

STATE OF COLORADO BOARD OF EDUCATION 201 East Colfax Avenue, #506 Denver, CO 80203	
In Re: Appellant: PROSPECT RIDGE ACADEMY District: ADAMS TWELVE FIVE STAR SCHOOLS	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
Attorney for District: Michael W. Schreiner, # 15226 CAPLAN AND EARNEST LLC ONE BOULDER PLAZA 1800 Broadway, Suite 200 Boulder, CO 80302-5289 Phone Number: (303) 443-8010 Fax Number: (303) 440-3967 mschreiner@celaw.com	Case Number: 10-CS-05
ANSWER BRIEF OF ADAMS 12 FIVE STAR SCHOOLS	

Adams Twelve Five Star Schools (the “School District”), responds as follows to the Opening Brief of Prospect Ridge Academy (“Prospect Ridge”) in this second appeal:

I. INTRODUCTION AND STANDARD OF REVIEW

The School District accepted an application to open a charter school from Prospect Ridge on October 12, 2009. After review by the School District’s staff, District School Improvement Team, and the Board of Education, the School District denied the application on December 16, 2009. Prospect Ridge appealed the decision of the School District to the State Board of Education which, on March 11, 2010, reversed the decision of the School District’s Board of Education and remanded the matter back to the School District with instructions for reconsideration.

The School District held a publicly noticed community meeting and public hearing on April 10, 2010 to receive public comment concerning the Prospect Ridge application and additional information from Prospect Ridge. Audio Record. On April 14, 2010, the School District's Board of Education approved a resolution conditionally granting the charter school application of Prospect Ridge. Record at PR 1-4. Prospect Ridge brings this second appeal claiming that certain actions of the School District constitute the unilateral imposition of conditions with which it disagrees.

The Charter Schools Act requires the Board to decide if the conditional grant of Prospect Ridge's charter application was contrary to the best interests of the "pupils, school district, or community." Section 22-30.5-108(3)(d), C.R.S. "If such a finding is made, the state board shall remand such final decision to the local board of education with instructions to ... approve or disapprove the conditions imposed on the charter applicant" Id.

As set forth in more detail below, the conditions imposed on Prospect Ridge, contained in the April 14, 2010 resolution of the Adams 12 Board of Education are in the best interests of the School District's pupils, School District and community and should be upheld by the State Board.

II. FACTS

After the adoption of the resolution conditionally approving the charter application of Prospect Ridge, School District staff and representatives of Prospect Ridge met to negotiate the terms of a contract. An initial draft (Record at PR 10-55) was circulated and the parties met on May 11, 2010 to discuss changes. Record at PR 102-03. A second draft incorporating several changes suggested by Prospect Ridge (Record at PR 56-101) was prepared and provided to Prospect Ridge on May 12, 2010. Record at PR 102-103. As set forth in the May 12, 2010 letter

transmitting the second draft of the contract, the School District recognized that the School District Board of Education's conditional approval provision regarding the number of School District students to be enrolled in Prospect Ridge appeared to be "a particular sticking point" for Prospect Ridge. Prospect Ridge claimed the requirement was inhibiting the School's ability to obtain financing. Record at PR 102. The School District invited Prospect Ridge to provide additional information to substantiate this assertion. PR 102. One month after this appeal was filed, Prospect Ridge submitted a letter from a consultant expressing general concern that the enrollment expectation could lead to difficulty obtaining financing. PR 104. No documentation from any potential provider of financing to Prospect Ridge expressing concern over the enrollment conditions was ever provided to the School District.

The School District continued to invite Prospect Ridge to engage in further negotiation of various provisions of the draft contract, including those complained about in this second appeal. The School District also asked for information from Prospect Ridge so that it could better understand its position and perhaps address its concerns. Both the May 12, 2010 letter from Ms. Karstaedt (Record at PR 102) and email of June 17, 2010 (Record at PR 106) ask Prospect Ridge to submit proposed alternative language regarding those items in the proposed contract with which Prospect Ridge disagreed. No alternative language or other requested information was submitted by Prospect Ridge.

III. ARGUMENT

A. The "70%" requirement is actually a reasonable requirement that 56% of Prospect Ridge's total projected enrollment consist of School District residents.

Prospect Ridge misapprehends the "70%" condition contained in the April 14, 2010 resolution of the Adams 12 Board of Education. The relevant portion of the resolution reads as follows:

By March 1, 2011, Prospect Ridge will provide to the Superintendent or designee signed letters of intent to enroll from a minimum of 80% from each grade level of the projected first year student population. By March 1, 2011, **of those intending to enroll** in the charter school for the 2011 -2012 school year, **70% must be residents of the District.**

(Emphasis added.)

Contrary to the assertion of Prospect Ridge, the clear language provides that 70% of the 80% intending to enroll, or 56% of the total projected enrollment, must consist of students resident in the School District by March 1, 2011. It is cogent to note that Prospect Ridge already projects that either 58.6% (Record at PR 6) or 56.5% (Record at PR 105) of its enrollment will be residents of the School District¹, so this requirement can hardly be deemed onerous.

Prospect Ridge asserts that the “70%” requirement is a violation of Section 22-30.5-104(2)(a), C.R.S. This statute provides that a charter school must have at least a majority of its pupils from the chartering school district or in school districts contiguous thereto. Prospect Ridge already projects that 56.5% of its students will be School District residents and it proposes, for the very first time in its Opening Brief, to guarantee that at least 51% of its students will be residents of the School District. It also asserts, again for the very first time in its Opening Brief, that it will agree to a condition, a preference for Adams 12 residents, that could lead to much more than 51% of its students will be School District residents.

Apart from the general observation that this apparent quibble over 5.5% of student enrollment by March 1, 2011 could most likely have been resolved if Prospect Ridge had participated in a meaningful negotiation of a contract, the School District’s position is supported by the statutory provision and is responsive to the statements expressed by the State Board at the

¹ In its Opening Brief Prospect Ridge asserts that 55% of its students will be residents of the School District. Opening Brief at page 3. This figure is not supported by the record as set forth above.

prior hearing that the School District continue to offer choice to its residents.² Section 22-30.5-104(2)(a), C.R.S. provides a “floor” or minimum concentration of students with a particular residence before an application can be made or a contract entered into. The statute does not prohibit a school district from establishing greater enrollment requirements, as long as the statutory minimums are met. It does not prohibit a school district from requiring that a majority or 70% of a charter school’s pupils consist of residents of the chartering district, nor can it reasonably be read to do so. The “70%” requirement does not set Prospect Ridge up for failure, it facilitates Prospect Ridge’s success. Requiring 56% of the projected enrollment of Prospect Ridge as of March 1, 2011 to be residents of the School District ensures that Prospect Ridge will meet the requirements of Section 22-30.5-104(2)(a), C.R.S.

Additionally, as set forth in Ms. Karstaedt’s email of June 17, 2010, the School District perceived the State Board to articulate that the School District should offer more choice to its residents. This goal is partially met by the “70%” requirement by ensuring additional choice for the School District’s residents.³

Prospect Ridge claims that the “70%” requirement will make it difficult to obtain financing. The School District invited Prospect Ridge to demonstrate that this was a legitimate fear and provide documentation for its consideration. Presumably this would have been an easy task, since Prospect Ridge stated in its response to questions from School District staff as late as

² The record demonstrates that the School District repeatedly asked Prospect Ridge to provide information so that it could understand its position. It is clear from the record that the purpose of seeking such information was to attempt to allay the concerns of Prospect Ridge, including possibly revising the conditions and contract language, i.e. “[W]e will review the matter [the “70%” requirement] again”. Record at PR 104. See also Record at PR 102

³ As contained in the record (record at PR 21 and 67), the goal of ensuring choice for School District residents is met through the proposed contractual provision of requiring 70% of Prospect Ridge’s enrollment to consist of School District residents at the time of its opening. Prospect Ridge has not appealed that contractual provision (see Notice of Appeal) and does not address that issue in its Opening Brief choosing to argue only the requirement that it demonstrate by March 1, 2011, that 56% of its projected opening enrollment consist of School District residents. Apparently, Prospect Ridge is satisfied that it will meet the proposed contractual enrollment requirement by the time of opening or it has waived its right to oppose the issue.

April 11, 2010, that it was in negotiations with owners of four potential sites and it would not be necessary to incur debt since it was pursuing a lease/purchase option. Record at PR 5. One month after this appeal was filed the only document provided by Prospect Ridge was a letter from a consultant expressing a generalized fear that lenders might be reluctant to provide financing if there was an enrollment requirement requiring a certain percentage⁴ of students be from the School District. Record at PR 104. Prospect Ridge has never provided the School District with any documentation from a prospective lender that the “70%” requirement interfered with obtaining financing. It is speculation of the most infirm sort to infer a malevolent motive from the imposition of a requirement that Prospect Ridge demonstrate that 56% of its projected enrollment be School District residents as of March 1, 2011.

B. The “80%” requirement is a reasonable requirement in the best interests of Prospect Ridge.

The condition in the April 14, 2010 resolution of approval that Prospect Ridge be able to demonstrate that it has received a letter of intent from a minimum of 80% of the **projected** enrollment in each grade level is intended to facilitate the success of Prospect Ridge. Prospect Ridge proposes to open as a K-6. Its budget is based on operation as a K-6 school with projected enrollment which already forecasts a significantly lower number of students in the upper grades as compared to projected enrollment in grades K-4. Record at PR 6 and 105. A school with significantly fewer students in the fifth and sixth grades that Prospect Ridge already projects to be low is significantly different than one with 14 and 11 students⁵ in fifth and sixth grade respectively. For example, a school with only five or six or even fewer students in the fifth and sixth grade could result in significant inefficiencies in instruction, staffing and facility useage.

⁴ Notably, the consultant does not identify the specific enrollment percentage that is of concern. Presumably it is above the 51% offered by Prospect Ridge in its Opening Brief but less than the 56 percent required by the School District’s Board of Education.

⁵ Based on 80% of the projections of Prospect Ridge for fifth and sixth grade contained on PR 105.

The condition approved by the School District's Board of Education only requires Prospect Ridge to demonstrate that it can meet 80% of its own projections. Obviously, if the projections for fifth and sixth grade are off, especially with the already low projected enrollment, there are significant budgetary implications, including staffing and facility costs that may not be remedied by simply adjusting enrollment in the lower grades.

C. Prospect Ridge attempts to address contractual matters that are not unilateral conditions imposed by the School District's Board of Education and the State Board does not have jurisdiction over these matters.

In Section C through both Es⁶, Prospect Ridge purports to appeal certain provisions of the proposed contract. None of these provisions were made a condition of approval of the charter application as set forth in the School District's April 14, 2010 resolution. Instead, these matters are issues the School District was attempting to negotiate with Prospect Ridge. The record demonstrates that it invited Prospect Ridge, on at least two occasions, to submit language to address their concerns over these issues. Prospect Ridge failed to respond.

Section 22-30.5-107.7(5), C.R.S. provides that a "school district may unilaterally impose conditions on a charter applicant or on a charter school **only** through adoption of a resolution of the local board of education of the school district." (Emphasis added.) Since the issues identified in Section C through both Es of the Opening Brief are not conditions imposed by the School District's Board of Education in a resolution, they cannot be the proper subject of an appeal.

However, even if they could be the proper subject of an appeal, they are certainly not yet ripe. The record clearly demonstrates that the School District was willing to consider alternative language regarding the draft contract provisions Prospect Ridge attempt to appeal. Record at PR 102-103 and 106. Prospect Ridge simply declined to participate in the negotiation.

⁶ There are two Section Es in the Opening Brief.

IV. CONCLUSION

The conditions imposed by the School District's Board of Education which are properly before the State Board on this second appeal are reasonable and necessary to protect the School District's pupils and community. They are clearly intended to foster choice in the School District and are neither onerous nor designed to "set up Prospect Ridge for failure."

As discussed above, Prospect Ridge cannot appeal, in mid-negotiation, certain provisions of a draft contract that are not contained in the resolution of the School District's Board of Education.

For the foregoing reasons, the School District requests that the State Board deny the second appeal of Prospect Ridge.

Respectfully submitted this 16th day of July, 2010.

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CERTIFICATE OF SERVICE

The undersigned certifies that on July 16, 2010, the foregoing was served via electronic service on:

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