

pending briefing by the parties and an ultimate ruling as to admissibility. After review of these documents, the parties' briefs and the law, we conclude that certain of these items, as discussed below, are of so little probative value as to have no relevance to these proceedings and they were not relied upon in our decision-making.

The first of these items is a series of newspaper articles, editorials and letters to the editor. The parties contend that these items demonstrate community support or opposition to the charter school application. Upon review, the items have little if anything to say regarding this particular application and there is no evidence that the authors had any knowledge of the contents of the subject application. Community support or opposition to the general concept of charter schools has no relevance to this matter. Moreover, these documents constitute hearsay and have no probative value. Accordingly all newspaper articles, editorials or letters to the editor were discounted.

The second set of questionable items is the record of criminal proceedings against Mr. Dyll, agent for Shenango Valley. Upon review, these records contain no evidence of any conviction in a court of record, any offense enumerated under Act 34 of 1985,² nor any evidence of a *crimens falsi* that might affect the credibility of Mr. Dyll's testimony. Given the general restriction in this Commonwealth on the use of other crimes as evidence of character (see generally, Pa. Rules of Evidence sec. 404-8), these records have no probative value and are, therefore, not being relied upon.

² This is the act that added section 111 to the Public School Code of 1949, requires criminal history background checks of prospective school employees and prohibits employment of individuals who have been convicted of certain specified crimes for a period of 5 years. 24 P.S. §1-111.

FINDINGS OF FACT

1. On November 13, 1999, a Regional Charter School Application was submitted in the name of Shenango Valley Regional Charter School to Sharon City, Hermitage and Farrell Area School District. (See Charter School Application, p. 5).

2. The applicant for the Regional Charter School was the Inaugural Advisory Board. The members of this board were: Joseph Frank, Shayen A. George, Kenneth B. McEwen, Phillip A. Smalley and Jean Warren, MEd. (Charter School – Public Hearing Questions, p.1; Charter School Application, pp. 17-18).

3. Only one of the original members of the Inaugural Advisory Board remains an active member of the Board. (Sworn Statement of Joseph A. Dyll, dated July 26, 1999).

4. Joseph A. Dyll is not an applicant for the Regional Charter School, however, he is a “consultant” to the Inaugural Advisory Board and he is the principal person behind this Appeal. (Minutes of Public Meeting, p. 1; Petition for Appeal of Denial, p.1).

5. Both Hermitage and Sharon City denied the application for a charter³. (Appeal 2).

6. Sharon City denied Shenango Valley’s application for a charter on the following grounds:

(a) Shenango Valley failed to show demonstrated, sustainable support for Shenango Valley by teachers, parents, other community members and students, including comments received at the public hearing;

(b) Shenango Valley failed to demonstrate a capability, in terms of support and planning, to provide comprehensive learning experiences to students under the proposed charter;

³ Although the Farrell Area School District also denied Shenango’s application, Shenango opted not to appeal from that decision.

(c) Shenango Valley failed to provide important information requested in Section 1719-A of the Charter School Law and failed to conform to part of the legislative intent outlined in Section 1702-A of the Charter School Law; and

(d) Shenango Valley failed to demonstrate how it may serve as a model for other public schools. (Sharon City School District Findings of Fact).

7. Hermitage denied Shenango Valley's application for a charter on the following grounds:

(a) Shenango Valley did not sufficiently demonstrate the need for a charter school;

(b) Shenango Valley presented no evidence regarding compliance with the American's with Disabilities Act and the Individuals with Disabilities Education Act;

(c) Shenango Valley's curriculum was insufficient;

(d) Shenango Valley's application failed to demonstrate sustainable support for the charter school;

(e) Shenango Valley's application raised concerns about financing, implementation and administration, which allegedly justified denial of the charter.

(Petition for Appeal, Hermitage, pages 4-5).

8. Two proposed buildings were suggested as sites for Shenango Valley; the Stevenson Mansion located in Sharon, Pennsylvania, and the Curtis Elementary School located in Brookfield, Ohio. The Curtis Elementary School is outside the jurisdiction of the Commonwealth of Pennsylvania. (Charter School Application, p. 24).

9. The mission of Shenango Valley stresses “Family Values” and an atmosphere “where all adults model” a code of conduct based on the belief that “[t]hose who lead – administrators, teachers, parents – lead by the example they set.” (Charter School Application, pp. 1 & 30).

10. The two proposed school facilities are not compliant with the Americans with Disabilities Act (“ADA”) and each will require at least one chair lift or elevator. (CPH Builders’s quotation). The original Preliminary Budget contained no line item for ADA renovations. The Proposed Revised Budget contains spending on ADA renovations through the years 2003-2004. (Charter School Application, Appendix C; Proposed Revised Budget, p. 1).

11. Shenango has no commitments of enrollment. (Findings of Fact, Reasons for Denial of Charter and Conclusion, paragraph 32).

12. One letter from Mr. Charles Rigby was attached to the Application. Although the letter contained 42 other signatures allegedly tendering support for the school, the residence of the signers and their status as parents, teachers, students or other community members is unknown. (Charter School Application, Appendix B).

13. Mr. Dyll circulated fliers in the local community urging people supporting Shenango Valley to attend the public hearing. (Findings of Fact, paragraph 47; Flier regarding Public Hearing).

14. The curriculum for Shenango Valley has not been developed, however it will be modeled after the Principles of Learning developed by the Learning, Research and Development Center (“LRDC”) of the University of Pittsburgh. (Charter School Application, pp. 2-3).

15. Sharon City is already a full partner with the LRDC and began implementing the Principles of Learning during the 1997-98 academic year. To date, Sharon City has implemented

at least four (4) of the eight (8) Principles of Learning in its classrooms. (Stipulation regarding Principles of Learning; Hermitage Transcript, p.3).

16. Shenango Valley considers smaller class sizes and exemption from unspecified provisions of the Public School Code as the primary alternatives it will offer students currently attending Sharon City. (Findings of Fact, paragraph 45).

17. The school calendar, length of school day and school year for Shenango Valley have not been determined but the school is considering weekend classes. (Charter School Application, p. 5; Findings of Fact, paragraphs 16 & 17).

18. There is no written professional development plan for the faculty of Shenango Valley. (Findings of Fact, paragraph 20).

19. The Preliminary Budget shows deficits in the first three years of operation of Shenango Valley. (Application, Appendix C).

20. The Preliminary Budget and Proposed Revised Budget do not consider expenses for food service and transportation, a library, art and music teachers, computer teachers and psychologists. (Charter School Application, Appendix C; Proposed Revised Budget; Hermitage Transcript, pp. 9-10).

21. The Preliminary Budget and Proposed Budget contain line items for corporate/government grants, private gifts and loans; however, there is no loan commitment and no fund-raising plan. (Charter School Application, Appendix C; Proposed Revised Budget; Findings of Fact, paragraphs 21-26).

22. Parents will be required to participate in fund-raising and giving. (Minutes of Public Hearing, p. 6; Findings of Fact, paragraph 27).

23. Shenango Valley's stated mission is "to provide quality education in an atmosphere of family values, positive discipline, innovative teaching and advanced technology. To build this uncommon school, students will partake in a rigorous 11 month, extended day academic program that empowers them with the means to succeed in school and in their life careers." (Shenango Valley Application, Page 1)

24. Shenango Valley's stated academic goal is "To develop an elementary school, whose curriculum embodies and adheres to the Principles of Learning, developed by the Learning, Research and Development Center (LRDC) of the University of Pittsburgh. These Principles, along with the new performance standards, also developed at the LRDC, demand high academic standards and the valuation of course subjects and the ability of the student to apply his or her learning to the real world." (Shenango Valley Application, Page 2)

25. Shenango Valley intends to open its doors with kindergarten through 4th grade and ultimately expand to 6th grade by the fifth year of its existence. (Application, page 14)

26. Shenango Valley intends to limit class size to no more than 18 students per class. (Application, page 14)

27. At the public hearing held on December 7, 1998 at Sharon City, only one member of the public made favorable comments about the Shenango Valley Application. One other member of the public made favorable comments about Charter Schools in general. A few members of the audience made comments in opposition to Shenango Valley. (Stipulation)

28. One member of the public spoke in support of the charter school concept at the Hermitage Public Hearing. (Hermitage Hearing transcript)

29. Teachers, parents, and Shenango Valley's Board of Trustees will formulate the day-to-day curriculum of the school. (Oral Argument p. 43).

CONCLUSIONS OF LAW

1. The Charter Law, Act of June 19, 1997, P.L. 225, No. 22, 24 P.S. § 17-1701-A *et seq.*, governs the application and approval processes and operation of charter schools in Pennsylvania.

2. Regarding community involvement, the Charter Law provides as follows: (a) the charter school's application and comments received at the school board hearing(s) on the application must evidence "demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students" 24 P.S. §17-1717-A(e)(2); (b) the application must include information on the manner in which community groups will be involved in the charter school planning process 24 P.S. §1719-A(8); and (c) the charter school must develop and implement strategies for meaningful parent and community involvement. 24 P.S. §17-1715-A(2).

3. Shenango Valley failed to demonstrate sustainable support by teachers, parents, students, and other community members.

4. The Charter Law also requires that the charter school be capable, "in terms of support and planning, to provide comprehensive learning experiences to students." 24 P.S. §17-1717-A(e)(2).

5. One of the General Assembly's goals in providing for the creation of charter schools, as set forth in the Charter Law's legislative intent provisions, was to "[e]ncourage the use of different and innovative teaching methods." 24 P.S. §17-1702-A(3).

6. Concerning finances, the Charter Law requires only that the application contain limited information⁴, thus, if the application includes this information, it is in this respect proper and approvable. 24 P.S. §17-1719-A(9)&(17).

7. Shenango Valley's proposed budgets and its plan for curricular development demonstrate insufficient capability, in terms of support and planning, for Shenango Valley to provide comprehensive learning experiences to students.

8. Shenango Valley's application failed to include adequate evidence of a curriculum, a school calendar and hours of operation, a proposed faculty and a professional development plan, and therefore, the application does not meet the requirements of Section 17-1719-A(9).

9. One of the four specific criteria against which a charter application must be measured is "the extent to which the charter school may serve as a model to other public schools." 24 P.S. §17-1717-A(e)(2)(iv).

10. Unrebutted evidence presented by Shenango Valley demonstrated that at least some characteristics of its proposed charter school program were innovative and could serve as a model for other schools.

DISCUSSION

The Districts denied Shenango Valley's application for a charter for several reasons, some of which were similar and others that were not. However, Hermitage elected to play a very limited role in this appeal; Hermitage relied upon Sharon City's brief and did not participate in argument before the Board. Thus, our review of this matter will focus on Sharon City's reasons for denial, which include Hermitage's main substantive objections.

⁴ The charter school application is to include: (1) the charter school's financial plan, (2) how the accounts of the charter school treasurer will be annually audited according to section 437 of the Public School Code of 1949, as amended, and (3) how the charter school will provide adequate and appropriate insurance coverage for the school,

A. WHETHER THERE IS SUSTAINABLE SUPPORT FOR THE CHARTER SCHOOL PLAN

Under section 17-1717-A(e)(2)(i), support for the charter school plan by teachers, parents, students and other community members, is one of the criteria by which the local board is to evaluate the application.

Shenango Valley contends that it has met this criteria with the following evidence: (1) Shenango Valley has already received approximately 100 resumes from teachers desiring to be employed; (2) Mr. Dyll conducted numerous focus groups, surveys and interviews; (3) another charter school in the region has a waiting list of over 200 individuals; (4) positive comments at the public hearings; (4) an exhibit attached to Shenango Valley's application indicating the initial process of forming a foundation, comprised of parents, to work with the development of the school signed by 42 individuals; (5) the 846 signatures for the Petition for Confirmation of Sufficiency of Petition for Appeal filed with the Court of Common Pleas of Mercer County; and (6) statements of individuals joining Shenango Valley's advisory board provided to the hearing examiner in the course of the present appeal. With the exception of these latter two, this evidence was available to the school boards of Hermitage and Sharon City prior to their decisions.

The legislature did not define what it meant by "community involvement" or even whom it meant by "community." This Board, however, can use other sections of the Charter Law to make an informed determination of the legislature's intentions regarding "community involvement" and "community."

The relevant sections that mention community are sections that concern the application itself. Section 17-1717-A(e)(2) concerns the school board's evaluation of the application and section 17-1719-A concerns the contents of the application. It can be assumed, therefore, that

employees and board of trustees.

community involvement or community support must be shown in the application or during the public hearing regarding the application. This would preclude Shenango Valley from using the Petition for Confirmation of Sufficiency filed with the Court of Common Pleas as evidence of community support or community involvement because signatures on the Petition are not secured until after denial of the application. Likewise this would discount the statements of individuals joining the advisory board as it is not clear whether these individuals joined the advisory board prior to the public hearing.⁵

What is left is a minimal amount of evidence of community support for the charter school plan by teachers, parents and other community members.

Shenango Valley offers testimony that over 100 resumes have been received for its teaching positions. But the record tells us nothing more about the make-up of these 100 individuals or the extent of their support beyond an interest in employment. Section 17-1717-A(e)(2)(i) refers to teachers in the same sentence as parents and other community members. The assumption is that support must come from parents and teachers who constitute part of the community. The record gives us no indication that the 100 people who submitted resumes are part of the community.

In attempting to show support by parents, Mr. Dyll testified about his efforts with focus groups, surveys, and interviews. Nevertheless, parental support is noticeably lacking elsewhere in the record. Although one individual did draft a letter describing the creation of a parents' work group, there is no evidence as to the number of parents involved.⁶

⁵ In any event these statements are of limited value, being very brief and uninformative. It is also unclear whether these individuals are in addition to or replacements for members of the original board.

⁶ The letter includes 42 additional signatures attesting to general support for the formation of Shenango Valley but there is no indication whether these signers are members of the relevant community for this regional charter school. There is also no evidence that these 42 are in any way involved with the parents' group described by the author of the letter.

Positive comments at the public hearings and evidence that another Charter School in the region has a waiting list of over 200 individuals may indicate regional support for the charter school concept. However, this is not evidence of community support for this particular charter school plan. This Board has interpreted Section 17-1717-A(e)(2)(i) as requiring demonstrated support from the community in which the school is to be located, and requires support for the actual plan being proposed. General support for the charter school concept is not sufficient under section 17-1717-A(e)(2)(i), and voicing general support for the charter school concept at a public hearing also does not satisfy 17-1717-A(e)(2)(i). One individual voicing support for Shenango Valley's plan does not provide sufficient evidence of community support.

Overall, the record is notably sparse in demonstrating community support for Shenango Valley's plan. Thus, we concur with the findings of both Hermitage and Sharon City that Shenango Valley did not meet its burden of demonstrating community support. The lack of support alone would be enough to deny Shenango Valley's appeal, but to be complete, we now turn to the other reasons for the denials.

B. WHETHER SHENANGO VALLEY HAS THE CAPABILITY IN TERMS OF SUPPORT AND PLANNING TO PROVIDE COMPREHENSIVE LEARNING EXPERIENCES TO STUDENTS – EDUCATIONAL CONCERNS

Sharon City's denial cited concerns about various deficiencies in Shenango Valley's application and educational plan. These concerns were raised under various headings, but since they seem to deal with the same general issue, they are combined here for discussion. In summary, Sharon City's denial of the application cited various concerns about the adequacy of the non-financial components of the application and educational plan of Shenango Valley. We now address whether the application and plan demonstrate adequate capability in terms of

educational planning and support to enable Shenango Valley to provide a comprehensive learning experience to students.

Sharon City's denial identified several areas where Shenango Valley appeared to be lacking in demonstrable planning for its educational mission: (1) no curriculum is established in the application; (2) the school calendar and hours of operation are not established; (3) there is no proposed faculty⁷; and, (4) there is no professional development plan. The Charter Law lists 17 items that are to be included in the charter school application. Each of the concerns identified by Sharon City are valid in that each involves an item that is required as part of the application under Section 17-1719-A. Shenango Valley counters, generally, that it has included the information required by 17-1719-A. Where detail is not provided, Shenango Valley states that it is because a charter has not been granted and due to the nature of the teacher, trustee, and parental involvement planned, these details cannot be provided until the charter is granted and the school and its constituent groups are established.

Again, we are confronted with the issue of community support. Shenango Valley argues that much of the detail in its educational plan is to be provided eventually by the Shenango Valley teachers, parents, and trustees. Yet as discussed *supra*, there is no evidence in the record that such support presently exists leaving open the question of whether such support can be mobilized to develop the curriculum and plan contemplated in the application. While Shenango Valley would like to defer the full development of its curriculum and educational plans until such time as it can mobilize its expected support, Section 17-1719-A is specific about what is required of an application. For example:

“An application to establish a charter school shall include all of the following information: . . .

⁷ Regarding this issue, we concur with the applicant that failure to identify proposed faculty is not fatal to its application.

(5) The mission statement and education goals of the charter school, the curriculum to be offered and the methods of assessing whether students are meeting educational goals.”

24 P.S. §17-1719-A. (Emphasis added).

Thus, notwithstanding Shenango Valley’s desire to include its support groups in the development of a future curriculum, Section 17-1719 of the Charter Law requires that Shenango Valley provide, in its application, some evidence of the curriculum to be offered.

Shenango Valley notes that its application provides that academic rigor in a thinking curriculum will be required and identifies core subjects of instruction such as English, reading, writing, mathematics, social studies, and general science. It offers its commitment to the Principles of Learning developed by the LRDC of the University of Pittsburgh. However, the core subjects are a mere listing and the plan to incorporate the Principles of Learning contains no real detail.

It is an inescapable conclusion that, by itself, this evidence does not adequately set forth the curriculum to be offered, as required by the Charter Law. Shenango Valley offers goals or guidelines as to what its curriculum may eventually be, but by its own admission, it does not have a curriculum established. These goals and guidelines could only be sufficient if Section 17-1719-A(5) could be satisfied by merely providing goals and guidelines. However, Section 17-1719-A(5) requires a charter school to identify a curriculum of some substance. The Districts were correct in concluding that Shenango Valley’s application was deficient in this regard.

The larger difficulty is that this deficiency is not merely technical, but is indicative of inadequate planning. Even if the Districts had looked beyond the deficiencies in the application, they would have had to accept, on faith, that Shenango Valley would be able to mobilize sufficient support and engage in future planning to develop a curriculum to meet the educational

needs of its students. The Districts are not required to accept this on faith as the Charter Law allows the local school board to evaluate an application based upon the capability, in terms of support and planning, of the charter school to provide a comprehensive learning experience. It was reasonable for the Districts to have concluded that Shenango Valley did not demonstrate this capability.

Additionally, for reasons similar to those stated above, Shenango Valley's application was properly rejected because it lacked a professional development plan for its faculty.

C. WHETHER SHENANGO VALLEY HAS THE CAPABILITY IN TERMS OF SUPPORT AND PLANNING TO PROVIDE COMPREHENSIVE LEARNING EXPERIENCES TO STUDENTS – FINANCIAL CONCERNS

Shenango Valley's preliminary budget, submitted with its application, projects an initial enrollment of 100 students in its first year of operation, rising to 300 by the fifth year. Its recently submitted revised budget is more optimistic and projects an initial enrollment of 200 students, increasing to 500 over five years. The Districts question whether these projections are realistic given the lack of community support discussed *supra* and, even if the projections are realistic, whether Shenango Valley can meet the goals of its proposed budget. The Districts contend that Shenango Valley has no commitment of funding from private or public sources, and has no fundraising plan despite projecting fundraising revenue beginning with year one. Shenango Valley also shows an overall operating deficit beginning in year three.⁸ The only specifically alleged defect in the budget, however, is the lack of money for required ADA renovations. The Districts have offered no evidence to rebut the figures in either of Shenango Valley's budgets.

⁸ These projections are from the preliminary budget submitted with Shenango Valley's application and available to the Districts in evaluating the applications. These numbers vary from the revised budget figures submitted by Shenango Valley during the course of this appeal.

Generally, the Charter Law does not provide for denial of a charter school application for financial reasons. Although a district is not limited to the criteria listed in Section 17-1717-A, the criteria are generally educational in nature. Thus, this Board considers it improper to use financial criteria as a basis for evaluating a charter school application.

However, the Law does require an applicant to provide a financial plan for the charter school. Section 17-1719-A(9). In attempting to satisfy this requirement, Shenango Valley included a preliminary budget with its application and then provided a revised budget during the course of this appeal. Shenango Valley intended these budgets to constitute its financial plan. In this regard they are inadequate, particularly since they are based upon assumptions of student enrollment that are not supported by any evidence, and because the projected student enrollment is necessary to meet revenue projections. Since some of the budget expenses will be fixed (the rental cost of the proposed school buildings, certain services and materials, and ADA renovation), this projected revenue source could be crucial to the viability of Shenango Valley.

While the Charter Law does not specify the amount of detail required in a financial plan, the Districts have raised questions concerning the underlying revenue assumptions of Shenango Valley's budgets. Shenango Valley has provided no evidence to justify its revenue projections, either in terms of projected numbers of students or fundraising sources. These projections are so essential to the budgets that without accurate projections the budgets are of questionable value and cannot satisfy the requirement of 17-1719-A(9). Given the educational nature of most application requirements, had Shenango Valley provided any substantial evidence as to the reasonableness of its projections the Districts may not have been justified in denying its applications on these financial grounds.

D. WHETHER SHENANGO VALLEY MAY SERVE AS A MODEL TO OTHER SCHOOLS

It was appropriate for the Districts to evaluate the extent to which the charter school may serve as a model for other public schools. The possibility of being a model is specifically mentioned as an evaluation criterion in 24 P.S. §17-1717-A(e)(2)(iii). The encouragement of different and innovative teaching methods and the creation of new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site, are among the goals of the legislature in passing the Charter Law. 24 P.S. §17-1702-A(4).

The Districts concentrated on Shenango Valley's commitment to the LRDC Principles of Learning and the fact that Sharon City is already a full partner with the LRDC and began implementing the Principles of Learning during the 1997-98 academic year. To date, Sharon City has implemented at least four (4) of the eight (8) Principles of Learning in its classrooms. In this regard, the Districts ignore some key elements of Shenango Valley's plan, which does more than simply replicate the Principles of Learning. Shenango Valley's plan mentions several additional aspects that are exclusive of the Principles of Learning and could serve as a model for other schools. Smaller class size, use of teachers' aides, emphasis on family involvement, family values, self-esteem and personalized teaching plans are all examples where Shenango Valley could be a model to other schools.

What is lacking in Shenango Valley's application, and from the record, is how much of this is, in fact, different from the existing model in the Districts. Sharon City emphasizes the existence of the Principles of Learning already in its district, but neither district spends much effort addressing whether any of these other factors are merely duplicative of existing school programs. On their face, they do appear to be innovative and capable of incorporation in other schools should they be demonstrated effective in Shenango Valley. Shenango Valley thus met

its burden of showing that it may serve as a model for other public schools. As they did with the Principles of Learning, it was incumbent upon the Districts to produce substantial evidence to rebut Shenango Valley's contention that these other aspects of its plan could not form the basis for Shenango Valley to be a model for other schools. For the above reasons, we reject the findings of the Districts in this regard, because substantial evidence is to the contrary.

ORDER

AND NOW, this 15th day of September, 1999, based upon the foregoing and the vote of this Board⁹, the February 15, 1999 decision of the Hermitage City School District and the February 24, 1999 decision of the Sharon City School District, denying the Charter Application of Shenango Valley Regional Charter School, are affirmed and the July 1, 1999 appeal of the Charter School is denied.

FOR THE STATE CHARTER SCHOOL
APPEAL BOARD

Eugene W. Hickok
Chairman

⁹ At the Board's September 15, 1999 meeting, the appeal was denied by a vote of 5-1, with members Bunn, Ford-Williams, Melnick, Shipula and Hickok voting to deny the appeal and member Tait voting to grant the appeal.