

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

In Re: Appeal of Kemetic Institute Charter School : Docket No. CAB 2000-6

FINDINGS OF FACT

1. Kemetic Institute Charter School ("Kemetic") filed an application with the School District of Philadelphia ("School District") on or before November 15, 1999, which sought approval of a charter school to begin operation for the 2000-01 school year. (Application).
2. Kemetic submitted a set of written answers to questions from the School District regarding its charter school application. (Written Answers).
3. On December 15, 1999, the School District held a hearing on the application, at which time Kemetic was given the opportunity to present evidence in support of its application. (Transcript).
4. The 75th calendar day after the December 15, 1999 hearing before the School District was February 28, 2000.
5. The School District did not render a decision on Kemetic's charter school application on or before February 28, 2000. (School District Letter of March 22, 2000).
6. On March 9, 2000, Kemetic filed the instant appeal, pursuant to Section 1717-A(g) of the Charter School Law, citing the School District's failure to grant or deny the application within 75 days after the first public hearing of the application, as required by Section 1717-A(e)(1) of the Charter School Law.
7. On March 14, 2000, the State Charter School Appeal Board ("CAB") appointed a Hearing Officer to conduct a hearing and develop the record for the CAB.
8. A pre-hearing conference was held on April 12, 2000, at which counsel for Kemetic and counsel for the School District waived the right to a hearing to be held for the purpose of presenting evidence that was not available at the time of the December 15, 1999 hearing before the School District. This waiver was confirmed in the Scheduling Order issued by the Hearing Officer on April 14, 2000. (Scheduling Order of April 14, 2000).
9. The School District certified and forwarded to the Hearing Officer the record below before the School District, which consisted of: (a) the Charter School Application; (b) a Kemetic Brochure; (c) Kemetic's Written Answers to questions from the School District; (d) Transcript of the December 15, 1999 hearing before the School District; (e) an Independent Review Panel Report Submitted to the School District dated February 15, 2000; (f) a Letter dated March 22, 2000 from the President of the School Board of the School District to Kemetic; and (g) a Resolution dated March 31, 2000 by the School District. (Record from School District).

10. On June 14, 2000, Kemetic attempted to introduce additional documentary evidence in support of its appeal by sending it, via facsimile transmission, to the Hearing Officer. The Hearing Officer refused their admission into evidence, and therefore, CAB did not consider this information.

11. Argument before the CAB was held on June 15, 2000.

12. The evidence regarding support for the charter school plan by teachers, parents, other community members and students, consisted of the testimony of one unidentified parent of three school age children (Transcript, pp. 45-47) and nine letters from persons located in Philadelphia. Of the nine letters: (a) two were from elected officials (Application, pp. 87-88); (b) three were from community leaders (Application, pp. 82, 84-85); (c) two were from teachers (Application, pp. 86, 89); and (d) two were from citizens who operate businesses in the community (Application, pp. 83, 90).

13. The applicant is the group consisting of Ms. Florence Churchill, Mr. Bradford Williams and Mr. Talib Issa. (Application, p. 37).

14. The grades to be served by the school are grades 9 and 10 during the initial 2000-01 school year; grade 11 will be added the second year; and grade 12 will be added the third year. The number of students to be taught in each grade is 150. (Application, pp. 4, 17).

15. The applicants will form a non-profit corporation which will be governed by a Board of Trustees. The application indicates the manner of selection of the trustees and their powers. (Application, pp. 38-41, 57-68).

16. The general location of the school is in an inner city economic empowerment zone where 99% of the residents are African-American. (Application, pp. 6, 18).

17. Kemetic expects to attract students "who have been chronically absent or late, ... who may be two or more years behind grade level ... or who are looking for an educational program that offers an entrepreneurial focus." (Application, p.18).

18. Kemetic's mission is for students to "participate in a hands-on entrepreneurial program, with the expectation that upon graduation they will have the knowledge and skills necessary to open and successfully operate their own small business." (Application, pp. 4, 5).

19. The charter Application contained the following statement concerning the physical facility in which the charter school was proposed to be located: "The school is looking at several locations in the North Central Philadelphia area. One facility that is under consideration is located at 2233-47 W. Allegheny Avenue." (Application, p.52). There was no information concerning the ownership of this property or any prospective lease arrangements.

CONCLUSIONS OF LAW

1. The standard that the Charter School Appeal Board (CAB) must apply in making its decision in this case is set forth in Section 1717-A(e)(2). CAB is not required to consider the findings or decision of the School District because the District's decision was rendered more than 75 days after the first public hearing and also after this appeal had been filed. 24 P.S. § 17-1717-A(g).

2. Since Kemetic waived its right to a hearing before the Hearing Officer to present additional evidence not available at the time of the hearing before the School District, the decision in this case is to be based on the application and the testimony and documentation submitted by Kemetic to the School District. 24 P.S. § 17-1717-A(i)(6).

3. The criteria for evaluating a charter school application, under Section 1717-A(e)(2) of the Charter School Law are:

(i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d).

(ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.

(iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.

(iv) The extent to which the charter school may serve as a model for other public schools.

24 P.S. § 17-1717-A(e)(2).

4. Kemetic failed to demonstrate "sustainable support for the charter school plan by teachers, parents, other community members and students," as required by Section 1717-A(e)(2)(i) of the Charter School Law, since the only evidence introduced was testimony from one unidentified parent and nine letters of support, two (2) of which were from teachers and none of which were from parents or students. 24 P.S. § 17-1717-A(e)(2)(i).

5. Kemetic's appeal must be denied for failure to comply with Section 1717-A(e)(2)(i) of the Charter School Law. 24 P.S. § 17-1717-A(e)(2)(i).

6. Section 1719-A(11) of the Charter School Law required Kemetic, in its application, to include: "A description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements." 24 P.S. § 17-1719-A(11).

7. Kemetic failed to comply with the requirement of Section 1719-A(11) of the Charter School Law since the only information provided regarding the physical facility for the charter school was the statement that Kemetic is "looking at several locations in the North Central Philadelphia area" and that one "facility that is under consideration is located at 2233-47 W. Allegheny Avenue." 24 P.S. § 17-1719-A(11).

8. Kemetic's appeal must be denied for failure to comply with Section 1717-A(e)(2)(iii) of the Charter School Law. 24 P.S. § 17-1717-A(e)(2)(iii).

DISCUSSION

A. Jurisdiction and Evidence Considered

Kemetic timely filed an application for a charter school within the limits of the School District of Philadelphia, seeking to commence operations for the 2000-01 school year. The School District held a public hearing on the application on December 15, 1999, at which time Kemetic was given the opportunity to present testimony and other evidence in support of its application.

Section 1717-A(e)(1) of the Charter School Law required the School District to grant or deny Kemetic's charter school application within 75 days of the first public hearing on the application. 24 P.S. § 17-1717-A(e)(1). Consequently, the School District was required to issue its decision on or before February 28, 2000. Since no timely decision was issued by the School District, Kemetic, on March 9, 2000, filed the instant appeal, citing as authority Section 1717-A(g) of the Charter School Law. Thereafter, the School District, on March 13, 2000, voted to deny the application. The School District also filed a Motion to Dismiss Kemetic's appeal. The motion was argued on May 16, 2000. By written decision of May 31, 2000 the Board denied the School District's motion.

Section 1717-A(g) requires the Board, in this case, to render a decision on the basis of the criteria of Section 1717-A(e)(2). 24 P.S. § 17-1717-A(g). These are the same criteria the School District was to utilize if it had rendered a timely decision on the application. Thus, the "appeal," District was to utilize if it had rendered a timely decision on the application. Thus, the "appeal"

is not a review of the decision by the School District, but, rather, invokes the CAB's "original" jurisdiction and calls for the CAB to utilize its discretion. The decision by the School District below, therefore, was not considered in ruling upon this matter.

A Hearing Officer was appointed to conduct a hearing and develop the record for CAB's consideration. A hearing was scheduled for April 19 and 20, 2000. If the hearing had been held, Kemetic and the School District would have had the opportunity to present any evidence that was not available at the time of the hearing before the School District. Both parties, at the pre-hearing conference, waived the right to a hearing, and the hearing was canceled. In addition, no new evidence was presented to the Hearing Officer.

On June 14, 2000, however, long after the record was closed and the day before the Board's meeting to consider this case, Kemetic attempted to submit additional documentary evidence by facsimile transmission to the Hearing Officer. Based on principles of due process, the Hearing Officer refused to admit this evidence. The Board agrees with this ruling and did not consider these documents in rendering this decision. *See*, 2 Pa.C.S. § 505; 1 Pa. Code § 35.126 and § 35.128. This decision is based upon Kemetic's application and the documents and testimony presented to the School District.

B. Consideration of Section 1717-A(e)(2) Criteria

Kemetic's appeal, properly filed under Section 1717-A(g) of the Charter School Law, requires the exercise of this Board's discretion to grant or deny the appeal on the basis of the criteria set forth in Section 1717-A(e)(2). These criteria shall hereafter be applied to the record in this matter.

(1) Sustainable Support

Section 1717-A(e)(2)(i) required Kemetic to demonstrate "sustainable support for the charter school plan by teachers, parents, other community members and students." 24 P.S. § 17-1717-A(e)(2)(i). The only evidence introduced of community support was testimony from one unidentified parent and nine (9) letters of support. Of the nine letters, two were from elected officials, three were from community leaders, two were from teachers, and two were from citizens who operate businesses in the community. This evidence did not demonstrate sustainable support as required by this section. Apart from the testimony of one unidentified parent, there was no evidence introduced to show the support of parents or students. The application indicated that 300 students were projected to attend the school in the first year of operation, 150 in ninth grade and 150 in tenth grade. In the second year, enrollment was projected to increase by 150 students for eleventh grade and in the third year another 150 students were projected to be added for twelfth grade. No applications, letters, testimony, surveys or other evidence were submitted to substantiate these projections and to establish that individuals were actually interested in having their children attend the charter school. Kemetic, thus, failed to demonstrate support from either parents or students.

The only evidence of support by teachers consisted of two letters from teachers in Philadelphia. This is insufficient to demonstrate support by teachers. Evidence of support by other community members consisted of seven letters. These letters are from elected officials and community leaders and they do evidence support from a number of community organizations. Thus, these letters demonstrate sustainable support in the community in which the school is to operate.

We do not interpret the requirement of "sustainable support" as necessitating proof of strong support from each and every category of persons listed in this subsection. Nevertheless, a

reasonable amount of support in the aggregate must be demonstrated. *Appeal of William Bradford Academy Charter School*, CAB 1999-8; *Appeal of Hills Academy Charter School*, CAB 1999-12. Here the burden of demonstrating reasonable support clearly has not been met in the aggregate. The lack of real support from parents, students and teachers was apparent from the record herein and, therefore, the appeal must be denied for failure to demonstrate the "sustainable support" required by Section 1717-A(e)(2)(i) of the Charter School Law.

(2) Compliance with Section 1719-A

Section 1717-A(e)(2)(iii) requires Kemetic to comply with Section 1719-A regarding the necessary components to be included in a charter school application. One of these required elements concerns the proposed charter school facility. Subsection (11) required Kemetic to provide: "A description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements." The only information provided by Kemetic on this subject was a statement on page 52 of its application. This statement reads: "The school is looking at several locations in the North Central Philadelphia area. One facility that is under consideration is located at 2233-47 W. Allegheny Avenue." We find that this is not sufficient to meet the requirements of Subsection (11). While Kemetic need not purchase a facility or enter into a lease in order to comply with this section, it must show some evidence of the likely availability of a particular facility and provide its address and physical description. *Appeal of William Bradford Academy Charter School*, CAB 1999-8; *Appeal of Phoenix Academy Charter School*, CAB 1999-10. Kemetic has not done so in its application and did not provide any additional evidence at the hearing afforded by the Hearing Officer. Thus, Kemetic's appeal must also be denied for failure to comply with the requirements of Subsection (11). 24 P.S. § 17-1719-A(11).

Because of the shortcomings of Kemetic's application discussed above¹ and because this Board is acting in its original jurisdiction the other required elements of the application will not be addressed. The appeal of Kemetic Institute Charter School is denied.

ORDER

AND NOW, this _____ day of July, 2000, based upon the foregoing and the vote of this Board,² the appeal of the Kemetic Institute Charter School is denied.

FOR THE STATE CHARTER SCHOOL
APPEAL BOARD

Eugene W. Hickok, Jr.
Chairman

¹ The grounds discussed herein are sufficient to support this Board's denial of the appeal and this opinion does not represent a determination that matters not discussed either meet or do not meet the requirements of the Charter School Law.

² At the Board's July 19, 2000 meeting, the appeal was denied by a vote of 6-0 with members Aliota, Bunn, Hickok, Melnick, Reeves and Shipula all voting to deny the appeal.