an existing charter and (b) Pittsburgh missed two deadlines set forth in the Department's Basic Education Circular (BEC) regarding charter school renewal. *See Basic Education Circulars: Charter Schools.*¹

Contrary to what RAPAHA contends, Section 17-1729-A does not set forth a time line for the renewal of an existing charter. RAPAHA is confusing Section 17-1717-A with Section 17-1729-A. A time line must be followed during the initial application phase to establish a charter school. Section 17-1717-A does not, however, apply to the renewal process for an existing charter; there is no set time line a district must follow during the renewal process. *Compare 24 P.S. § 17-1717-A with 24 P.S. § 17-1729-A.*

RAPAHA's argument that, during the renewal process, a school district opposing renewal could simply fail to act for an unlimited period of time does have merit. The futures of the students, teachers and employees of any charter school facing the renewal process are in limbo as no one knows whether the school will be open for the next school year. However, there is nothing in the CSL that mandates a school district to adhere to a specific timeline during the renewal process. The BEC relating to charter schools suggests a time line, even for the renewal process, modeled after the original application timeline, but schools are not mandated to follow this suggestion. School districts should act upon a renewal application timely, so as to avoid disruption to students; however, districts can do so without strict adherence to the timelines in the CSL. Thus, RAPAHA's procedural objection is dismissed.²

¹ This BEC is available at: <http://www.pde.state.pa.us/k12/cwp/view.asp?A=11&Q=54323>.

² Notwithstanding the fact that CAB has addressed and disposed of this procedural objection, CAB notes that RAPAHA essentially waived this objection in Paragraph 3 of the March 30, 2007 Stipulation of the parties in this matter.

RAPAH's Application for Renewal was Properly Denied Because There Were One or More Material Violations of the Conditions, Standards or Procedures Contained in the Written Charter

Now CAB will turn to the merits of this appeal. Section 1720 of the CSL provides that a charter granted by a school district is legally binding on both the local board of school directors of a school district and the charter school's board of trustees. 24 P.S. § 17-1720-A. CAB has previously held that: "[o]nce a charter is granted, the charter school is required to comply with its terms and to achieve the goals specified therein and violation of the material terms of the charter is a proper basis for revocation." *In re: Creative Educational Concepts Charter School*, Docket No. CAB 1999-15, p.6 at ¶8. Further, because the "charter school application is required by the CSL to be extremely detailed and specifically identify the manner in which the charter school will operate (*see* 24 P.S. § 17-1719-A) and because the information contained in the charter school application eventually becomes part of the charter itself, the information in the charter school application is intrinsic to the charter and is essentially the heart of the charter school." *Thurgood Marshall Academy Charter School v. Wilkinsburg School District*, Docket No. CAB 2001-5 at p. 11. A charter school cannot make unilateral changes to the charter agreement as unapproved changes run counter to the primary purpose of the charter agreement. Therefore, the only way to modify a charter agreement is to request an amendment to the agreement.

Pursuant to Section 1729 of the CSL, which states that a request for a charter renewal can be denied if there are one or more material violations of the conditions, standards or procedures stated in the charter, Pittsburgh voted to not renew RAPAH's charter. 24 P.S. § 17-1729-A(a)(1). This Board agrees with Pittsburgh in finding that

RAPAH violated or did not comply with various parts of its charter, in violation of 24 P.S. § 17-1729-A(a)(1). These violations were first reported by the review team and further substantiated through reports and documents generated in conjunction with the renewal process.

RAPAH failed to provide many opportunities and activities that were promised in its charter school application. First, in its application, RAPAH stated that: “[t]he school will pay particular attention to integrating technology throughout the curriculum and focusing on teaching technological skills for an information age.” Certified Record, Document #1,³ Exh. 4. Furthermore, the application provided that: “[e]very student...will have access to a personal computer at school and at home.” Cert. R. - #1, Exh 4. This “Home Roll-Out Program” was to provide a home network computer to every family with a child in third grade and above. However, home computers were never provided to students; instead a computer lab was placed in the school. Pittsburgh did not find this unilateral decision to be a material violation of a standard contained in the charter. We disagree.

Many schools used shared computer labs; however, at RAPAH, there are 28 functioning computers in the student lab and 230 students attending RAPAH. Each student uses the computer lab 2-3 times per week. This is a far cry from providing *every* student with access to a personal computer at school and at home and from paying particular attention to integrating technology throughout the curriculum. When Edison made the decision to eliminate the Home Roll-Out Program from the curriculum, it was RAPAH’s responsibility to request an amendment to its charter application. RAPAH now

³ Hereinafter, citations to any document contained in the Certified Record provided to CAB on May 11, 2007 will be referenced as “Cert. R. - # ___.”

argues that the technology that is currently integrated into its curriculum complies with the spirit of the charter agreement. Even if this were accurate, it is not enough. RAPAHA is not complying with the letter of its charter, which includes personal computers for every student, and therefore, a material violation has occurred.

The charter agreement promised a 7-hour day for RAPAHA's primary academy and an 8-hour day for the Elementary Academy as well as a longer school year. Beginning in the second year of the charter, students were to attend RAPAHA for 198 days because, according to the charter school application, "[w]hen one multiplies the number of hours and days over a six-year period (K-5), the student receives almost the equivalent of two additional years of schooling. This is especially beneficial for students who are at-risk of academic failure." Cert. R. - #1, Exh. 4. RAPAHA has never provided an 8-hour day for the Elementary Academy. Further, the 2006-2007 school year was the first year that RAPAHA provided 198 days of instruction. Once again, complying with the spirit of the charter school agreement is not enough. RAPAHA promised both a longer school day and a longer school year to benefit those students "who are at risk of academic failure." Failing to comply with the charter agreement in this respect constitutes a material violation of the charter agreement.

RAPAHA also stated in its charter that it would "provide special after-school programs, exposure to the arts, athletic programs and the International Youth Commission to teach management and entrepreneurial skills." Cert. R. - #1, Exh. 4. RAPAHA does provide cultural enrichment and musical programs, however, the only after-school program offered at RAPAHA seems to be tutoring for below basic students in reading. Although at one time an after-school fitness program was offered, no after

school programs are currently offered. There are no regular athletic programs. Further, the International Youth Commission is not involved with the charter school and does not teach management and entrepreneurial skills. RAPAHA's failure to comply with the charter agreement's promises regarding special after-school programs is another material violation of the charter agreement.

In addition to RAPAHA's failure to provide a technology-enriched curriculum, a longer school day and a longer school year, as well as a special-after school program, which together constitute a sufficient basis to conclude that the charter should not be renewed, Pittsburgh also cites several other violations that provide additional foundation for denial of RAPAHA's renewal request. The record is replete with situations in which RAPAHA failed to provide its students with programs and activities that were identified in the charter school agreement. For example, the FASST program, although implemented, was not as active as the charter agreement suggested it would be. Also, the charter agreement provided that all students would learn a second language, beginning in kindergarten. However, during the first year of RAPAHA's operation, students were not provided foreign language instruction. Furthermore, the Spanish teacher resigned prior to the 2006-2007 school year and no replacement had been hired; instead, the foreign language requirement was replaced with a drama class. The charter agreement also reserved at least one seat on the school's board of trustees for parents. This parent seat was vacated in August of 2005 and, as of the review team's visit, the vacancy had not been filled. Because each of these items are identified in the charter school application, they intrinsically became part of the charter agreement that was granted to RAPAHA.

RAPAH argues that none of these matters are a material violation of its charter. Even if this were a persuasive argument, CAB has previously held that: “[f]ailure to provide any of these individually may not necessarily constitute a material violation of the charter. However, in the aggregate, they do constitute a material violation of the charter because together they constitute a significant part of [the] charter school plan.” *In Re: Ronald H. Brown Charter School*, Docket No. CAB 2005-08 at p. 25. RAPAH was legally bound and obligated to provide the above mentioned educational programs and activities to its students. RAPAH failed to follow through with its promises; however, there have been no amendments or changes to RAPAH’s charter since it was granted by CAB. Individually, as well as in the aggregate, RAPAH’s failure to provide its students what it promised constitutes a material violation of the charter agreement. Furthermore, RAPAH’s statement that it has substantially complied with, or has complied with the spirit of the charter, is contrary to 24 P.S. §17-1729-A and cannot be a determinative factor in this appeal.

RAPAH Failed to Meet Generally Accepted Standards of Fiscal Management or Audit Requirements

Pittsburgh also asserts that RAPAH failed to meet generally accepted standards of fiscal management and audit requirements. *See* 24 P.S. §17-1729-A(a)(3). The record below provides significant evidence of RAPAH’s failure to appropriately manage its finances. For example, at the end of the 2003-2004 school year, RAPAH reported a net deficit of \$243,212.00. At the time of the public hearing, the most recent audit of RAPAH was an audit for the 2004-2005 school year and, this audit noted that the net deficit had increased to \$479,577.00. Furthermore, RAPAH was projected to have a

deficit of \$627,276.35 as of September 29, 2006. Notwithstanding or maybe because of its deficit, RAPAHA does not maintain an emergency or reserve fund.

Other evidence of fiscal problems is found in the loan agreement that, at the commencement of its charter, RAPAHA entered into with Edison. RAPAHA's liability is over a half a million dollars and RAPAHA has not yet made any payments on the loan. Cert. R. - #1, p. 26. While officials at RAPAHA have had discussions with Edison regarding a possible re-working of the loan, no changes have been made to the loan terms. Pittsburgh concluded and CAB agrees that it is fiscally irresponsible to undertake a 30-year debt when the original charter was a 5-year charter; simply put, a charter school that is granted a 5-year charter should not be incurring a 30-year debt when its long-term future is uncertain. Further, RAPAHA should not be pointing its finger at Pittsburgh. The issue in this case is RAPAHA's financial instability, not Pittsburgh's. RAPAHA has to be accountable for itself and will not succeed in making the argument that, because Pittsburgh may or may not be financially stable, RAPAHA should not be responsible for its own fiscal problems. No matter what Pittsburgh's financial state, the types of deficits maintained by RAPAHA do not meet generally accepted standards of fiscal management.

There are numerous bases in the record that demonstrate the instability of RAPAHA's fiscal operations. At best, RAPAHA has failed to meet the generally accepted standards of fiscal management and audit requirements mandated by 24 P.S. § 17-1729-A(a)(3). Consequently, the non-renewal of RAPAHA's charter was proper for this reason as well.

RAPAH Violated Laws Pertaining to Criminal History Background Checks and Child Abuse Clearances

In addition to the reasons discussed above, Pittsburgh voted not to renew RAPAH's charter because it allegedly violated several laws applicable to charter schools. *See* 24 P.S. §17-1729-A(a)(5). Section 17-1724-A(i) and (j) of the CLS require all individuals, including applicants, who have, or will have, direct contact with children to submit a report of criminal history record information and an official clearance statement regarding child injury or abuse from the Department of Public Welfare. 24 P.S. §§ 17-1724-A(i)-(j). Also, pursuant to 23 Pa. C.S.A. § 6355, “[a]n administrator shall require each applicant to submit an official clearance statement obtained from the department within the immediately preceding year as to whether the applicant is named as the perpetrator of an indicated or a founded report or is named as the individual responsible for injury or abuse in an indicated report for school employee or a founded report for school employee.” RAPAH is not exempt from this requirement.

The audit for the 2004-2005 school year noted that RAPAH did not maintain criminal history record background checks or clearance statements regarding child abuse for all individuals within the school that have direct contact with children. Between the time of that audit and the comprehensive review, RAPAH did nothing to correct this error. While conducting their comprehensive review, the review team found that there were no clearance certificates or background checks for 6 employees and that 1 person had a child abuse clearance but not a criminal history background check.

As discussed above, RAPAH has hired employees without current child abuse clearance certificates. Failure to require or maintain complete and adequate criminal history background checks and child abuse clearance certificates is a violation of the CSL

as well as violation of other provisions of law from which RAPAH is not exempt. This alone serves as an adequate basis for Pittsburgh's decision to not renew RAPAH's charter.

Conclusion

In sum, Pittsburgh had sufficient legal grounds, pursuant to Section 1729(c) of the CSL, to deny RAPAH's request for renewal of its charter. 24 P.S. § 17-1729-A(c). The record contains substantial evidence that RAPAH has: (1) committed numerous material violations of the charter agreement, (2) failed to meet generally accepted standards of fiscal management and audit requirements and (3) violated the CSL and 23 Pa. C.S.A. § 6355 by failing to obtain and maintain proper criminal history background checks and child abuse clearances.

