

**[J-22-2011]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

|                                     |   |  |
|-------------------------------------|---|--|
| SLIPPERY ROCK AREA SCHOOL DISTRICT, | : | No. 27 WAP 2010  |
|                                     | : |  |
| Appellant                           | : | Appeal from the Order of the Commonwealth Court entered June 4, 2009 at No. 221 CD 2008, affirming the Order of the Department of Education entered January 8, 2008. |
| v.                                  | : |  |
| PENNSYLVANIA CYBER CHARTER SCHOOL,  | : |  |
|                                     | : |  |
| Appellee                            | : | ARGUED: April 12, 2011   |

**CONCURRING OPINION**

**MR. JUSTICE SAYLOR**

**DECIDED: NOVEMBER 23, 2011**

Although I support the result reached by the majority opinion, I differ with its perspective that “[t]here is no justification for reading ‘board of school directors’ to include the board of trustees at the charter school.” Majority Opinion, slip op. at 13. In fact, the General Assembly’s use of the technique of incorporation by reference to extend general provisions of the Public School Code into the cyber school context, see 24 P.S. §17-1749-A, requires similar translative efforts in many other material respects. I also have difficulty with the majority’s vision of a demarcation between age of admission and funding, see Majority Opinion, at 16, in light of the constraints on a charter school’s ability to independently generate revenues, see 24 P.S. §17-1725-A(a)(1) (“There shall be no tuition charge for a resident or nonresident student attending a charter school.”). For these and other reasons, I believe this is a closer case than is reflected on the face of the majority opinion.

In the end, however, I find the governing statute to be materially ambiguous and believe that, if the General Assembly wishes local school districts to fund cyber-kindergarten programs where the district has validly exercised its discretion not to offer a public-school analogue, such an intention should be made plainer.