

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD**

MAST-NESHAMINY CHARTER SCHOOL,	:	
	:	
Petitioner,	:	
	:	
v.	:	CAB Docket No. 2014-02
	:	
NESHAMINY SCHOOL DISTRICT,	:	
	:	
Respondent.	:	

**DECISION ON NESHAMINY SCHOOL DISTRICT’S MOTION TO DISMISS AND
MAST-NESHAMINY CHARTER SCHOOL’S MOTION TO SUPPLEMENT**

Mast-Neshaminy Charter School’s (“Mast”) application for a charter was denied by the Neshaminy School District (“District”) on March 18, 2013. Mast filed an appeal with the State Charter School Appeal Board (“CAB”) on February 12, 2014, and the District filed its answer on February 24, 2014. In the intervening time, Mast has, on two occasions, lost the facility it proposed using as the site for its charter school. As such, the District filed a Motion to Dismiss the Appeal for Failure to Obtain a Suitable Facility. On January 12, 2015, as agreed to in a conference call among counsel, the District’s counsel advised CAB that Mast had not come forward with a new facility and asked to proceed on the Motion to Dismiss. Mast subsequently filed a Motion to Supplement the Record on February 5, 2015, offering four alternative sites in order of preference for the location of its charter school.

A. The District’s Motion to Dismiss

The District argues in its Motion to Dismiss that Mast has failed to identify a site for its school in violation of a requirement of the Charter School Law (“CSL”). The District argues that Mast has not met the minimum requirements of the law, since it keeps losing potential locations. In

contrast, Mast argues that it continues to find alternative sites to present both to the District and to CAB. Section 1719-A of the CSL sets forth the requirements for the contents of a charter school application. 24 P.S. § 17-1719-A.

A charter application is required, in part, to contain “[a] description of and address of the physical facilities in which the charter school will be located and the ownership thereof and any lease arrangements.” 24 P.S. § 17-1719-A(11). This is all that the CSL requires regarding facilities in a charter application. In other appeals, CAB has consistently concluded that it cannot deny a charter application simply because the charter school had failed to secure all plans and approvals before submission of its application. *Environmental Charter School*, Docket No. CAB 1999-14 at 16-17; *Voyager Charter School*, Docket No. CAB 2005-9 at 9. CAB has previously held that the CSL “does not require that a lease be signed for a facility but requires that the facility be identified and the ownership and lease arrangements be described in at least a general way. *In re Phoenix Academy Charter School*, Docket No. CAB 1999-10 at 21-22. Finally, Commonwealth Court has held that the charter applicant is to present information and evidence of an alternative site to CAB and to the District in the event that a proposed facility is no longer available. *Montour School District v. Propel Charter School – Montour*, 889 A.2d 682 (Pa. Cmwlth. 2006).

During argument before CAB, counsel for the District argued that Mast’s original application did not contain adequate lease arrangements for its proposed facility. As such, the District argued that Mast should not be able to move forward with its appeal when Mast’s original application was deficient in this area. However, this argument was not made in the Motion to Dismiss filed by the District. Instead, the District’s Motion to Dismiss was premised upon Mast’s inability to identify a suitable facility as exhibited through Mast’s original Motion to

Supplement. That Motion to Supplement is no longer relevant because that facility has become unavailable. Consequently, Mast filed a second motion to supplement, as will be discussed below.

The Commonwealth Court has held, in recognition of the fact that the application process can be lengthy and that an applicant's proposed facility could become unavailable, that a charter school may propose a new facility and present evidence of such to CAB and the school district. *Id.* at 690. In the instant case, Mast lost the facility it proposed to utilize in its original charter school application. As such, Mast filed a Motion to Supplement the Record. However, due to the lapse of time, that proposed facility was also lost. Now a Second Motion to Supplement with additional proposed facilities has been filed. Thus, Mast has followed proper procedure after losing its facilities; and as such, the Motion to Dismiss is denied as being without merit.¹

B. Mast's Second Motion to Supplement

On February 5, 2015, Mast filed a Second Motion to Supplement the record with information related to proposed alternative facilities for the charter school.² Regarding CAB's review of the record in an appeal, the CSL provides that CAB "shall have the discretion to allow the local board of directors and the charter school applicant to supplement the record if the

¹ However, as noted above, the District alleges that Mast did not provide adequate information in its original application concerning the proposed facility and argues that Mast should not be able to cure that deficiency by proposing a new facility. This issue was only raised in argument, and not in the Motion to Dismiss. However, the District may raise this issue again during briefing of the merits of the appeal, which will afford Mast the opportunity to respond.

² The District indicated in multiple correspondences that it was never served with Mast's Second Motion to Supplement and was only served with the Brief in Support of the Second Motion to Supplement. However, CAB's counsel has evidence indicating otherwise, including an email from counsel for Mast attaching the Second Motion to Supplement in which counsel for the District was copied. Additionally in a letter dated March 13, 2015, the District stated that it did not object to the filing of the Second Motion to Supplement, as long as the Motion does not attempt to cure the deficiencies that existed at the time this case was argued before CAB on February 18, 2015. The Second Motion to Supplement was filed prior to the February 18, 2015 CAB meeting and therefore does not contain any additional information beyond what was argued at that meeting.

supplementary information was previously unavailable.” 24 P.S. §17-1717-A. The Commonwealth Court has helped frame what “previously unavailable” means by stating that it “cannot include information that could have been obtained and submitted for inclusion into the record prior to the district’s vote.” *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400, 405 (Pa. Cmwlth. 2003). It is without question that the information related to proposed alternative facilities for the charter school was previously unavailable and could not have been obtained or submitted for inclusion in the record prior to the District’s vote. At that time, it was unknown that Mast would lose its proposed facility and need new alternative sites. As such, the evidence related to the proposed alternative facility sites appended to the Second Motion to Supplement clearly constitutes admissible supplementary evidence. Thus, the Second Motion to Supplement is granted, and the alternative facility information shall be admitted into the record.

