

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

In RE:

Appeal of Rising Sun Academy : Docket No. CAB No. 2000-4  
Charter School :

**OPINION AND ORDER**

The Philadelphia School Board (“the Board”) failed to act on the charter school application of the Rising Sun Academy Charter School (“the Academy”) until after the 75-day period set forth in the Charter School Law, 24 P.S. §17-1701-A et seq. (“the Charter Law”), and after the Academy had filed an appeal to the Charter School Appeal Board (“CAB”). The CAB determined that the appeal was to be heard in its original jurisdiction, and therefore, this opinion is based upon the criteria set forth in section 17-1717-A(e)(2) of the Charter Law. It takes into account the information found in the certified record as well as information that was presented in other sources, including testimony and supplemental documents. The information presented by the Academy does not support the grant of a charter.

**A. Findings of Fact<sup>1</sup>**

1. The applicant is Brien Gardiner, whose business address is 11000 Roosevelt Boulevard, Philadelphia. This is the address of the Philadelphia Academy Charter School. (Cert. Rec. A).
2. The charter school is the Rising Sun Academy Charter School. Its intention is to serve children in kindergarten through eighth grade. (Cert. Rec. A). Upon opening, the school expects to have 624 students. Expected eventual enrollment is 644. (Cert. Rec. A, p. 16).

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<sup>1</sup> The parenthetical expressions are the locations of stated information in the record. “Cert. Rec.” refers to the certified record. The term “Hrg. Doc.” refers to the documents presented at the hearing.

3. The applicant's expectation is that each grade will have 66 students. In addition, there will be 30 special needs students in ungraded classes upon opening. After the first year, 50 such students are expected. (Cert. Rec. A, p. 16).
4. The applicant has chosen a building on Ashton Road in northeast Philadelphia as the facility site for the Academy. The instructional and administrative departments of the Academy would be housed at this address. (Cert. Rec. A, p. 19).
5. There is substantial community support for the Academy. (Cert. Rec. A) The application and the documents presented at the hearing include letters from organizations, businesses, individuals, and parents who would like to have their children considered for places in the Academy. (Cert. Rec. A and Hrg. doc.).
6. Among the families who would like to enroll students in the Academy are the more than 1,000 families on the waiting list for the Philadelphia Academy Charter School. (Cert. Rec. A, p. 40).
7. Among the letter writers are a number of people who support the Academy knowing that Brien Gardiner of Philadelphia Academy Charter School is associated with it. (Cert. Rec. A and Hrg. doc.).
8. The Philadelphia School District is subject to a desegregation mandate. (Cert. Rec. G). Residents of Northeast Philadelphia are predominantly white. (Cert. Rec. A, p. 16).
9. The Academy intends to give preference to the children of founders and supporters of the Academy, and to siblings of students. (Cert. Rec. A, p. 17). Other positions will be filled by lottery. (Cert. Rec. A, p. 17).
10. It is unclear how many founders there are (Cert. Rec. A, p. 33) but there may be more than eleven. (Cert. Rec. A, p. 34). It is certain that the applicant's intention is to increase

the number of founders. (Cert. Rec. A, p. 34). There is also a long list of “supporters.” (Cert. Rec. A, p. 24) but it is unclear whether that list is exhaustive or what the characteristics of the founders and supporters might be.

11. It is not possible to know how many spaces in the school are reserved for founders and supporters, now and in the future, whether that number will change radically from year to year, or whether the reservations will help or hinder Philadelphia in its integration efforts.
12. The Academy plans to recruit students throughout Philadelphia by providing information through public agencies, schools and churches, and appropriate organizations (Cert. Rec. A, p. 16).
13. A Board of Trustees will govern the Academy, with day-to-day management delegated to the administrative staff. (Cert. Rec. A, p. 34).
14. The Board of Trustees, which may consist of seven or nine members, will be elected “by consensus” every two years (Cert. Rec. A, pp. 35, 37). The Trustees have a list of specific duties. (Cert. Rec. A, 35).
15. An Advisory Council will allow all stakeholders to make recommendations to the Board of Trustees regarding curriculum, assessment, and organization. (Cert. Rec., pp. 34, 35).
16. At least 75 percent of the professional staff will be certified. Up to 25 percent will be recruited from qualified persons without regard to certification. (Cert. Rec. A, p. 37).
17. The application is unclear regarding the necessary qualifications of the non-certified staff. The principal would hire all candidates with the assistance of a committee of Trustees. (Cert. Rec. A, p. 37).
18. The ratio of students to teachers would be 22 to 1. (Cert. Rec. A, p. 28).

19. Core curriculum would be taught in the morning. This will consist of grade-appropriate instruction in language arts, reading, mathematics, science, and social studies. (Cert. Rec. A, pp. 5-12).
20. Practical application of the core curriculum would make up the afternoon session, with students applying what they learn to fine and performing arts, world languages, humanities, and healthy lifestyle. (Cert. Rec. A, p. 2).
21. Every student's core curriculum needs would be pre-assessed, with intervention provided if indicated, and every student's progress would be measured by the SAT-9 and PSSA as well as by trained observation and methods such as student portfolios. (Cert. Rec. A, p. 27). During the course of instruction, there would be benchmark evaluations. (Cert. Rec. A, p. 27).
22. Students' progress would be evaluated every 6 to 8 weeks. Assessment criteria would be concise and clearly communicated, and a variety of methods would be used. (Cert. Rec. A, p. 28). The application does not give any details about what the periodic assessments would be looking for or what performance benchmarks in progress might be.
23. The Academy would add eight days of instruction to the school year. (Cert. Rec. A, p. 19).
24. The faculty would use team teaching, with one master teacher and two novices for each grade of 66 students. (Cert. Rec. A, pp. 13, 66). The master teacher would help the other two teachers and the teaching support staff to understand the Academy's program and philosophy. (Cert. Rec. A, p. 13).
25. The Academy plans to offer its faculty ten percent (10%) of its budget for staff development and another twenty percent (20%) to fund teacher time in workshops and

team meetings. Meetings would be held during, as well as outside of, school hours.

(Cert. Rec. B). Two and one-half hours would be set aside each school day for teachers' meetings. Four team leaders would lead workshops in literature and educational trends. Community technology leaders would conduct a computer workshop, and the University of the Arts has given the faculty certain free audit privileges, for literature, mathematics, English language arts and computer courses. (Cert. Rec. B).

26. Teachers would be identified and hired upon approval of the charter. Recruitment would be open to teachers in the Philadelphia School District. The Academy would be an equal opportunity employer. (Cert. Rec. A, p. 38).
27. The Board of Directors has hired a management firm, Nobel Learning Communities, which runs 150 private schools nationally. Nobel would perform business services and oversight. (Cert. Rec. A, p. 42).
28. Sixty-three positions are budgeted for the first year of instruction. (Cert. Rec. A, p. 42). This number includes 27 regular teachers and 3 special education teachers. After one year, there would be 28 regular teachers and 4 special education teachers. (Cert. Rec. A, p. 38). In addition, the second year would see the addition of two Program Support Specialists and an administrative assistant, for a total of 68 positions. Thirty-five Program Support Specialists would address the art, music, physical training, and tutorial aspects of the program. (Cert. Rec. A, p. 42).
29. Revenues based upon per pupil allocations would fund the Academy. The first year would be expected to cost \$4,171,949 including \$800 per pupil start-up funding. The next year is projected to cost \$4,067,868. (Cert. Rec. A, pp. 42, 44-49).

30. The Academy expects that it would have a surplus of \$125,242 in the first year, which would become reserve funds. (Cert. Rec. A, p. 42).
31. The Academy would begin to raise funds from local business and industry and would seek Title 1 funds. (Cert. Rec. A, p. 42).

### **B. Evaluation of the Application**

Section 17-1717-A(e)(2) sets forth four criteria under which a charter school application is to be evaluated. These are not the sole criteria, but are criteria the legislature set forth in the Charter Law.

#### **1. Support**

Section 17-1717-A(e)(2)(1)(i) requires that the application show:

The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing....

The Academy included evidence of support with its application and the documents presented at hearing. There are letters from representatives of private and public organizations as well as from individuals, including parents, who are in favor of the charter. A number of the letters are from people who state an intention to send their children to the Academy and to continue their support by volunteering their talents and time. Some of the writers indicate that they are familiar with the Philadelphia Academy Charter School and its administrator, Brien Gardiner, and assume that the Academy will be successful because of the connection between the two schools and Gardiner's connection with both. (Cert. Rec. A).

The Academy has also presented in the application a long list of "supporters" whose identities are not explained, but whose connection to the Academy is implied. (Cert. Rec. A, pp. 24, 25). The application also sets forth the intention to continue to recruit "founders" to

participate in school planning. (Cert. Rec. A, p. 34). A number of established agencies, which serve handicapped children, are represented on the Academy's Board of Directors. (Cert. Rec. A).<sup>2</sup>

Finally, there are hundreds of people on the waiting list for the Philadelphia Academy. (Cert. Rec. A). Because the schools are connected, and because the application discusses the list as evidence of need, it is assumed that those hopeful parents are supporters of the Academy.

Thus, the application sufficiently describes community support for the Academy.

## **2. A comprehensive learning experience**

The next requirement, in Section 17-1717-A(e)(2)(ii) is that the application show:

The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.

The Academy plans a standard education, with its morning "core curriculum" comprising the science, mathematics, social studies, English language arts, and reading at grade-appropriate levels. The addition of an afternoon of rather vague cultural and "healthy lifestyle" pursuits does not seem much different from the plan expected from a public school. In fact, the only difference might be that the Academy would not use certified teachers for the afternoon classes, but rather its (part-time?) support specialists. (Cert. Rec. A, p. 44).

The Academy would probably offer the same education as the Board's schools. There is a concern that the plan spreads the experienced, certified teachers thinly and a concern that the afternoon plans are still not adequately developed. Therefore, it is not clear that the Academy would provide a comprehensive learning experience.

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<sup>2</sup> The term "Board of Directors" appears in a letter in support of the charter, although the term is never used elsewhere. This opinion assumes that the term is a letter writer's substitute for some other group, perhaps the "founders" or the Board of Trustees.

### **3. The inclusion of the requirements of the Charter Law**

Section 17-1717-A(e)(2)iii requires that the application be weighed for the extent to which it provides requested information and for its conformity to legislative intent. The section states that the CAB considers:

The extent to which the application considers the information requested in Section 1719-A and conforms to the legislative intent outlined in Section 1702-A.

The application formally covers most of the subjects listed in Section 17-1719-A of the Law. The problem is not so much that listed subjects are left out, although a few are missing. The problem is that the information provided is often vague and incomplete.

Subsections (1), (2) and (3): The application contains the name and address of the applicant and charter school, as required by Section 17-1719-A(1), (2) and (3).

Subsection (4): When the Law begins to ask for more complicated information in subsection (4), however, the Academy begins to fall short. Specifically, the application's description of the proposed governance structure of the charter school contains internal inconsistencies about who and how many people are to be Trustees. Their election is "by consensus" of an unknown electorate. The application should make clear the way the Academy will be managed, both at its founding and as time goes on. It does not. Section 17-1719-A(4) requires that the application include this:

Subsection (4). The proposed governance structure of the charter school, including a description and method for the appointment or election of members of the board of trustees.

The application speaks of a Board of Trustees and sets forth the specific undertaking upon which the Board will vote. (Cert. Rec. A. p. 35). It says quite optimistically that an



Advisory Council will allow for all stakeholders to make recommendations to the Board on matters of curriculum, assessment and organization of the charter school. It is never clear how the Trustees will be chosen, or even how many trustees there will be.

Subsection (5): The legislature requests information on the mission and educational goals of the applicant. The Academy has a broad mission to lead all children to great potential, but it is short on assessment in non-core curriculum. Traditional testing will be used to insure that students are progressing in the “morning” courses, but there is no indication that mastery will be required before promotion. The afternoon session consists of vague cultural and healthy lifestyle pursuits. “Healthy lifestyle” is referred to, but there is no real description of whether children will be learning team sports, lifelong fitness, vegetarianism, or something else entirely. “World language” is a term used and, understandably, never defined. There are no assessment criteria mentioned for afternoon pursuits.

The legislature intended that a charter school have an independent structure that would accomplish a number of educational goals. 24 P.S. §17-1702-A. The Academy’s academic plans are quite ambitious. The plan is to have a school day that includes core courses, which are reading, language arts, mathematics, science, social studies, and “technology”. Each day would allow time for students to develop talents and skills in fine and performing arts, world languages, humanities, and healthy life styles. (Cert. Rec. A, p. 2). However, the application does not provide any practical detail. Without details it is impossible to know whether Section 17-1702-A will be satisfied or, whether a charter school’s obligation to provide a “comprehensive learning experience” will be satisfied pursuant to 24 P.S. §17-1717-A(e)(2)(ii).

The application makes mention of “baseline assessment data” (Cert. Rec. A. p 3) which, from context, seems to mean measurement of where students stand in the core subjects before

instruction begins. The application does not explain how such data would be acquired, developed, interpreted, or used. Only the post-instruction measurement tools, which are the PSSA, SAT-9, and others to be developed by the Academy, are named in the application. (Cert. Rec. A. p. 3).

This deficit makes it impossible to know whether the Academy will fulfill certain of the legislative intentions – improving and increasing learning, and providing comprehensive learning.

In order to determine whether the Academy's methods will improve pupil learning, the Academy will need some system for measuring both starting points and accomplishments. In a similar vein, there needs to be some way to determine whether pupils at the Academy gain an increased opportunity for learning. The application does mention a planned 22 to 1 student to teacher ratio, which may be an increased opportunity, but there is no offer of any differing ratio for the Board's schools. Similarly, the Academy plans for more hours of instruction than the Board offers but does not present evidence of the value of these extra hours.

The application does not provide adequate information to determine whether the charter school will provide innovative teaching methods. There is an implication that the Academy pedagogy will differ from that of the "typical" elementary-middle school whose day contains breaks for special subjects, but that difference is not really explained. There is only a mention of time flexibility for the core curriculum teachers and the use of teaching by teams, which consist of one master teacher and two novices per grade, but this is not particularly innovative.

P.S. §17-1702-A(3) (Cert. Rec. A. p.13)

The value of dividing the day into two parts is never developed. The teachers have freedom in the afternoon to use their individual styles, but there is no encouragement to

experiment and, again, no way to measure effectiveness. (Cert. Rec. A, p.13). It is the legislature's desire that new opportunities and responsibilities be created for the charter school's teachers. The charter school should:

- (4) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.

Although the Academy envisions teachers working in groups, collaborating, and teaching in cross discipline style, it does not claim that teachers will have the right or authority to evolve professionally or create a new teaching system. (Cert. Rec. A, p.13). There is an encouraging mention of individualized instruction and intervention in the event that problems come to a teacher's attention, but there is no presentation of teacher responsibility for any learning program. (Cert. Rec. A, p.2).

The Academy may provide parents and children with different options for education as envisioned by 24 P.S. §17-1702-A (5), but the application does not explain how the Academy will be different enough from the Board's schools to offer any real option other than location.

Subsection (6): The admission policy, required by Section 17-1719-A, is a troubling aspect of the application. The Academy will be in northeast Philadelphia. According to its application, the Academy intends to recruit students from all sections of the city so that the make-up of the student body will be diverse, even though northeast Philadelphia is presently predominantly white. Recruiting will be done with the aid of a brochure that will provide information about the Academy and will inform interested persons about the application process. The brochure will be distributed throughout Philadelphia through community organizations, schools, public agencies, and other appropriate forums. Although children of founders and supporters (and siblings) will be given preference, the Academy believes that the initial

enrollment of 624 and the expected eventual enrollment of 644 will allow a lottery to be used for a significant number of places.<sup>3</sup>

The shortcoming on the Academy's description is its failure to address the issue of the number of places that will be reserved for children of parents involved in establishing the school. If only founders' children were guaranteed places and there were only eleven founders, as the application may be interpreted to say (Cert. Record A, p. 33), there would only be a small number of places kept out of the lottery. The application indicates, however, a more expansive preference, to include founders, "supporters" and siblings of students. (Cert. Rec. A., pp.3, 17).

Further, the application also implies that there are more founders than those who make up the eleven member "founding coalition" or that there will be more in the future. (Cert. Rec. A, p. 34). How a large and increasing number of founders and supporters, a term never defined, will affect the make-up of the student body is never explained. The Board may be correct when it expresses concern that the Academy will cause the school district to stray from its desegregation duties, since the racial make-up of the founders and supporters, now and in the future, is never described or forecasted. Although the application discusses recruitment from the entire city, it does not attempt to explain the effects of the stated preferences on the small number of places available in the Academy. There is a list of well over one hundred supporters in the application. (Cert. Rec. A, p. 24). If each supporter has one child in the student population, the lottery may be limited to the supporters and founders.

The application is deficient in this area, and the deficiency is an important one. The Charter Law allows a charter school to give preference to the children of parents who actively participate in the development of the charter school. However, the Academy has not shown that

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<sup>3</sup> The application is somewhat confusing as concerns this issue. It refers to the intention of the Philadelphia Academy Charter School. (Cert. Rec. A, p. 16). Because other information on page 16 seems to be consistent with the Academy's plans, it is assumed that the reference to Philadelphia Academy is a clerical error.

those to whom it will give preference have actively participated in the school's development. The resulting implication is that the student population is already established and comes only from the neighborhood. (Cert. Rec. A., p. 34).

Subsection (7): The application adequately deals with discipline.

Subsection (8): Community groups who are interested in the Academy are named and the intention to include the community is noted in a number of contexts. This feature is adequate, although not specific.

Subsection (9): The application contains financial data for two school years. There is no material regarding audits except the statement that the management consultant, Nobel, would perform an annual audit and report the findings to the Board of Trustees.

Subsection (10): Complaint procedures are adequate.

Subsection (11): The discussion of the facility is adequate.

Subsection (12): The calendar is discussed adequately.

Subsection (13): The plans for faculty are discussed generally, but there are no details given beyond numbers of teachers and the plan to fulfill the requirement that 75 percent of teachers be certified. The application gives only a nod to the requirements in Section 17-1724-A of the Charter Law, which sets forth the criteria under which staff members are hired and employed.

Subsection (a) of Section 17-1724-A of the Charter Law requires that seventy-five (75%) percent of the professional staff be certified by Pennsylvania. The Charter Law further describes the qualifications for the other twenty-five percent of the professional staff:

Subsection (b). Each Charter application shall list the general qualifications needed to staff any non-certified positions. Professional employees who do not hold appropriate Pennsylvania certification must present evidence that they:

- (i) Meet the qualifications in sections 1109 and 1209 [24 P.S. §11-1109 and 12-1209.]
- (ii) Have demonstrated satisfactorily a combination of experience, achievement and qualifications as defined in the charter school application in basic skills, general knowledge, professional knowledge and practice and subject matter knowledge in the subject area where an individual will teach.

The application indicates that the Academy intends to comply with the requirement that 75 percent of its professionals be certified. The other 25 percent of the staff is troubling.

The Academy has said only that up to twenty-five percent of the instructional staff will be recruited from qualified persons in areas necessary to fulfill the school's academic mission without regard to their certification status. Further, the faculty will be selected "based on demonstrated classroom competency" or demonstration and portfolio of experience with a probationary period of one year after hiring. The Faculty's competence and the charter school's intention to conform to qualification requirements are all important. The application gives no information about the Academy's plans in this vital area.

Almost as important, the Academy is counting on its employees not organizing a union. (Cert. Rec. A. p. 2). The law allows the employees of a charter school to unionize 24 P.S. §17-1724-A(a). If the Academy thought that an unorganized faculty was a concept worth mentioning in the application, it is probably counting on that concept as a feature of the charter school. That confidence may be misplaced.

Subsection (14): The Academy does not plan for its students to participate in Board-sponsored activities.

Subsection (15): The Academy intends to comply with applicable Philadelphia and Pennsylvania statutes and regulations regarding criminal history records when it begins to hire its staff.

Subsection (16): The Academy also intends to comply with regulations regarding child abuse.

Subsection (17): Insurance concerns are addressed.

The application is deficient in most of the criteria established in the legislative intent section of the Law. The intention was that a charter school would fulfill all six criteria. The Academy falls short on all but its intention to be accountable in the same way as any Board school, that is, by the measurements of standard tests.

#### **4. Serving as a model for other public schools**

The extent to which a proposed charter school might serve as a model for other public schools is a criterion to be considered when deciding whether to grant a charter to a charter applicant. 24 PS §17-1717-A(e)(2)(iv).

The application does not suggest any way in which the Academy would serve as a model for other public schools. There is no comparison made between the Academy's pedagogy and that of any elementary or middle school managed by the Board. The student to teacher ratio, 22 to 1, is stated as being "smaller [than] that usually found." No details are offered. (Cert. Rec. B).

The Academy does not cite a shortcoming in Board schools that a particular Academy characteristic would correct. The Academy does not plan to specialize in the education of any particular named group of students who have not been well served by the Board's schools. There is the promise of intervention, but the only concrete detail about intervention is intervention that would occur in response to the reading and math pre-assessments that will be given to each student. (Cert. Rec. B). The only other mention of intervention is just that – a

mention (Cert. Rec. A, p. 2), and there is no effort to contrast the Board's policy for meeting unplanned individual needs with the Academy's plan.

The Charter Law does not quantify the desired extent of a charter school serving as a model, but Section 17-1702-A makes clear that charter schools should improve public education. If it is the intent of the Academy to improve public education with new methods of teaching pupils or training teachers or with new materials, the application does not say so.

### **Conclusion**

The Academy's application does not meet the requirements of the Charter Law. It gives too little information about how the Academy would be different from any other public school, how the faculty would be chosen, how the Board of Trustees will actually be chosen, how an Academy teacher would benefit professionally from his or her work there, and, how selection of the student body would not violate the District's desegregation mandate. Therefore, the charter is denied.



**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2000, based upon the foregoing and the vote of this Board,<sup>4</sup> the appeal of the Rising Sun Academy Charter School is denied.

For the Charter School Appeal Board,

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Eugene W. Hickok, Jr.  
Chairman

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<sup>4</sup> At the Board's June 15, 2000 meeting, the appeal was denied by a vote of 5-1, with members Aliota, Bunn, Melnick, Reeves, and Shipula voting to deny the appeal, and member Hickok voting to grant the appeal.