

**COMMONWEALTH OF PENNSYLVANIA**  
**State Charter School Appeal Board**

**IN REFERENCE TO:** Vitalistic Therapeutic Center Charter School  
Appeal from Denial of Charter School Application  
By the School District of the City of Allentown

**SYNOPSIS**

The School District of the City of Allentown (“School District”) denied both the original application and the revised application of the Vitalistic Therapeutic Center Charter School (“Charter School”) for various reasons. Relying on the findings of fact, the conclusions of law and the discussion set forth below, the Charter School Appeal Board (“Appeal Board”) concludes that the School District’s denial of the charter was proper, although for a reason other than those relied upon by the School District.

The Appeal Board reviewed the seven criteria on the School District’s Charter School Application Review Form in which the Charter School was rated unsatisfactory. Contrary to the finding of the School District, the Board found that the Charter School could serve as a model for other public schools. The Charter School was also found to have adequately demonstrated sustainable community support and particularly to have included in its applications an adequate description of the school’s governance and of community involvement in future planning. The other negative findings of the School District were rejected as well. However, the Board found that the school facility was proposed to be located in the Bethlehem Area School District, rather than in Allentown. Under the Charter School Law an applicant must apply to the school district in which it will be located. Conversely, an application to another district must be rejected. Thus, on this basis the Board rejects this appeal.

**A. FINDINGS OF FACT**

1. For twenty-seven years, Vitalistic Therapeutic Center, Inc. (“Vitalistic Center”) has provided educational and therapeutic services to children of the Lehigh Valley community who have various disabilities, development delays and social/emotional needs. *Certified Record, Item 1, Executive Summary.*

2. Vitalistic Center has been licensed as a partial hospital program for fifteen years and has a treatment team of a board certified psychiatrist, human services professionals and direct-care counselors who design and maintain individual treatment plans for the children who are placed there. *Certified Record, Item 1, p. 5.*

3. To continue to provide these services and to secure a stable funding stream, Vitalistic Center proposed to establish a charter school, the Vitalistic Therapeutic Charter School of the Lehigh Valley (the "Charter School"). *Certified Record, Item 1, Executive Summary*. The Charter School is proposed to be located within the Bethlehem Area School District.

4. On or about November 12, 1997, Naomi Grossman, Executive Director of Vitalistic Center submitted to the Allentown School District ("School District") a local charter school application (the "Original Application") on behalf of the Charter School. *See Certified Record, Item 1*. Additional materials were submitted to the School District on behalf of the Charter School on December 3, 1997, January 8, 1998 and February 9, 1998. *See Certified Record, Items 2, 4, and 6*. The Charter School also submitted a local charter school application to the Bethlehem Area School District.

5. The Charter School's philosophy integrates expressive therapies, developmental services, and educational curriculum. *Certified Record, Item 1, p.2*. The goal of the Charter School is to prepare "at risk" children to function and succeed, at a later point in time, in the public school system. *Id.* "At risk" children are children needing individualized education plans<sup>1</sup> and therapeutic interventions due to exposure to poverty, substance abuse, family instability, or developmental disabilities. *Certified Record, Item 1, p. 3*.

6. Vitalistic Center will provide therapeutic services to the Charter School as well as other services and materials such as the lease of the facility and employee background checks. *Certified Record, Item 1, p. 19*. An interdependent relationship is envisioned for these two entities. *Id.*

7. The educational program of the Charter School follows the traditional model with curricula similar to those adopted by the Lehigh Valley public schools. *Certified Record, Item 1, p. 3*. However, the proposed classroom size is twelve children, a teacher, counselor and an assistant teacher. The program is a year-long program which includes a summer session. A Personal Development Achievement Plan will be developed for each child based upon the results of "curriculum-based educational tests, as well as social and psychiatric screening." *Id at p.4*. Additionally, a mental health program will be implemented and designed for each child. *Id.*

8. As a means of evaluating "at risk" children, the Charter School will perform an in-depth interview prior to enrollment as a means of ascertaining the internal construct and dynamics of the child and his or her family. *Certified Record, Item 1, p. 5*. Although the child will be the focus of the educational/therapeutic program to be offered, the family component will be a critical part of the Charter School's program. *Id.* The program will attempt to improve parenting skills and to support families in managing family stressors. *Id.*

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<sup>1</sup> We note that the individualized education plans proffered by Vitalistic Center are not the plans required under both state and federal law for students who have been identified as having disabilities and needing special education.

9. The Charter School intends to be a model in assisting public schools in assessing the following issues affecting children: specific disabilities, temporary reactive responses to change, recurrent aberrant thinking and behavior and expected reactions and future problems for children exposed to ongoing antisocial family behaviors. *Certified Record, Item 1, p. 7*

10. Several letters were presented to the School District supporting the Charter School from individuals associated with various educational, civic and professional organizations throughout the Lehigh Valley community, including organizations based within the Allentown community.<sup>2</sup> *Certified Record, Item 1, Attachment II 3-B-4.*

11. A public hearing was held on December 17, 1997 during which time the Charter School presented its Application. *Certified Record, Item 2(b)*. The School District's Committee –of-the-Whole met on February 24, 1998 to discuss the Original Application. *Certified Record, Item 7*. A public meeting of the School District's Board of Directors ("School Board") was held on February 26, 1998. *Certified Record, Item 8*. By a seven to two vote, the School Board declined to approve the Original Charter School Application. *Id.*

12. On or about April 24, 1998, the Charter School resubmitted its application to the School District ( the "Revised Application").<sup>3</sup> *Certified Record, Item 9.*

13. The Revised Application included additional testing and detailed curriculum materials as well as a more detailed fiscal budget. *Certified Record, Item 9.*

14. The Revised Application also included a list of sixty-six school aged children whose parents were committed to enrolling the children at the Charter School. *Certified Record, Item 1, p. 9-15*. Each child on the list had a parental signature acknowledging commitment to enrollment. *Id.*

15. On September 24, 1998, the School Board voted on the Revised Application and by a five to four vote, denied granting a charter. *Certified Record, Item 11.*

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<sup>2</sup> The organizations offering letters of support included Cedar Crest College, Kutztown University, Muhlenberg University, the United Way of the Greater Lehigh Valley, Lehigh Valley Child Care Inc. (Allentown), Corestates Bank (Allentown) and France & Anderson, P.C. (Allentown). *Certified Record, Item 1, Attachment II 3-B-4.*

<sup>3</sup> The School District disputes that it received the Revised Application in April of 1998. *Answer of the School District of the City of Allentown to the Petition of Vitalistic Therapeutic Center Containing New Matter and Brief of the School District of the City of Allentown.* However, the record certified by the School District includes a copy of the Revised Application, and the index for the record, as generated by the School District, describes the application as "Revised/Resubmitted Charter School Application dated April 24, 1998." See *Certified Record, Index, Item 9*. Additionally, the School Board voted on the Revised Application at its Board Meeting held on September 24, 1998 and the minutes make no indication that the Revised Application was filed in an untimely manner.

In its Appeal Petition, the Charter School alleges that the School District failed to consider the Revised Application in a timely manner as required by 24 P.S. 17-1717-A-(5)(g) of the Charter School Law. However, counsel for the Charter School and the School Board narrowed the issues for purposes of this appeal and this timeliness of consideration issue was not briefed nor pursued by Charter School counsel.

16. Although, the parties dispute whether the Charter School received written notice setting forth the reasons for denial of the Revised Application, as described in the following discussion, they agreed to a specification of issues for purposes of this appeal.

17. In accordance with the Charter School Law, the Charter School filed a Petition to Certify Signature Petition Pursuant to the Charter School Law ("Signature Petition"). The Signature Petition was filed with the Lehigh County Court of Common Pleas on April 23, 1998 (the "Court") and certified by the Court pursuant to a decree dated April 23, 1999.<sup>4</sup>

18. On July 1, 1999, the Charter School filed an appeal with the Charter School Appeals Board in accordance with the Charter School Law.<sup>5</sup> Such appeal was accepted by the Charter School Appeals Board at its first meeting on July 1, 1999 and a hearing officer was assigned.

19. At the August 18, 1999 meeting of the Charter School Appeals Board, the certified record, including briefs and certain supplemental materials agreed to by the parties, was presented to the Charter School Appeals Board by the hearing officer. Legal counsel and representatives for both parties were present and counsel gave oral argument.

## **B. CONCLUSIONS OF LAW**

1. The Charter School Appeal Board must give due consideration to the findings of the School District.

2. Giving due consideration to the School District's findings, the Charter School Appeal Board finds that the District erred in concluding that the Charter School would not provide expanded educational opportunities or enhance the operation of District programs. In contrast, the record clearly establishes that the Charter School can serve as a model for other public schools as required by Section 1717-A(e)(2)(iv).

3. Giving due consideration to the School District's findings concerning Charter School governance and management, the Charter School Appeal Board finds that the certified record clearly demonstrates that the Charter School provided "demonstrated, sustainable support" for the charter school plan, as required by Section 1717-A(e)(2)(i) and that its application included appropriate information concerning governance and community involvement in planning pursuant

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<sup>4</sup> The School District in its Motion to Quash Appeal objects to the timeliness of the Charter School's filing of the Signature Petition. *Certified Record, Item 28*. The Court, however, certified the Signature Petition. It is not appropriate for the Charter School Appeal Board to review this issue which is within the province of the Court and was decided by the Court. Any appeal with respect to the sufficiency of the Signature Petition is a matter more appropriately appealed to the Superior Court rather than the Charter School Appeal Board.

<sup>5</sup> In its Motion to Quash Appeal, the School District also objects to the timeliness of the filing of the Appeal Petition on July 1, 1999. However, because the Charter School Appeal Board was not created until July 1, 1999, it is appropriate that the Charter School filed its Appeal Petition on July 1, 1999.

to Section 1719-A(4)&(8).

4. The Charter School, in its Revised Application satisfied the requirement about reporting criminal record and child abuse clearance information, which is found at Section 1719-A(15)&(16) of the Charter School Law.

5. A Charter School must apply for a charter to the school district in which it proposes to be located under Section 1717-A(c), which Vitalistic did not do in this case.

6. The School District rated the Charter School favorably in fifty-nine of its sixty-five rating criteria. Of the seven criteria given “unsatisfactory” ratings or “not evident” ratings, the Original and Revised Application address these areas and, therefore, the application should not have been rejected on these grounds.

### **C. DISCUSSION**

At the outset, we must note that the parties disagreed about whether the Charter School received written notification from the School District setting forth the reasons for the denial of its Original Application and its Revised Application as required by the Charter School Law. However, rather than continuing to dispute this issue through an evidentiary hearing before the hearing officer, counsel for the parties reached an agreement as to the issues involved in this appeal and to be reviewed by us, as if they were contained in a proper notice. Of sixty-five criteria set forth on the School District’s Charter School Application Review Form, the School District rated the Charter School “unsatisfactory” with respect to only seven criteria. Using the Charter School Application Review Form developed by the School District as the basis, counsel agreed that these seven areas, in which the Charter School received a "low" rating, would be the focus of this appeal. All other areas and requirements are, thus, deemed to have been met by the Charter School to the School District's satisfaction. *See Certified Record, Items 25 and 26, Waiver of Rights.*

The issues agreed upon by the parties are the following: (1) Does the Charter School provide expanded educational opportunities within the School District?; (2) Does the Charter enhance the operations of the School District’s programs?; (3) How will parents and community members be involved with the governance of the school?; (4) How will the community be involved in the decision-making and management of the Charter School?; (5) Is the Charter School's employee performance evaluation system effective?; (6) Has a criminal history and child abuse check been conducted?, and (7) What is the compensation package for staff? Several of these issues are very closely related and they will be joined together for purposes of the following discussion.

**1. Does the Charter School Provide Expanded Educational Opportunities within the School District?**

**2. Does the Charter School Enhance the Program Operations of the District?**

The Charter School Law does not require a Charter School to provide expanded educational opportunities within the school district nor does it require a Charter School to enhance the School District's program operations<sup>6</sup>. These requirements were developed by the School District and are somewhat analogous to questioning the extent to which the Charter School will serve as a model for other public schools. *See* 24 P.S. §17-1717-A, (e)(2)(iv). The Charter School has developed an innovative method of assessing the following issues affecting children: specific disabilities, temporary reactive responses to changes, recurrent aberrant thinking and behavior and expected reactions and future problems for children exposed to ongoing antisocial family behaviors. *Certified Record, Item 1, p.7* Although the educational program of the Charter School follows the traditional model with a curriculum similar to that used in the Lehigh Valley public schools, the proposed classroom size is twelve children, a teacher, counselor and an assistant teacher. *Certified Record, Item 1, p.3-4*. A Personal Development Achievement Plan will be developed for each child based upon the results of "curriculum-based educational tests, as well as social and psychiatric screening." *Id at p.4*. Additionally, a mental health program will be implemented and designed for each child. As a means of evaluating "at risk" children, the Charter School will perform an in-depth interview prior to enrolling a student as a means of ascertaining the internal construct and dynamics of the child and his or her family. *Id. at p. 4-5*. Although the child is the focus of the educational/therapeutic program to be offered, the family component is a critical part of the Charter School's program. *Id.* The Charter School also will attempt to improve parenting skills and support families in managing family stressors. *Id.*

In its brief, the School District argues that it has already established within its system a program similar to that of the Charter School. *See Brief, page 3*. It argues that it has an Instructional Support Team which consists of an administrator, counselor, teacher, nurse, psychologist, and parent. *Id.* It further argues that its student-teacher ratio is 12 to 1 and that an individualized educational plan is developed for each "special needs" child. *Id.* However, these arguments are not supported by the record. In fact, no evidence cited in the School District's brief supports these arguments. The minutes from the February 24, 1998 hearing simply indicate that the School District's Superintendent believes that the services proposed to be offered by the Charter School offer little if nothing more than programs the District already offers to "at-risk" students. *Certified Record, Item E, p.8.* The School District does not explain or analyze the similarities between its programs for at risk children and the program proposed by the Charter School.

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<sup>6</sup> A school district is not limited to the criteria set forth in the Charter School Law when it is reviewing the merits of a charter school application. Additional criteria developed by a school district, however, should be consistent with the Charter School Law.

Given the detail concerning its program as set forth in the Original Application and the Revised Application, the Charter School, with its emphasis on therapeutic intervention may arguably serve as a model for other public schools and enhance the School District's current program. Thus, the School District's findings in this regard are rejected.

**3. How Will Parents and Community Members be Involved with the Governance of the School?**

**4. How Will the Community be Involved in the School Decision Making/ School Board Management?**

The Charter School Law requires demonstrated, sustainable support for the Charter School by parents, teachers and the community. *See* 24 P.S. §17-1717-A (e)(2)(i). It does not require a parental or community representation with respect to the governance structure<sup>7</sup> of the school and decision-making by school board management. These requirements were developed by the School District and are somewhat analogous to determining the level of community and parental support.

In this regard, we find that there is strong community and parental support within Allentown for the proposed Charter School. The Revised Application includes a list of sixty-six school aged children whose parents are committed to enrolling the children at the Charter School. *Certified Record, Item 9, p. 9-15.* Each child on the list had a parental signature acknowledging an enrollment commitment. *Id.* The majority of these sixty-six school aged children reside within the Allentown School District. *Id.* Additionally, there were several letters of support for the Charter School from individuals associated with various educational, civic and professional organizations throughout the Lehigh Valley community, most of which were based within the Allentown community<sup>8</sup>. *Certified Record, Item 1, Attachment II 3-B-4.* Moreover, the School District has not disputed that there is demonstrated, sustainable support for the Charter School within its District.

The proposed board of the Charter School will overlap significantly with the current board of the Vitalistic Therapeutic Center, Inc<sup>9</sup>. *Certified Record, Item 9, p. 16.* The Board has a

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<sup>7</sup> The Charter School Law does not specifically require community involvement in either management or decision-making. It requires that the application include "the proposed governance structure," which this application does, and information on how community groups will be involved in future planning, which will occur through the proposed Parental Advisory Council. 24 P.S. §17-1719-A(4)&(8).

<sup>8</sup> The organizations offering letters of support included Cedar Crest College, Kutztown University, Muhlenberg University, the United Way of the Greater Lehigh Valley, Lehigh Valley Child Care Inc. (Allentown), Corestates Bank (Allentown) and France & Anderson, P.C. (Allentown). *Certified Record, Item 1, Attachment II 3-B-4.*

<sup>9</sup> The School District questions whether the Charter School meets the statutory definition of a charter school as set forth in Section 1703 of the Charter School Law. In particular, it argues that the Charter School is not "independent" because of the overlapping board membership with the Vitalistic Therapeutic Center. However, the overlapping of board membership does not, in and by itself, negate the independence of the Charter School.

varied composition representative of different segments of the community, including real estate, mental health, banking, law and business. *Certified Record, Item 1, Attachment III:2:A-ii.* The Revised Application states that there shall also be a Parental Advisory Council comprised of nine members, all of whom shall be parents of enrolled students. *Certified Record, Item 9, p. 18.* Additionally, community groups were involved in the development of the Charter School. *Certified Record, Item 9, p. 16.* Given the above, the parents and the community are involved with the decision-making process and the composition of the Board of the Charter School. The School District's contention, that parental and community involvement is not evident in the Application, is clearly erroneous and thus, we reject these findings.

#### **5. Is the Charter School's Employee Performance Evaluation System Effective?**

The School District argues in its brief that the Charter School's Employee Performance Evaluation System is vague and further states that its own evaluation system has specific criteria for evaluation. The Revised Application states that the evaluation process begins with a review of staff professional qualifications and personal commitment to the Charter School's Mission. It also states that there is a semi-annual review which utilizes a Likeret-type instrument to assess qualitative performance and work ethics. *Certified Record, Item 9, p. 9.* Given this, the Charter School's Revised Application does discuss in some detail how its performance evaluation system will operate. The School District may favor its own evaluation system but, given the record, it cannot deny that the Charter School has planned and established an evaluation system.

#### **6. Has a Criminal History and Child Abuse Check been Conducted?**

The Charter School Law requires that a criminal history and background check be conducted on Charter School employees. In its Revised Application, the Charter states that it will comply with federal, state and local laws and includes an application for a Criminal Record Check and Pennsylvania Child Abuse History Clearance. Given that a charter school is not established and does not have employees until it has been granted a charter, the approach taken by the Charter School is reasonable and pragmatic and we find it to satisfy the Charter School Law.

#### **7. What is the Compensation Package for Staff?**

The School District rated this criteria as "not evident" even though it acknowledges in its brief that the Revised Application contains general statements as to salaries, health benefits and compensation. The Revised Application states that the compensation rate will be set by the Charter School Board and that the rate shall be based upon an employee's education and experience. Given this, the School District cannot rate this category as "not evident" and its finding is rejected.

## **8. Additional Issue Not Raised by Counsel**

The Charter School Law requires that “[a]n application to establish a charter school shall be submitted to the local board of school directors of the district where the charter school will be located.” 24 P.S. 7-1717-A (emphasis added). This Charter School applied to the Allentown School District, although the record establishes that the school facility was proposed to be located within the boundaries of the Bethlehem Area School District. However, in order for the applicant to operate a single district charter school with the approval of the Allentown School District, the Charter School would have to have a facility within the boundaries of that district. Notwithstanding our conclusion that the district’s rejection of the charter application was erroneous based upon the reasons put forth by the district, we are constrained by the language of the statute, particularly in cases such as this, where the governing language is clear and unambiguous. Thus, because the school facility is in another district, the Charter School’s appeal is dismissed.

**ORDER**

AND NOW, this \_\_\_\_\_ day of October, 1999, based upon the foregoing and the vote of this Board,<sup>10</sup> the September 24, 1998 decision of the School District of the City of Allentown denying the Revised Charter School Application of the Vitalistic Therapeutic Center Charter School is affirmed and the July 1, 1999 appeal of the Charter School is denied.

For the State Charter School Appeal Board,

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Eugene W. Hickok  
Chairman

<sup>10</sup> At the Board's September 15, 1999 meeting, the appeal was denied by a vote of 6-0, with members Aliota, Bunn, Melnick, Hickok, Tait and Ford-Williams voting to deny the appeal.