

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

**Northern Rhode Island
Council on the Arts/
Beacon Charter School**

v.

Rhode Island Department of Education

.....

DECISION

Held: We find that the Beacon Charter High School, which is located in Woonsocket, mismanaged its own finances to the point that Beacon would have been unable to make payroll in early or mid-March of 2005. This fact, along with other Beacon deficiencies, caused the Rhode Island Department of Education (RIDE) to conclude that Beacon was insolvent, and so administratively flawed that long continuation of the Beacon School would put the public school interests of the state, along with state and local funds, at risk. Failure to make payroll would have immediately closed the school and disrupted the educations of Beacon's students. In order to prevent this disruption RIDE drafted a **MEMORANDUM OF AGREEMENT** which it forwarded to the Beacon School's Board of Trustees. The Board accepted this agreement. Under this agreement RIDE provided Beacon with \$280,000 in state funds, a sum sufficient to allow Beacon to stay in operation until the end of the school year. In exchange for this sum Beacon agreed to surrender its charter in June at the end of the 2005 school year. We find this agreement to be valid and not to have been modified by any oral agreement. We therefore conclude that the Beacon Charter High School has surrendered its charter and that Beacon may no longer function as a Rhode Island charter school.

DATE: August 11, 2005

Jurisdiction and Travel of the Case

Jurisdiction is present under R.I.G.L. 16-39-1, R.I.G.L.16-39-2, and R.I.G.L. 16-39-3.2. Hearings in this matter were conducted in Providence and in Woonsocket. Given the time pressure in this case oral argument was received instead of written briefs. This matter is now in order for decision.

Positions of the Parties

- **Rhode Island Department of Education**

The Rhode Island Department of Education (RIDE) contends that the Beacon Charter High School, which is located in Woonsocket, mismanaged its own finances to the point that Beacon would have been unable to make payroll in early or mid-March of 2005. This fact, along with other Beacon deficiencies, caused RIDE to conclude toward the end of 2004 that Beacon was insolvent, and so administratively flawed that long continuation of the Beacon School would put the public school interests of the state, along with state and local funds, at risk. At this point RIDE began to consider the prospect of instituting charter revocation proceedings against Beacon School. Obviously, however, prospective revocation of Beacon's charter would do nothing to prevent the immediate closure of the school in March due to the school's inability to make payroll. Failure to make payroll would have immediately closed the school and disrupted the educations of Beacon's students. In order to prevent this disruption RIDE drafted a proposed **MEMORANDUM OF AGREEMENT**¹, WHICH it forwarded to the Beacon Schools Board of Trustees. Under this agreement RIDE would provide Beacon with \$280,000 in state funds, a sum sufficient to allow Beacon to stay in operation until the end of the school year. In exchange for this sum Beacon would agree to surrender its charter in June at the end of the 2005 school year. RIDE submits that such an agreement, in written form, was accepted by Beacon in early April of 2005 and that RIDE then provided Beacon with the sum of 280,000. RIDE therefore submits that the Beacon Charter has been surrendered and that Beacon, as a charter school, no longer exists.²

- **The Beacon Charter School**

Beacon concedes that its financial condition was so depleted by the start of 2005 that all signs indicated it would have been unable to make payroll in early or mid-March of 2005. It concedes that it did enter into the **MEMORANDUM OF AGREEMENT**³ in early April of 2005 with the Commissioner of Education to surrender its charter at the end of the 2004-2005 school year in exchange for \$280,000 in state funds. Beacon argues, however, that the Commissioner's chief of staff, at a March 28th meeting with Beacon officials and others, *prior to* the signing of the **MEMORANDUM OF AGREEMENT** verbally agreed to waive the surrender of Beacon's charter and to allow Beacon until the end of the school year to financial and administratively right itself. Beacon also alleges that the chief of staff

¹ Exhibit 22

² Exhibit 22.

³ Exhibit 22

verbally agreed that if Beacon did right itself by securing new solid financing and new educational backers, then Beacon could continue to operate during the 2006-2007 school year and thereafter. Beacon further submits that it now has secured new solid financing and new educational backers, and that it is therefore entitled to stay in operation

Findings of Fact

The BEACON CHARTER SCHOOL CORPORATION was registered in the Office of the Rhode Island Secretary of State on June 6th, 2003 as a non-profit corporation.⁴ The BEACON Articles of Incorporation state that:

The purpose of the BEACON CHARTER SCHOOL CORP. is to provide education in the arts and business field to high school age children grades 9 - 12 on a full time basis subject to the laws governing charter school facilities in the State of Rhode Island.⁵

The annexed bylaws to this non-profit corporation state at Section III that:

The charter for the school has been granted to the Beacon Charter School Corp. by the Northern Rhode Island Council of the Arts, holder of such charter, without compensation.⁶

The Board of Regents for Elementary and Secondary Education had granted preliminarily approval to the Beacon School on June 27, 2002 with the support of the Commissioner of Education and the Woonsocket school committee.⁷ On July 22, 2003 the Auditor General approved Beacon's financial plan.⁸ The Beacon Charter won final approval from the Board of Regents on July 23, 2003. The minutes to this July 23, 2003 meeting of the Board contain repeated comments from members of the Board demonstrating concern that it had to be made clear that Board of Regent approval of the Beacon Charter did not mean that the Beacon School would be funded by state funds appropriated to the Rhode Island Department of Education. The approval resolution of the Board therefore stated:

MOVED AND SECONDED: That the Board of Regents for Elementary and Secondary Education Approve the BEACON Charter School Project. This Approval is Contingent on the Appropriation of Additional Funding (for the School) from the General Assembly in the understanding that the school will not be funded from existing appropriations.⁹

⁴ Exhibit 4.

⁵ Exhibit 4.

⁶ Exhibit 4.

⁷ Exhibit 3.

⁸ Exhibit 6.

⁹ Exhibit 5.

On August 7, 2003, Keith Oliveira, who holds the position of Charter Schools Coordinator with the Rhode Island Department of Education (RIDE), sent a letter to Jack Lawhead who was then the Project Coordinator for the Beacon Charter School.¹⁰ In this letter Mr. Oliveira congratulated Beacon on the charter approval it had won from the Board of Regents on July 23, 2003. Mr. Oliveira's letter also stated:

Based upon the vote [of the Board of Regents] you are now authorized to receive state and local aid payments pursuant to the charter schools funding statute (R.I.G.L. 16-77.1) and are cleared to begin operation in September 2003.***Please forward your final student enrollment figures along with a specific list of students indicating the district of residence for each so that our Office of Finance may calculate the appropriate state aid payment to be made to your school.

Mr. Oliveira's request for a student count was necessary because in Rhode Island a charter school's funding is essential based upon the number of students the charter school enrolls. For each enrolled student the charter school receives a per pupil payment of state and local school funds equivalent to the per pupil education cost in the student's sending school district.¹¹ Therefore when a charter school makes financial commitments it must keep a close weather eye on its enrollment. If a charter school's financial commitments greatly exceed its revenue-generating enrollment the school will quickly sink in an ocean of red ink.

The Beacon Charter School set sail on its maiden voyage in September of 2003. Beacon had projected an enrollment of 114 students for the 2003-2004 school year, but in fact only 80 students enrolled.¹² Still, Beacon seems to have completed the 2003-2004 school year with no more problems than those that usually accompany the start of any other enterprise. With undimmed optimism Beacon projected a student enrollment of 196 students for the 2004-2005 school year. RIDE's Charter School Coordinator, Mr. Oliveira, was not sanguine about this number. When he expressed his concern about it Beacon trimmed the figure back to 165 students and prepared to cast off.¹³

When Beacon left the dock in September of 2005 it had only 111 students on board. Given this number of students, and the resultant fiscal constraints that would be imposed on Beacon's operations, much would depend on the school's management skills. Beacon's financial difficulties were compounded by the fact that it had failed to give its teachers non-renewal notices by March 1st of the prior school year.¹⁴ This now made it difficult to reduce staff expenses.¹⁵ Beacon's fiscal seaworthiness already seemed subject to some concern. In retrospect it seems clear that Beacon's management paid insufficient heed to the stormy fiscal petrels that were then beginning to swoop in the wind:

¹⁰ Exhibit 7.

¹¹ R.I.G.L. 16-77.1- See: Transcript page 25. See: Exhibit A.

¹² Transcript of July 20th, 2005, page 20.

¹³ Transcript of July 20th, 2005, page 23.

¹⁴ R.I.G.L.16-13-2.

¹⁵ Transcript of July 20th, 2005, page 88.

O'er the Deep! O'er the Deep!
 Where the whale, and the shark, and the sword-fish sleep,
 Outflying the blast and the driving rain,
 The Petrel telleth her tale—in vain;
 For the mariner curseth the warning bird 25
 Who bringeth him news of the storms unheard!
 Ah! thus does the prophet, of good or ill,
 Meet hate from the creatures he serveth still:
 Yet he ne'er falters:—So, Petrel! spring
 Once more o'er the waves on thy stormy wing!¹⁶

Once more, in the fall of 2004 Mr. Oliveira, and other officials of the Department of Education, voiced their growing concerns to Beacon officials about Beacon's enrollment figures, and the fiscal foundering these figures might portend. To their credit Beacon officials themselves began to see the increasing chop in the fiscal waters and they stepped up their recruiting efforts.¹⁷ Moreover, at the behest of Ms. Tick, the Beacon School business manager, Mr. Oliveira penned a letter to all Rhode Island school districts urging them to be prompt in forwarding their required contributions to charter schools.¹⁸ While the letter covered all charter schools in the state, it was issued with the Beacon School in particular mind, in an effort to keep the school on an even keel as the fiscal waves began to roll with more menace.

After these events, but still in the fall of 2004, Ms. Tick advised Mr. Oliveira, in a sort of fiscal SOS, that the Beacon School, "was projecting a deficit that would become real in and around March 10 or March 24"...of 2005. "The amount was approximately \$250,000 at that time, and [Ms. Tick] subsequently provided...a cash flow analysis to confirm [this].¹⁹ The Beacon School was therefore about to founder well before it and, more importantly, its students, could reach a safe harbor at the end of the school year in June of 2005:

A THOUSAND miles from land are we,
 Tossing about on the roaring sea;
 From billow to bounding billow cast,
 Like fleecy snow on the stormy blast:
 The sails are scatter'd abroad, like weeds,
 The strong masts shake like quivering reeds,
 The mighty cables, and iron chains,
 The hull, which all earthly strength disdains,
 They strain and they crack, and hearts like stone
 Their natural hard, proud strength disown.

¹⁶ *The Stormy Petrel* by Barry Cornwall (1787-1874), *A Victorian Anthology*, 1837-1895.

¹⁷ Transcript of July 20th, 2005, page 82.

¹⁸ Transcript of July 20th, 2005, page 32. Exhibit 8.

¹⁹ Transcript of July 20th, 2005, page 38.

We suppose, in theory of course, that at this point the Department of Education could have refrained from further action and simply allowed the Beacon School to vanish under the fiscal waves some time in March of 2005. Beacon students would have been picked up by their respective sending school districts, and these students would have been placed back in regular classroom settings. Beacon staff would be out of work, but they could confidently be expected to seek other employment. The Beacon School would be gone, “full fathoms five below.”

In reality, however, such a course of inaction was totally unacceptable to RIDE. While RIDE had now lost any faith in Beacon’s management skills, RIDE was not prepared to allow the students at the Beacon school to have their educations disrupted in the middle of the school year.²⁰ A rescue effort of some sort would have to be mounted. Concerning this rescue effort Mr. Oliveira of RIDE testified that in the fall of 2005:

[T]he Department [RIDE] began having internal conversations about how we might be able to provide for the shortfall to ensure that the school made it through a 180-day school year. Our primary concern was that without additional resources, the school would not be able to provide for a full 180-day school year and so we began attempting within the Department to identify sources of revenue that we could make available to the school to prevent that.

These internal meeting included, besides Mr. Oliveira, Ms. Jennifer Wood, RIDE’s Chief of Staff, Ms. Carolyn Dias, RIDE’s Director of Finance, and Ms. Celeste Bilotti, RIDE’s State Aid Coordinator. Mr. Oliveira testified about these internal meetings:

The result [of these meetings] was we were able to redirect some resources in an amount in an amount of approximately \$280,000 we would be able to make available to the school in order for the school to complete a 180-day school year.²¹

Mr. Oliveira further testified:

We had a meeting [with Beacon officials] in December [2004] and, identifying what the crisis was and how the Department of Education could work with the school to provide the necessary funds to get through the 180-day school year, and that were we to do that, again, it would be subject to an agreement that the school would surrender its charter in receipt – upon receipt of those funds.

Ms. Bilotti, RIDE’s State Aid Coordinator testified about how this \$280,000 was obtained:

Our director of finance had to inform the Department of Administration State Budget Office, the Governor’s office, and the General Assembly of the need. We

²⁰ Transcript of July 25, 2005, page 11.

²¹ Transcript of July 20th, 2005, page 39. Of course, communication with the state budget office, the Governor’s Office, along with General Assembly action would be required to accomplish this redirection of government funds. Mr. Oliveira testified: “We communicated with the legislative finance leaders. Kept them abreast of the situation, because we knew we would need to get their approval to redirect state resources towards this dilemma. Transcript Pages 45 and 53.

identified a surplus in our charter school account that could partially offset this additional payment and eventually receive permission to actually make the payment. Because there was not enough money in the account, we would have to obtain permission for an authorized red balance, and keep on top of tracking that this actual appropriation would be made as part of the supplemental budget, and it indeed eventually was appropriated to cover the additional money needed for the account as a whole.

Of course there was no obligation for Beacon School to accept RIDE's December 2004 offer and surrender its charter in exchange for operating capital needed to get the school to the end of the school year. As is the case with any vessel in distress the good ship Beacon was free to refuse salvage efforts for as long as its captain, on behalf of the ship's owners, considered salvage efforts not to be immediately necessary or to have been offered at too high a price. Now all marine salvors have an obligation to save lives, but as for saving the ship -- this is a matter for negotiation. Beacon was entitled to seek salvage efforts from anyone who was willing to provide these services at a cost acceptable to Beacon. In fact the record shows that Beacon was attempting to negotiate salvage from other sources that would not require the surrender of its charter. Mr. Oliveira testified concerning the meeting in December of 2005:

Well, the school was attempting to identify its own sources of revenues that it could identify outside of the Department's access of resources that it could use to plug those holes. There were a number of options that the school was working towards to fill the budget gap without having to access state funds.

There were conversations that the school was having with the CVS Corporation. There were discussions ... with the GTECH Corporation of some funds that might be made available. There were conversations about the school possibly seeking a guarantor on a note to finance *the school facility*, in which some of the funds could be used to plug the operational hole, operational deficit of the school. There were a number of options the school was proposing outside of funds the state might be able to make available.(Emphasis added)²²

The *school facility* mentioned in the material just quoted refers to the Stadium building in Woonsocket. Beacon hoped to purchase and renovate the Stadium building for use as a school to replace the less than ideal facility Beacon was occupying. A newly renovated school facility might be an attraction for new students.²³ Beacon also hoped that if a loan to renovate the Stadium building was obtained, a portion of the loan proceeds could be diverted to cover Beacon's immediate operational funding shortfall. Mr. Oliveira's notes to the December meeting also show that the United States Department of Agriculture (USDA) was another prospective rescuer of the Beacon School by means of a loan:

The most viable option currently [in December of 2004] being explored under this scenario is to secure the U.S. Dept. of Agriculture as either a guarantor of a note from a private lender, or that the USDA to be the primary lender. It was

²² Transcript of July 20th, 2005, pages 41 – 42.

²³ Exhibit 11.

suggested that it was more preferable that the USDA be the primary direct lender because of more favorable terms.

Sen. Jack Reed's office has been the primary interface with the USDA and the consultants working on behalf of the school. The consultants working with the school on this option will submit to the department a written update of this plan. If successful in securing USDA participation, the turnabout time of receiving funds is approximately 45 days.

Of course, this matter would not be before us if CVS, GTECH, USDA, or some benevolent donor with cash to deposit to Beacon's account had provided the \$280,000 needed to "plug the operational hole" that was threatening to sink Beacon before the middle of March of 2005. In fact, none of the entities just mentioned attempted to help Beacon on either a short or long term basis. The only available rescuer was still RIDE, and RIDE was only willing to provide Beacon with the needed \$280,000 to "plug the operational hole" on the condition that Beacon surrender its charter, and cease operations at the end of the school year. (In fact while \$280,000 may have been the sum needed to reach the end of the school year, Beacon's true operating deficit may have been as much as \$450,000.²⁴) Mr. Oliveira's meeting notes summarize the situation in December of 2004:

It was reiterated throughout the meeting that the primary cause for the current financial dilemma was the over-projection of students. Prior to the school year, the school projected an enrollment of 165 students, which would have generated approximately \$1.56 million in state and local aid. However, at the time of the October enrollment reporting, the school had only reenrolled 111 students. Having staffed to the school to the higher number of 165 students, the school has been unable to generate sufficient per pupil revenue to cover the costs at the current staffing level.²⁵

To conclude the meeting, the department [RIDE] expressed a number of concerns, beyond the current and more immediate fiscal situation, that have caused notice to the short and long-term sustainability of the school. In addition to the school's inability to attract a sufficient level [of] students and subsequent revenue shortfall, a number of administrative concerns were expressed. Among the concerns presented were:

1. The school has lost two head directors within the last six months.
2. The hiring of a non-certified teacher, who was subsequently terminated.
3. The termination of an employee without proper due process.

These administrative issues, combined with the school's inability to secure financing for the school's facility renovations; persistent student recruitment difficulties; and, consequently, the current fiscal dilemma presents a picture of a struggling school. While the department will continue to work with the school to address these matters, *the department must also maintain its regulatory role in evaluating the situation.* It was suggested that the school seek the technical

²⁴ Transcript of July 20th, 2005, page 140.

²⁵ Exhibit 11.

assistance resources that could be provided through the RI League of Charter Schools in addressing some of its *critical issues*. (Emphasis added)

The situation here is evident. While the sea was not yet fully arisen, Beacon was already losing way, and taking on water fast. The capability of Beacon's officers to manage the ship was in doubt. RIDE was now expressing more urgent concern. Still, RIDE was not yet ready to assume a more directive role in managing the impending casualty until Beacon had exhausted all practical efforts to obtain another, less demanding, rescuer than RIDE.

By January of 2005 Beacon's situation had worsened. RIDE began to have further internal discussions about how to prevent the immediate sinking of Beacon, and about whether or not RIDE should, as a long-term matter, consider revoking Beacon's charter. On or about January 5, 2005 officials from RIDE and Beacon had another meeting. Concerning this meeting Mr. Oliveira testified:

[W]e met with the [Beacon] school to propose the Department of Education providing funds to the school to get it through a 180-day school year and that upon – that we would enter into agreement in lieu of revocation, that the school would surrender its charter at the end of the school year if the Department of Education provided those funds, the funds to get the school through the 180-day school year. That proposal was made to the school in our January meeting, and that was what this proposal was then presented. A [Beacon] representative at that January meeting brought that proposal back to the board of trustees of the [Beacon] school....

On January 28, 2005 the Business Manager of the Beacon School, Ms. Tick, e-mailed Mr. Oliveira at RIDE to inform him that the Beacon would “run out money” sometime in early or mid-March. She wrote, “We probably will be able to make our March 10 payroll but probably not have enough to make our March 24 payroll.”²⁶ Ms. Tick's e-mail of January 28th, 2005 caused Mr. Oliveira to begin to consult with RIDE officials, “...to ensure we [RIDE] could try to have funds available to head off any potential shortfall.”²⁷ Mr. Oliveira was wise to be sure RIDE was prepared to take prompt action. Failure by Beacon to make payroll would of course mean that Beacon was sunk.

Confronted with this reality, and after exhausting all other means of possible salvage, the Beacon School Board of Trustees was now ready to accept RIDE's offer to provide immediate operational aid in the sum of \$280,000 to keep Beacon afloat until the end of the school year, on the condition that Beacon surrender its charter. On February 9, 2005 Mr. Paul Lawhead, Chairman of the Beacon Charter High School Board of Trustees, wrote to Mr. Keith Oliveira, RIDE's Charter School Coordinator:

²⁶ Exhibit 13.

²⁷ Transcript of July 20th, 2005, Page 52.

Dear Keith,

On February 3, 2005, The Beacon Charter High School Board of Trustees approved the following motion during an Executive Session:

Motion: The school would surrender its charter at the end of the school year, if we cannot procure the funding for the continued operation of the school and the renovation of the Stadium Building on or before February 28, 2005. However, should the financing become available shortly thereafter, we would like to have the opportunity to re-address this issue.

In addition, as I previously reported to you, it is anticipated that our funds will run out between March 10-24th, 2005.²⁸

A further e-mail from the Business Manager of Beacon on February 16, 2005 to Mr. Oliveira confirmed that Beacon was about to go under. A cash flow projection was attached to this e-mail. The Business Manager now had doubts about being able to make Beacon's March 10th payroll.²⁹ Referring to Ms. Tick's e-mail of February 16, 2005 and its attached cash flow projection Mr. Oliveira testified:

We used this [Ms. Tick's e-mail] as a basis of determining when the state funds -- the necessity of making the state funds available, and we use it as a determiner as to how soon and how we should pursue *working with the state appropriators* to make those funds available. * * * We communicated with the *state budget office* and communicated with both the *chairs* of the *House* and *Senate finance committees*. (Emphasis added)

The reader should carefully note this testimony. This testimony plainly indicates, as does the prior testimony of RIDE's Coordinator of State Aid quoted a few paragraphs ago, that RIDE had no authority to unilaterally commit state funds to Beacon. Any movement of state funds to Beacon would require approval from the (1) the state budget office, (2) the chair of the House finance committee and (3) the chair of the Senate finance committee.³⁰ Of course, anyone familiar with the fiscal operation of state government is familiar with this rather obvious point.

By March 2, 2005 Beacon was settling into the water. The Business Manager of Beacon, Ms. Tick, sent e-mail to Mr. Oliveira stating, " You asked us [Beacon] to notify you when we were within 2 weeks of running out of cash. We are potentially at that point." On the same day Mr. Oliveira replied to this e-mail with his own e-mail, and set up a meeting with Beacon School to be held on March 10th, 2005.³¹

Present at this March 10th meeting on behalf of the Beacon School were Mr. Lawhead, Ms. Tick, a Mr. Coppola (from the Beacon board of trustees) and two consultants to Beacon – Mr. Cuomo and Mr. Mancini. A Mr. Nardelli was present on behalf of the Rhode Island League of Charter School. Besides Mr. Oliveira, Ms. Jennifer

²⁸ Exhibit 12.

²⁹ Exhibit 14.

³⁰ Transcript of July 25, 2005, page 11.

³¹ Exhibit 17.

Wood, the Chief of Staff for the Commissioner of Education, along with Carolyn Dias, RIDE's Finance Director, Celeste Bilotti, RIDE's Coordinator for State Aid, and Paul Pontorelli, as RIDE's legal counsel, were present on behalf of the Rhode Department of Education.

Mr. Oliveira testified that RIDE came to this meeting with the fixed intention to secure final agreement that Beacon would surrender its charter in exchange for \$280,000 in state funds as specified in the draft **MEMORANDUM OF AGREEMENT**. He further testified that RIDE never wavered from this position.³² We credit this testimony, as will be discussed more fully at a later point.

Beacon still seems to have considered RIDE's tendered bargain to be somewhat Faustian. Beacon tried to argue to RIDE at the March 10th meeting that it had other potential backers, that it surely would be able secure outside funding, and that if only RIDE would agree to convert the \$280, 000 into a loan, Beacon would not only be able to right itself, but that it would also be able to completely refurbish itself and, indeed, expand its activities.³³

Mr. Oliveira testified that RIDE was not interested in any of this, and that RIDE remained adamant that Beacon would have to surrender its charter in exchange for the \$280,000.³⁴ Ms. Jennifer Wood, RIDE's chief of staff, who attended this meeting, testified that she was underwhelmed by the few documents Beacon produced to support its bold new plans.³⁵ In essence she testified that she was convinced that the documents she was shown in no way constituted evidence of even a superficially viable plan for the reconstitution of the Beacon School.³⁶ She concluded by testifying that:

In other words, we couldn't simply continue to put state revenue into a school that had no plan for solvency either in the school year it was in or in subsequent school years and that therefore it would be necessary for the agreement that the Board had voted on in February [to surrender the charter] to be executed in order for additional funding to be made available.

The upshot of the testimony of Mr. Oliveira and Ms. Wood is that while RIDE had no objection to Beacon's continuing its own efforts to right itself, it was clear, given Beacon's impending inability to make payroll, that time for self-help would presently run out. Beacon's receipt of state funds would then entail the surrender of its charter. We credit this testimony. Mr. Oliveira's notes to the March 10th state:

It was finally determined that the school could pursue its new plan of action until such time that the school the school reached a point of financial insolvency. At

³² Transcript of July 20th, 2005, page 128.

³³ Transcript of July 20th, 2005, page 139.

³⁴ Transcript of July 20th, 2005, page 130 and 150.

³⁵ Transcript of July 25, 2005, page 18

³⁶ Transcript of July 25, 2005, page 14-19. [Testimony of Wood]

which time RIDE and the school would enter in a formal agreement [to surrender its charter] as previously agreed to.³⁷

In our view Ride's position never changed at the March 10th meeting. By then RIDE had completely lost faith in the notion that Beacon could ever become a seaworthy ship. Once RIDE pumped in the \$280,000 of buoyancy needed to keep Beacon temporarily afloat, Beacon would be taken in tow, and conducted to a safe harbor. This harbor would be reached at the end of the statutorily required 180-day school year. The student passengers would then disembark, and passage for them on other educational vessels would be arranged. Having surrendered its charter, Beacon would then be decommissioned, never to set sail again.

During the next few days after the March 10th meeting Beacon continued to ship water. Mr. Oliveira continued to press Beacon for a written agreement and acceptance of RIDE's offer of \$280,000 in exchange for Beacon's Charter.³⁸ He informed Beacon that absent a written agreement to RIDE's terms no state money would be forthcoming.³⁹ He also pressed Beacon for a written payment schedule for the funds if they were to be accepted.⁴⁰ Finally, at the eleventh hour, in early April of 2005 Beacon accepted RIDE's terms and entered into the following agreement:

MEMORANDUM OF AGREEMENT⁴¹

THIS AGREEMENT is between the Rhode Island Department of Elementary and Secondary Education ("Department") and the Beacon Charter High School ("Beacon").

WHEREAS, the Board of Regents for Elementary and Secondary Education granted Beacon a revocable charter in 2003 to establish and maintain a public school program; and,

WHEREAS, during its second year of operation, Beacon has experienced financial difficulties that has rendered it insolvent and unable to provide students with ongoing educational programming; and,

WHEREAS, the Department, at the direction of the Commissioner of Education, exercises general supervisory authority over public elementary and secondary education in the state of Rhode Island; and,

WHEREAS, public schools in Rhode Island are required by law to operate at least 180 days annually; and

WHEREAS, without financial assistance, Beacon will not be able to operate a public school program for 180 days during the 2004-05 school year,

³⁷ Exhibit 18.

³⁸ Exhibit 21.

³⁹ Transcript of July 20th, 2005, page 62.

⁴⁰ Exhibits 19, 20 and 21.

⁴¹ Exhibit 22.

IT IS HEREBY AGREED as follows:

THAT the Department will provide Beacon with the necessary funds to complete a public school program for 180 days;

THAT Beacon will minimize its expenses in conducting a public school program for the remainder of the 2004-05 school year;

THAT Beacon will liquidate all available assets and apply the resulting funds to school operations during the remainder of the 2004-05 school year; and

THAT upon the conclusion of the 2004-05 school year, Beacon will cease operations and voluntarily surrender its charter to the Department.

Peter McWalters [manual signature]
For the Department of Elementary
and Secondary Education

Lawhead [manual signature]
For the Beacon Charter High School

4/4/05 [manual writing]
Date

4/2/05 [manual writing]
Date

On or about April 6th, 2005 RIDE prepared a wire transfer of state funds for the Beacon school in accordance with this agreement. On or before May 11 of 2005 RIDE was in contact with the state budget office to remove the Beacon School from the state budget.⁴² The result of these contacts was the issuance by the budget office of a document entitled, "FY 2006 CHARTER SCHOOL AID PROJECTION FINAL RUN WITH FINAL PER PUPILS AND SHARES AND NO BEACON."⁴³ On July 15, 2005 the Commissioner of Education sent a letter to all the state's school superintendents and charter school directors informing them of the "Final FY 2006 Charter School Aid" entitlements.⁴⁴ This document contained no mention of Beacon.

Beacon Charter High School argues that, in spite of its written agreement to surrender its charter in exchange for the \$280,000 needed to keep Beacon afloat until the end of the school year, RIDE, through its chief of staff, had agreed *prior to* the actual signing of the **MEMORANDUM OF AGREEMENT**, that Beacon could really have the \$280,000 without surrendering its charter, along with an indefinite amount of time to find new backers, and that if these backers appeared Beacon could continue to operate. This contention is based upon a meeting held in the state house on March 28, 2005---a few days *before* the early April signing of the **MEMORANDUM OF AGREEMENT**. Concerning this meeting Ms. Wood testified:

At the conclusion of the meeting, as I left it was with the understanding that Mr. Lawhead was in fact going to make efforts to convene his Board [of the Beacon School] and that they were going to move forward with formalizing the agreement that had been envisioned in the February resolution of the Board. There was much discussion in the meeting about the hopes and desires of the representatives of the

⁴² Exhibit 44.

⁴³ Exhibit 44, Attachment.

⁴⁴ Exhibit 22.

school and including Mr. Fontaine on behalf of the school that they were still hoping to obtain other sources of capital either through private business sources or through other kinds of efforts that they were making, and I was very clear in that meeting that at this point, February 28 was the date that those efforts needed to have been concluded, finalized, and that those funds needed to be literally available in a bank account. We had met in March, so that February 28 date had slipped somewhat, and in March we had again reiterated, I had reiterated that prior to the date when the school crossed into the red, if you will, when those emergency funds would be needed, if they were able to achieve solvency then that would resolve the issue. Mr. Fontaine challenged me to extend that deadline beyond the date of our March 24 meeting and to say, well, what about meeting -- meeting the solvency challenge if you will, closing the budget deficit subsequent to that. I said, that is not realistic. I cannot recommend that, and that I would not on behalf of the Department of Education recommend that to the executive branch financial authorizers nor the General Assembly, because these proposals and ideas for additional funding that had been presented were all in the future tense, and none of them had come to fruition during this period from March 10 to March 24, and therefore we would need to proceed, and I was very blunt about the fact that unless the Board were able to meet and formalize an agreement to resolve the matter as had been envisioned in their February deliberations [to surrender the charter] that we would not be able to move forward [to provide the \$280,000].

We credit this testimony. It is consistent with all the actions taken by RIDE both prior to and subsequent to this March 24th meeting. We also believe that Ms. Wood correctly defined the narrow limit of her authority in this matter. The \$280,000 that was being made available to Beacon was the product of prior approval by both the legislative and executive branches of government for a particular purpose. She had no independent authority, even if she were inclined to exercise it (which she was not), to convert this money to a loan to fund a course of action that had not received the prior approval of legislative authorities and the budget office. Moreover there was simply no statutory authority for RIDE to make loans. RIDE is not a bank.⁴⁵ Ms. Wood's testimony also comports with the action taken, in fact, by the Beacon School. In early April Beacon school signed the draft **MEMORANDUM OF AGREEMENT**, without any change at all to the previously agreed to language.

Beacon suggests that the testimony of Mr. Fontaine, who is the Chair of the Woonsocket City Council and of Mr. Costa, of the Governor's Office, provides a direct challenge to Ms. Wood's account of this meeting. Both of these gentlemen were present at the March 28th meeting. While we accept almost all of what these gentlemen testified to, we think they came late to the details of this matter, and they did not grasp the urgency that RIDE had assigned to dealing with the immediate fiscal crisis that confronted Beacon. For example Mr. Fontaine, whose testimony is close to that of Mr. Costa, testified that:

I posed the question to Ms. Wood as to whether or not the efforts, if successful, would not be able to save the charter, in essence, that if the charter -- if they were successful in obtaining these support mechanisms, if they would still be required to surrender the charter, and at that point she said no. She said obviously if they're

⁴⁵ Transcript of July 25, 2005, page 110 {Testimony of Wood}

able to strike these agreements that would make the school viable, that the agreement would not need to be executed.

This statement is clearly not contrary to Ms. Wood's testimony concerning her statements at the March 28th meeting. . In fact it was Ms. Wood's consistent position that if Beacon did not accept the state's \$280,000, and if Beacon found its own way to remedy its inability to make payroll, there would obviously be no need to implement the agreement. For example, at the March 10th meeting Ms. Wood testified that she stated:

...I was asked in the meeting whether or not it would be necessary to enter into an agreement relating to the ceasing of operations of the school if a financial plan were able to be developed, and I said very clearly, if the school is able to close its budget deficit prior to going into the red, then you don't need the state's money, and we don't need an agreement. But I was quite unyielding, because I felt it was only responsible to be so, given that I had heard so many different hopeful suggestions but no concrete solutions. I was quite unyielding on my point that we needed to either resolve that insolvency before the school went in the red or move forward on the plan that had already been voted on by the Board in February. And there was a real sense of urgency about that.

We credit Ms. Wood's testimony that she adhered to this position at the March 28th meeting. If a benevolent donor would only *immediately* deposit \$280,000 cash into Beacon's account so that Beacon could make payroll, there would be no need implement the agreement to surrender Beacon's Charter. Time's winged chariot, instead of hurrying near, might then pause for a space, and allow Beacon officials time to attempt, against long odds, to prevent Beacon's descent into the fiscal abyss. Perhaps this space might last into June. But, if Beacon had to take the state's \$280,000 to make payroll *in April*, RIDE would *immediately* enforce the **MEMORANDUM OF AGREEMENT**, keep Beacon afloat only until a safe harbor was reached in June, and then accept Beacon's surrendered charter as specified in the **MEMORANDUM OF AGREEMENT**. We think that Beacon's patrons were all too prepared to hear about an extension until June, but their ears were not as receptive to the condition precedent to this extension--\$280,000 *immediately* deposited in cash to Beacon's account by someone *other than the state*. We therefore conclude that Ms. Wood did not agree to waive the charter surrender provision contained in the **MEMORANDUM OF AGREEMENT**.

We are tempted to stop here because we have found that RIDE never agreed to depart from the **MEMORANDUM OF AGREEMENT**. This finding obviates any need to address the question of whether or not Beacon ever put forward a real plan of fiscal and programmatic reform. Still we feel that the volume of evidence we have taken on this point, and the possibility of further review, require us to consider the status of the plans which were put into the record on behalf of Beacon. In evaluating the substance of these plans we have examined the documents Beacon submitted to argue that it had developed a firm financial and programmatic basis for the school to sustain itself through the 2005-2006 school year, and beyond:

1. **Exhibit B** is a term sheet with the date of February 14, 2005 from BankRI that discusses a possible loan to help Beacon renovate the Stadium building in

Woonsocket for school use. Of course a term sheet by definition is not a binding commitment from the bank that issues it. Term sheets are carefully drafted so as not to be binding documents. Moreover this term sheet discusses receipt of \$1,200,000 in tax credits. The record before us shows that such credits only received preliminary approval on May 19th, 2005.⁴⁶ Even if final approval is granted for these credits there is nothing to show what amount of tax credits will be approved. The term sheet also speaks of \$600,000 in school housing construction aid. But no such aid has been applied for, or granted. Even if housing aid were to be granted in some amount this aid would be in the form of reimbursement and not “up front money.” The Commissioner’s Chief of Staff testified in this matter that this term sheet, “had a number of different conditions in it that would have to be met before [it] could go forward, and some of those conditions were ones that I did not feel in my professional judgment could be met, at least certainly not during the time frame available to the school.”⁴⁷ In the end Exhibit B was not an item that could be taken to a bank and cashed.

2. **Exhibit C** is a one-page letter dated March 9, 2005, which purports to indicate that a Mr. Wayne Daniel was prepared to be a guarantor on the hypothetical bank loan mention in Exhibit B. This “document” is not on letterhead. It carries a *typewritten* signature from a Mr. “Wayne Daniels.” Since the real potential guarantor has the last name of “Daniel” it is doubtful that Mr. Daniel[s] prepared Exhibit C. In any event, this misnomer aside, it is evident that document contemplates that RIDE would be prepared to make a short-term loan to Beacon. Such a loan was something that was not going to happen, as Mr. Oliveira’s testimony shows. In any event this document is not a guarantee; it is only a suggestion that its author may be willing to provide guarantee on the basis of certain conditions, some of which were not likely to be fulfilled. It is interesting to note that testimony was later elicited from Mr. Cuomo, a Beacon financial consultant who had worked to obtain this hypothetical guarantee, that RIDE should have understood that loan funds were not immediately available because BankRI would need seven to eight weeks to evaluate Mr. Daniel’s credentials as a potential guarantor. At the same time here Beacon advances the idea that RIDE was being completely unreasonable in not immediately advancing large sums of taxpayer money on the basis of the gossamer documentation concerning Mr. Daniel[s] provided in Exhibit C. In essence we find Exhibit C to have no merit as a document which public officials could rely on.
3. **Exhibit 26** is taken out of order here because of its relevance to Exhibit C. Exhibit 26 is a preliminary budget submitted by Beacon to the Auditor General [See: Exhibit K] sometime in March of 2005 as a demonstration of Beacon’s financial status. This document purports to show that Beacon was running in the black by about \$45,000 on March 7th 2005. This was not true. Exhibit 26 also includes a line item showing a \$400,000 loan to Beacon’s credit. This was not true either. Beacon’s financial manager had instructed Beacon’s business manager to place this \$400,000 item in Beacon’s budget, despite the fact that there was no documentation

⁴⁶ Exhibit P.

⁴⁷ Transcript of July 25, 2005, page 17

for its existence -- other than the assurance by the finance officer that the loan “was in the works.” Beacon’s business manger seems to have had concerns (as well she might) about recording this line item--but she did as she was told, and placed it in the budget. The fact that Beacon’s finance officer, Beacon’s business manager, and a Beacon financial consultant would be involved in the submission of such a document fully supports, to put it as mildly as possible, RIDE’s conclusion that everything was not “shipshape and in Bristol fashion” at Beacon, and that those who should have been supervising Beacon were failing in their obligations.

4. **Exhibit D** is a 1-page letter from Johnson & Wales University indicating that the University had, “decided to commit itself to involvement in the school and its delivery of educational services.” The involvement of Johnson & Wales University at Beacon would have been encouraging if, in fact, a complete plan for such involvement had existed and had been agreed to. No such plan was ever submitted. In fact **Exhibit G**, another one page letter from Johnson & Wales University states, “Johnson and Wales University is unable to provide Beacon with the financial underwriting which they were originally seeking from us.” It is perhaps not surprising that Johnson & Wales University, as it was with GTEC, CVS, the USDA, and others, was not willing to invest its funds in Beacon. In any event one page letters would not amount to the documentation that a responsible public officer would require as a condition for investing large sums of state money in an *insolvent* enterprise.
5. **Exhibits E** (May 26, 2005), **F** (June 23, 2005), **H** (June 28, 2005) and **M** (July 1, 2005) are simply rehashes of the Exhibits we have just discussed. The same tenuous non-binding material is now being directed to the Auditor General and the Office of the Governor.

We have carefully reviewed not only the Exhibits relating to Beacon’s projected plans of reform but also the testimony that was provided in support of these Exhibits. We conclude for the reasons stated above that none of this material amounted to anything that would suffice to allow a responsible public official to invest further public funds in the Beacon School.

We further note that while Beacon was, in the end, overwhelmed by its self-induced financial collapse, this does not mean that administrative inattention did not also hasten Beacon’s end. For example, while Rhode Island law plainly applies the state teacher tenure law to Rhode Island charter schools, Beacon officials seem to have been oblivious to this law. The result was that Beacon dismissed a teacher in complete violation of the tenure law.⁴⁸ The decision in the case involving this teacher shows that Beacon had no idea of how a teacher should be dismissed or who should do the dismissing. This tenure case resulted in a financial loss to the school. More importantly however the record shows that Beacon’s lack of awareness concerning the teacher tenure law caused the school to miss the well-known March 1st deadline to lay off teachers. Failure to act before this deadline gravely undermined Beacon’s financial condition by forcing it to employ more teachers than it needed. Beacon also seems to have been unaware of the need to observe state teacher

⁴⁸ Exhibit 9

certification laws and regulations. All of these deficiencies contributed to RIDE's conclusion that Beacon was not an appropriate investment for scarce public education funds. It is a bit ironic that Beacon's charter application to the Board of Regents contains detailed statements about how the school would teach its students the importance to business people of supply and demand, understanding markets, budgeting, finance, book keeping, accounting and personnel management. If Beacon had followed its own lesson plans it would have stood a much better chance of maintaining its charter.

Supplemental Findings of Fact

We find that the students, parents, staff, and public officials who appeared at the hearing in this matter in support of the Beacon School demonstrate that there is a focus of enthusiastic interest in a combined arts and business education program in the Blackstone Valley region. The close attention these Rhode Islanders paid to the extended fiscal and administrative testimony in this case should demonstrate to public education officials that there is an educational demand here that should be carefully evaluated. Perhaps a new right sized charter school, under sound and prudent management, could meet this demand.

Conclusions of Law

1. The Board of Regents for Elementary and Secondary Education and the Commissioner of Education exercise broad supervisory authority over public education in Rhode Island. R.I.G.L.16-1-5, et seq. and R.I.G.L.16-60-1, et seq.
2. In Rhode Island, charter schools are public schools. R.I.G.L. 16-77-2(b).
3. Rhode Island's teacher tenure law and certification law apply to charter schools.R.I.G.L.16-77-11.
4. Rhode Island law specifies that the Commissioner of Education is empowered to promulgate regulations concerning charter revocations. R.I.G.L. 16-77-3

Discussion

Based upon the evidence before us we find that the Beacon School, in accordance with the **MEMORANDUM OF AGREEMENT** it signed with the Commissioner, has surrendered its charter. While this agreement has a contractual form, we also recognize that this agreement was entered into between a public school and the Commissioner of Education. The Commissioner exercises visitorial and regulatory authority over public education in this state, and this agreement was made in the exercise of this authority. We do not believe verbal modifications of such documents, especially when large sums of public funds are involved, are allowable as a matter of public policy. In particular we note that public school governing bodies speak through their minutes. We find in this record no minutes from the Beacon School governing Board in which any attempt has been made to modify the agreement it made with the Commissioner of Education.

Beacon school suggests in this matter that the Commissioner may have been inhibited from revoking Beacon’s Charter because no regulations have been promulgated to govern such revocations. We doubt whether this assertion is correct, because regulations have been promulgated for hearings before the Commissioner of Education. We believe that these regulations would suffice to govern a charter school revocation case. In any event we are concerned with a charter *surrender* in this case—not a contested charter revocation proceeding.

The record before us shows that the General Assembly has stricken Beacon from the rolls of those public charter schools entitled to receive public funds. This legislative action in itself would seem to have effectively decommissioned the Beacon School.

Conclusion

We find that the Beacon Charter High School has surrendered its charter and that the Beacon Charter High School has ceased to exist as a public charter school in Rhode Island.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

August 11, 2005
Date