

PLEASANTECH ACADEMY CHARTER :
 SCHOOL EDUCATION ASSOCIATION,

 PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF TRUSTEES OF THE : DECISION
 PLEASANTECH ACADEMY :
 CHARTER SCHOOL, :

RESPONDENT. :

SYNOPSIS

Petitioning Association challenged the failure of respondent charter school to utilize the salary schedule set forth in its application for charter when negotiating the salaries of the Association’s members. The appeal was first filed with the State Board of Education, which remanded the matter for an initial determination by the Commissioner.

The Commissioner forwarded the matter to the OAL and, after the parties stipulated to the operative facts, the ALJ determined that respondent was not bound by the salary schedule in the application for charter, as it did not constitute a salary policy adopted by the board of trustees.

The Commissioner affirmed the ALJ’s conclusion, finding it consistent with a previous determination by the Commissioner that amendment of a school’s charter, insofar as it addresses a salary policy, is not necessary because policies reflected in applications for charter are merely a guide for those reviewing the charter application, and are not binding on the board of trustees. The Commissioner also noted that, by law, only a board of education, or, in this case, a board of trustees, may establish a salary policy, and that the policy set forth in the application for charter was established by the founders, not the board of trustees, which did not exist as an official body until the charter was granted. The petition was dismissed.

February 11, 2002

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 4214-00
AGENCY DKT. NO. 167-5/00

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The record and Initial Decision issued by the Office of Administrative Law have been reviewed. Exceptions were filed by petitioner in conformity with the requirements of *N.J.A.C.* 1:1-18.4. No reply exceptions were filed by respondent.

Petitioner's exceptions aver, *inter alia*, that, although the Administrative Law Judge (ALJ) correctly recognized that the law permits a school employee and employing board of education to individually negotiate the employee's initial placement on a salary schedule, he improperly held that respondent was not bound by the particular salary guide schedule established in, and made part of, its approved charter. Petitioner articulates three reasons why it believes the ALJ's conclusion is flawed:

First and foremost, the terms of respondent's written charter clearly and unambiguously state that employee salaries were to be established at specific salary ranges which correlated to particular employee qualifications. Put another way, the charter expressly provided for defined salary ranges for each specific position according to the employee's educational background, which respondent blatantly ignored.

Second, the particular salary levels at which the charter mandated that employees were to be paid was underscored by the budget submitted to the Commissioner's office in support of respondent's charter, wherein salaries were listed for positions at levels which corresponded to the specific ranges set forth in the charter. That budget provided for the same salary ranges as contained in the charter. Moreover, although the budget is a separate and distinct document from the charter, and it is the charter, of course not the budget, which controls the establishment and operation of the charter school, it is important to note that the budget also referenced those particular salary schedules established in the charter.

Third, respondent itself admitted that it did not compensate its employees according to the charter and actually expressed its intent to try to correct the problem by formally amending the charter. This was substantiated by the May 7th letter response from respondent's business manager, Keith Szendry, to the Association's initial inquiry about employee salaries, wherein he conceded that employee salaries were not consistent with the charter, that original funding levels were not achieved, and that the respondent would formally request that the scale being utilized be added to the charter. (Petitioner's Exceptions at 3-4)

In support of its exceptions, petitioner reiterates the legal arguments set forth in its brief on motion for summary decision, which arguments were considered by the ALJ in rendering the Initial Decision.

Upon review of the record, including petitioner's exceptions, the Commissioner agrees with and adopts as his own the ALJ's recommendation to dismiss the petition for the reasons stated in the Initial Decision. Notwithstanding petitioner's arguments to the contrary, the Commissioner is in full agreement with the ALJ that there is nothing in statute, regulation, or the Charter School Application form suggesting that specific salary ranges proffered in an *application* for a charter school are to be considered a salary policy/schedule binding upon the Board of Trustees should the charter application be approved by the Commissioner. This conclusion is consistent with the determination reached by Commissioner Hespe on

December 14, 1999, wherein he did not accept a proposed amendment to the PleasanTech Academy's charter regarding reduction of the minimum starting salary for teachers and the removal of additional pay for multiple certifications, concluding instead that:

[I]t is not necessary to request an amendment to reduce the minimum starting salary for teachers from \$35,000 to \$32,000 and remove additional pay for multiple certifications. According to N.J.S.A. 18A:36A-11(a), "a charter school shall operate in accordance with its charter and the provisions of law and regulation which govern other public schools." N.J.S.A. 18A:29-9 states that "whenever a person shall hereafter accept office, position or employment as a member in any school district of this state, his initial place on the salary scale shall be at such point as may be agreed upon by the member and the employing board of education." Therefore, the contract between the employee and the board would stipulate the salary for individual staff members and the salary ranges reported in the charter school application serve only as a guide for reviewers. (December 14, 1999 Letter from Commissioner Hespe to PleasanTech Academy Charter School at 2)

Moreover, *N.J.S.A.* 18A:29-4.1 provides that a board of education, or in this instance, the board of trustees of a charter school, not charter school founders, may adopt a one, two or three-year salary policy, including salary schedules for all full-time teaching staff members which shall not be less than those required by law. The statute further mandates, among other things, that such salary policy and schedules shall be binding upon the adopting board and upon all future boards from the effective date of such policy. Consequently, the specific salary schedule contained in the PleasanTech Academy's charter application, which constitutes planning information provided by the founders cannot be considered as binding on the charter school's *Board of Trustees*, because the Board, which did not exist as an official body and had no power to act in an official capacity until after the Commissioner's approval of the charter application, *N.J.A.C.* 6A:11-2.1(h), did not adopt the policy pursuant to statute.

Accordingly, for the reasons expressed in the Initial Decision and elaborated upon herein, the petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: 2/11/02

Date of Mailing: 2/13/02

* This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.