

STATE OF COLORADO BOARD OF EDUCATION 201 East Colfax Avenue, #506 Denver, Colorado 80203	▲ BOARD USE ONLY ▲ Case Number: 10-CS-05
In Re: Appellant: Prospect Ridge Academy District: Adams County School District No. 12	
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OPENING BRIEF OF PROSPECT RIDGE ACADEMY	

Prospect Ridge Academy (“PRA”) submits the following opening brief:

I. INTRODUCTION

In August of 2009 PRA filed its charter school application with Adams County School District No. 12 (the “District” or “Adams 12”). In December 2009 the District’s board of education (the “Adams 12 Board”) denied PRA’s application, and PRA appealed that denial to the State Board of Education. On March 11, 2010 the State Board voted unanimously to remand the Adams 12 Board’s denial of PRA’s charter application with instructions for reconsideration.

On April 14, 2010 the Adams 12 Board voted to approve PRA’s charter application, but in the process of that approval the District has attempted to impose certain onerous conditions on the charter school, some of which set the school up for

failure. Therefore, on May 13, 2010 PRA appealed the unilateral imposition of these onerous conditions to the State Board of Education.

The Charter Schools Act gives the State Board appellate authority in charter school appeals. C.R.S. § 22-30.5-108. In a second appeal such as this, the State Board must determine whether the decision of the Adams 12 Board unilaterally to impose unacceptable contract conditions on PRA was contrary to the best interests of the pupils, school district, or community. C.R.S. § 22-30.5-108(3)(d). If so, the State Board shall remand the Adams 12 Board's decision with instructions to approve or disapprove the conditions, as the State Board deems appropriate, and the State Board's decision shall be final and not subject to appeal. *Id.*

After the Adams 12 Board granted PRA's charter, the District proposed a 40-page single-spaced contract. PRA was prepared to swallow hard and accept the vast majority of the conditions imposed by the District, but six conditions it simply could not accept and it asked for changes. The District has steadfastly refused to change these six provisions, and this appeal ensued. As the discussion below will demonstrate, the six conditions the District is attempting to force on the school do not meet the best interests standard, and this matter should be remanded to the District with instructions to disapprove these conditions.

II. DISCUSSION

A. **The "70%" Requirement Violates the Statute and Sets the School Up for Failure.**

The District has attempted to impose unilaterally a contract condition that requires PRA to demonstrate by March 1, 2011 (i.e., six months before the school opens) that

70% of its students are residents of the District. Record, pg. 21. If PRA does not meet the 70% requirement, the charter application will be deemed retroactively denied. *Id.*

First, the Charter Schools Act specifically addresses the issue of where a charter school's students may reside. The statute provides that a majority of a charter school's pupils must reside "in the chartering district or **in school districts contiguous thereto.**" C.R.S. § 22-30.5-104(2)(a) (emphasis added). Thus, the Charter Schools Act contemplates that even a majority of PRA's pupils may reside in districts contiguous to Adams 12, and the Adams 12 Board's insistence that 70% of the school's pupils be residents of the Adams 12 is a clear violation of this provision.

Not only is the District's position a violation of statute, but also it sets the school up for failure. PRA repeatedly explained to the District that the 70% condition makes it extremely difficult for the school to obtain financing for its facility. At page 104 of the record Dustin Jones, a real estate professional who specializes in charter school facilities, explains that this burdensome requirement "will be seen as a very high credit risk for the school and will likely lead to extreme difficulty obtaining financing, if possible at all." The reason for this is easy to understand. What finance company is going to offer to finance PRA if on March 1, 2011 the school will (at least potentially) cease to exist because it has only 69.5% in-district students instead of the required 70%?

What makes the contract condition even more inexplicable is that the District knows PRA is locating in an area where several districts converge and that it is counting on enrolling students from the St. Vrain and 27J districts. In its application PRA gave the District the chart set forth at page 105 of the record. PRA projects that 55% of its students will be residents of Adams 12 and the remainder will come from other districts,

primarily St. Vrain and 27J. PRA further explained this to the Adams 12 Board at their April 10, 2010 board meeting. Audio record at 14:44 to 15:20.

As a compromise, PRA is willing to give the District two things: First, it will give all Adams 12 pupils preference.¹ In other words, out-of-district students will be admitted to a class only if no in-district student is on the wait list for that class. This is the typical clause used in most charter contract. Second, PRA will guarantee that at least 50% of its pupils will reside in Adams 12. The District has rejected PRA's offer to compromise.

Knowing that PRA intends to draw a significant proportion of its students from St. Vrain and 27J, and knowing that the condition makes it difficult, if not impossible, for the school to obtain financing, the District nevertheless seeks to impose the 70% requirement on the school. Having failed in its efforts to deny PRA's charter, one wonders if the whole purpose of this condition is to set the school up for failure. Is the District trying to block the school in a different, more subtle manner? Under these circumstances one could be excused for wondering if that is not the case.

In summary, the District's unilateral 70% condition is both unlawful and unreasonable and sets the school up for failure. Accordingly, it clearly fails to meet the "best interests" standard.

B. The "80%" Requirement is Unreasonable.

The District has imposed another unreasonable enrollment condition on PRA. Under this condition the school must demonstrate that 80% of **each grade level** is enrolled by March 1, 2011 or, again, its charter will be deemed retroactively denied. Record, pg. 21.

¹ After the usual preferences for founders and staff children.

It is not at all unreasonable for the District to require PRA to demonstrate that at least 80% of its total projected enrollment is enrolled by March 1, 2011, and the school is willing to accept that condition. But as everyone who has ever opened a school (any school, not just a charter school) knows, it is very difficult to fill the upper grades, and for the reason PRA's organizers have informed the District that they will front load their enrollment as well. Audio recording at 13:14 to 13:57.

PRA proposes to open grades K-6 in August 2011. It anticipates having no difficulty filling grades K-4. Parents are reluctant, however, to move their students into the upper grades of a new program, primarily because by the time students are in sixth grade, they have made friends whom they are understandably very reluctant to leave behind for a single year at a new program. Whatever the reasons may be, however, near universal historical experience shows that it is much harder to fill the upper grades of a new program. That is why new programs are usually filled "from the bottom up."

Nevertheless, the District insists on the "80% of each class" standard. It says that it wants to ensure that PRA is on track to meet its enrollment projections so that it will, in turn, meet its budget projections. But this is obviously false. If the District were concerned only with the budget consequences of enrollment, then it would accept PRA's offer to ensure that 80% of its **total projected enrollment** is in place by March 1. Then, if PRA were a little short in the fifth and sixth grades, it could make up the difference by admitting more students in K through 4.²

The District has offered no explanation for its insistence that even the upper grades of the new school be filled to at least 80% capacity by March 1 on pain of

² Obviously keeping it mind that kindergarten students are counted as only roughly ½ an FTE for budget purposes.

retroactive denial of the charter. Again, one wonders if the District is intentionally setting this school up for failure. In any event, having failed to justify its position, the District's "80% of each class" condition (as opposed to the "80% of total enrollment" condition that PRA is willing to accept) fails to meet the best interests standard and should be rejected.

C. The School Should be Allowed to Hire the Auditor of its Choice.

The Charter Schools Act imposes on each charter school the obligation to obtain an annual audit. C.R.S. § 22-30.5-112(7). PRA has absolutely no problem complying with this requirement. Yet the District insists on imposing additional conditions on the audit requirement. Specifically, the District insists on the following contract text with respect to selection of the school's auditor: "The School's audit shall be performed by an independent auditor with at least two years experience in auditing charter schools **and approved by the District's Chief Financial Officer.**" Record, pg. 35 (emphasis added).

The Charter Schools Act states that each charter school "shall be responsible for its own operation . . ." C.R.S. § 22-30.5-104(7)(a). Note the use of the mandatory "shall" in this statutory provision. Clearly, the selection of the school's independent auditor is part of a school's operations for which the school, and the school alone, is responsible under the statute. Accordingly, the District's insistence that it have veto power over PRA's choice of auditor violates the operational responsibility provision of the statute.

PRA is willing to accept the following provision: "The School's audit shall be performed by an independent auditor with at least two years experience in auditing charter schools." In other words, PRA will accept the text proposed by the District

except for the veto provision. PRA intends to hire a reputable auditing firm with far more than two years experience in auditing charter schools. It is in its best interest to do so. There is simply no need for the District to reserve a veto power over its choice of auditor except for the District's "we are the only ones who know how to do it right" attitude, which, of course, is the very antithesis of the policy driving the Charter Schools Act in the first place. Therefore, a condition that runs afoul of the statewide policy set forth in the statute clearly fails to meet the best interests standard and should be rejected.

D. The District's Unlimited "Audit Power" is Unreasonable.

The District has reserved the power to force PRA to conduct and pay for additional audits any time the District commands it to do so. Record, pg. 35. It is true that the text states that the District may require an additional audit only if the school agrees. *Id.* The text then provides, however, that if the school does not agree, the District may "seek dispute resolution" under the contract. *Id.* And the dispute resolution provision is a one-sided farce stacked in favor of the District. That section of the proposed contract provides that if, after going through the dispute resolution process, the parties still disagree, the decision of the Adams 12 Board "shall be final." Record, pg. 53. In other words the dispute resolution provision of the proposed contract "resolves" disputes by giving the District the final say in everything. Needless to say, the provision gives no comfort to PRA.

The practical effect of the audit provision is to give the District the right to force PRA to conduct at the school's expense any audit at any time for any reason or no reason. PRA has no objection to paying for the audits required by the statute. It does, however, object to a contract condition that gives the District the right to force the school to pay for

additional audits at the District's whim and respectfully suggests that the right unilaterally to force upon the school the cost of such additional audits does not meet the best interests standard.

E. The District's Attempt to Reserve the Right Unilaterally to Revoke District Policy Waivers Violates the Statute and is Unreasonable.

The District attempts to impose a condition upon PRA pursuant to which the District reserves the right unilaterally to withdraw previously granted waivers of District policies. This condition is a clear violation of the statute.

Section 9(K) of the proposed contract provides that the District may "request" the withdrawal of previously granted policy waivers. Record, pg. 43. At first glance this appears to be an innocuous provision that gives the District the right only to request the recession of previously granted waivers, which request the school has the right to approve or deny. This is not, however, the true case. The proposed contract goes on to provide that the District has the right to impose an "involuntary" withdrawal of a policy by simply invoking the farcical "dispute resolution" process that gives the District the final say if it disagrees with PRA's denial of the request to withdraw the waiver. Record, pg. 50.

The Charter Schools Act gives a charter school the right to request waivers of "local school district regulations." C.R.S. § 22-30.5-104(6)(c). The statute goes on to state: "Any waiver of state rules or local school district regulations made pursuant to this subsection **shall be for the term of the charter for which the waiver is made.**" *Id.* (emphasis added). The statute then goes on to give the State Board – but conspicuously not the local board – the right to review and revoke waivers no longer deemed necessary. *Id.* Accordingly, under the plain language of the statute, any waiver of an Adams 12

policy “shall be for the term of the charter,” and any attempt by the Adams 12 Board unilaterally to revoke a waiver would be a violation of the statute.

The reason the statute denies local boards the power unilaterally to revoke waivers is obvious. A charter school’s freedom from certain policies binding local districts is the very foundation of the flexibility the statute intends to give charter schools. If a school district were permitted to simply yank those waivers at will, the statute would be effectively undermined. Accordingly, the District’s attempt to reserve unto itself a power specially prohibited to it by the statute, obviously violates the best interests standard and should be rejected.

E. The “Review of All Hires” Provision Violates the Statute.

The District seeks to impose a contract condition upon PRA pursuant to which the school may not hire any employee unless the employee is first vetted by the District human resources department. Record, pg. 44. Again, the provision violates the statute. C.R.S. § 22-30.5-104(7)(a) specifically states that a charter school “shall be responsible for its own operation including, but not limited to . . . personnel matters.” The statute could not be more clear. PRA is responsible for hiring, evaluating, compensating, disciplining and terminating its own employees, so long as it does so within the bounds of the law. Under the statute the District simply has no say in PRA’s employment decisions, and its attempt to end run the statute by forcing PRA to vet each and every one of its employees with the District human resources department is a gross violation of the statute and should not be countenanced by the State Board.

III. CONCLUSION

For the reasons set forth above, the six contract conditions the District seeks unilaterally to impose on PRA fail to meet the best interests standard. Accordingly, PRA respectfully requests the State Board to remand the District's decision unilaterally to impose those conditions on the school with instructions to disapprove the conditions. Respectfully submitted this 25th day of June, 2010.

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CERTIFICATE OF SERVICE

The undersigned certifies that on June 25, 2010 a true and correct copy of the foregoing was served via email on:

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