

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

IN RE:

Vitalistic Therapeutic Center Charter School :
Appeal from Denial of Charter School : Docket No. CAB 2000-15
Application by Bethlehem Area School District :

OPINION AND ORDER

In 1999, the Bethlehem Area School District (“Bethlehem School District”) denied both an original application and a revised application of the Vitalistic Therapeutic Center Charter School (“Charter School”) for various reasons. The Charter School Appeal Board (“CAB”) concluded that the Bethlehem School District’s denial of the charter was proper, notwithstanding CAB’s rejection of three grounds for denial asserted by the Bethlehem School District. (CAB 1999-6.)

In 1999, the School District of the City of Allentown (“Allentown School District”) denied both an original application and a revised application of the Charter School for various reasons. CAB concluded that the Allentown School District’s denial of the charter was proper, although for a reason other than those relied upon by the Allentown School District. CAB found that the Charter School facility was proposed to be located in the Bethlehem Area School District, rather than in the Allentown School District. Under the Charter School Law an applicant must apply to the school district in which it will be located. Thus, CAB rejected the appeal filed by the Charter School from the Allentown School District’s denial of a charter. (CAB 1999-5).

On November 12, 1999, the Charter School submitted an application for a regional charter school to both the Allentown School District and the Bethlehem School District. On February 28, 2000, the Bethlehem School District’s Board voted to deny the application. On

March 23, 2000, the Allentown School District's Board voted to approve the grant of the Charter School's regional charter application. On April 24, 2000, the Charter School resubmitted its application for a regional charter school to the Bethlehem School District and included additional material. On, June 5, 2000, the Charter School made an additional presentation to the Bethlehem School District's Board, and on June 26, 2000, the Bethlehem School District voted to disapprove the Charter School's application. In a letter dated August 17, 2000, the Bethlehem School District explained the reasons for its denial.

The Charter School appealed to CAB from the denial of its application by the Bethlehem School District. For the reasons set forth below, CAB grants the application for a regional charter school.

FINDINGS OF FACT¹

Procedural History

1. On November 12, 1999, Naomi Grossman submitted the Charter School's application to the Bethlehem School District and the Allentown School District. Certified Record, Item 5.

2. On January 31, 2000, the Boards of both the Allentown and Bethlehem Area School Districts held a joint hearing on the Charter School's application. At that hearing, the Charter School submitted an exhibit containing supplemental information concerning the background of its board of trustees, a proposed agreement between the Vitalistic Therapeutic Center, Inc. ("Vitalistic Center") and the Charter School, a proposed lease of space for the

¹ Unless otherwise indicated, all references to the Certified Record is to Part B of the Certified Record, i.e., proceedings before the Bethlehem Area School District.

Charter School, letters of support from parents, community organizations and community members.

3. On February 28, 2000, based on the Administration's recommendation, the Bethlehem School District Board voted to deny the Charter School application. Certified Record, Item 12.

4. On March 23, 2000, the Allentown School District Board voted to grant the Charter School application.

5. On April 24, 2000, the Charter School resubmitted its application for a regional charter school to the Bethlehem School District. Certified Record, Item 18; Part A of Certified Record, Item 1, Exhibit A.

6. On April 28, 2000, the Bethlehem School District issued a letter detailing the reasons for its February 28 vote to deny the Charter School's application. Certified Record, Item 19.

7. On June 1, 2000, the Charter School filed a written response to the denial letter of April 28, 2000, which included a revised agreement between the Charter School and the Vitalistic Center, and letters of support from residents of Bethlehem and Allentown. Certified Record, Item 25.

8. On June 5, 2000, the Charter School made an additional presentation to the Bethlehem School District. Certified Record, Item 2.

9. On June 26, 2000, ten individuals addressed the Bethlehem School District Board, and the Charter School submitted additional documents. The Bethlehem School District's administration presented its recommendations concerning the application. Thereafter, the Bethlehem School District Board again voted to deny the application. Certified Record, Item 30.

10. In accordance with the Charter School Law, the Charter School obtained signatures on a petition and filed the petition with the Northampton County Court of Common Pleas, which certified the petition on August 9, 2000. Part A of Certified Record, Item 1.

11. On August 17, 2000, the Bethlehem School District sent a letter to the Charter School notifying the Charter School of its decision to deny the resubmitted application, listing the deficiencies in the resubmitted application, and restating the recommendations of the Administration in support of its denial. The following areas were cited as being deficient: (1) a lack of demonstrated and sustainable support for the Charter School by teachers, parents, other community members and students; (2) insufficient and not final separation between the Charter School and Vitalistic Center; (3) inadequate evaluation and provision for special education; (4) concern that the proposed curriculum does not enhance learning opportunities; (5) concerns that the budget and financial resources of the Charter School Were inadequate for the proposed student population; and, (6) a belief that the Charter School would not serve as a model for other public schools. Part A of Certified Record, Item 1, Exhibit B.

12. On September 13, 2000, the Charter School filed an appeal with CAB in accordance with the Charter School Law. CAB accepted the appeal and Thomas Au was appointed as hearing officer. Part A of Certified Record, Item 2.

13. At the November 3, 2000 meeting of CAB, the record, including materials agreed upon by the parties, was certified by the hearing officer to CAB. Legal counsel for both parties presented oral argument.

Organization of the Charter School

14. For twenty-eight years, Vitalistic Center has provided educational and therapeutic services to children of the Lehigh Valley community who have various disabilities, developmental delays and social/emotional needs. Certified Record, Item 5, Executive Summary.

15. Vitalistic Center has been licensed as a partial hospital program for more than 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. Certified Record, Item 5, I.6.

16. To continue to provide these services and to secure a stable funding stream, Vitalistic Center proposes to establish a regional Charter School for grades K-3 in the Allentown and Bethlehem School Districts. Certified Record, Item 5, Application and Executive Summary, p.2.

17. The Charter School's philosophy integrates expressive therapies, developmental services, and educational curriculum. The goal of the Charter School is to prepare these "at-risk" children to function and succeed at a later point in the public school system. "At-risk" children, as defined by the Charter School, are children needing individualized education plans and therapeutic interventions due to exposure to poverty, substance abuse, family instability, or developmental disabilities. Certified Record, Item 5, p.2.

18. An independent, but interdependent, relationship is envisioned for the Charter School and Vitalistic Center. The Charter School will provide educational services, whereas the Vitalistic Center will provide therapeutic and support services. With its application, the Charter School has submitted a proposed slate for its Board of Directors (Certified Record, Item 5, Attachment III.2.A-ii), proposed by-laws for the Charter School (Certified Record, Item 5,

Attachment III.2.G) and a proposed agreement between Vitalistic Center and the Charter School (Certified Record, Item 25, Attachment 4).

19. Under the agreement, Vitalistic Center will provide therapeutic services to the Charter School, space for the Charter School, transportation for the students of the Charter School, as well as other services and materials. Certified Record, Item 25, Attachment 4.

20. The Charter School proposes to enroll 96 students in grades K-3 in years 2000-01 through 2004-05. Certified Record, Item 5, Attachment II.2.A.

Curriculum of the Charter School

21. 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 5. Application at p.3. However, the proposed classroom size is twelve children, a teacher, counselor and an assistant teacher. 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. at p.4.

22. 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 dynamics of the child and his or her family. Certified Record, Item 5, Application at p.6. 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. at p.9. The Charter School will attempt to improve parenting skills and to support families in managing family stressors. Id. at p.16.

23. The Charter School has submitted numerous documents, including public school report cards of former students, surveys of parents of former students, public testimony at

hearings, and letters from community residents, demonstrating the success of its approach. Part A of Certified Record, Item 1, Exhibit A; Certified Record, Item 2, p.20-26.

24. 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 changes; recurrent aberrant thinking and behavior; and expected reactions and future problems for children exposed to ongoing antisocial family behaviors. Certified Record, Item 5, Application at p. 1.

Sustainable Community Support

25. The majority of the members of the Charter School's Board of Trustees are residents of Allentown and Bethlehem. The majority of Vitalistic Center employees are residents of Allentown and Bethlehem. Certified Record, Item 5, Attachment I.4. School.B.i.

26. Letters supporting the Charter School were submitted from individuals associated with various educational, civic and professional organizations throughout the Lehigh Valley community. Certified Record, Item 5, Attachment II 3-B-i.

27. The Charter School's application included a list of approximately ninety-seven school-aged children currently enrolled whose parents were committed to continued enrollment at the Charter School. Certified Record, Item 5, Attachment I.5.B.

28. The Charter School states that there is a waiting list of 46 students for enrollment at Vitalistic Center (as of June 5, 2000), which includes 12 students from the Bethlehem Area School District. Certified Record, Item 2, at p.7.

CONCLUSIONS OF LAW

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

2. Section 17-1717-A(e)(2) of the Charter School Law, 24 P.S. §17-1717-A(e)(2), sets forth the factors to be used in the evaluation of the proposed Charter School application:

- (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 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 1720-A.
- (iv) The extent to which the charter school may serve as a model for other public schools.

3. Since the Charter School seeks a charter as a regional charter school, the relevant community for purposes of analysis is the Allentown School District and the Bethlehem Area School District.

4. CAB finds that the certified record does not support the Bethlehem School District's conclusion that there was a lack of demonstrated sustainable support for the Charter School plan from parents and community members within Bethlehem and Allentown as required by Section 1717-A(e)(2)(i).

5. CAB finds that the certified record does not support the Bethlehem School District's conclusion that the Charter School did not sufficiently demonstrate its capability, in terms of support and planning, to provide comprehensive learning experiences to student. 24 P.S. §17-1717-A(e)(2)(ii).

6. CAB finds that the Bethlehem School District erred in concluding that the Charter School would not serve as a model for other public schools. In contrast, the record clearly establishes that the Charter School can serve as a model for its targeted student population — “at-risk” students — for other public schools. 24 P.S. §17-1717-A(e)(2)(iv).

7. CAB finds that the Bethlehem School District erred in concluding that the Charter School fails to conform with the legislative intent of the Charter School Law, as stated in Section 1702-A.

DISCUSSION

Demonstrated And Sustainable Support For The Charter School Plan By Teachers, Parents, Other Community Members And Students

Section 17-1717A-(e)(2)(i) of the Charter School Law requires that an applicant for a charter school demonstrate sustainable support for the charter school plan by teachers, parents, other community members and students. While the legislature did not define the parameters of “community” or “community involvement,” CAB can rely upon other provisions of the Charter School Law for guidance. As CAB stated in *Phoenix Academy*, CAB 1999-10, the degree of support for the proposed charter school plan is relevant, not the degree of opposition. CAB concludes that the term “sustainable support” means support sufficient to sustain and maintain the proposed charter school as an on-going entity. Furthermore, the indicia of support are to be measured in the aggregate rather than by individual categories. The statutory listing of “teachers,

parents, other community members and students" indicates the groups from which valid support for the charter school plan can be demonstrated. *Independence Charter School Initiative*, CAB 2000-2, at 11.

In its August 17, 2000 letter of denial, the Bethlehem School District stated that "the application and proposal continue to lack support that is demonstrable and sustainable." To the contrary, CAB finds that the certified record shows that the Charter School repeatedly demonstrated support from each of these categories throughout the application process.

Thirty-four letters of support from local political leaders, representatives of community organizations, educational institutions, and local hospitals, human services professionals, and local business people were attached to the Charter School's November 12, 1999 application. Certified record, Item 5, Attachment II. In addition, fourteen signatures of support were submitted by parents of students (representing 18 students) in Bethlehem and approximately 53 signatures submitted by parents of students (representing approximately 60 students) in Allentown. Certified record, Item 5, Attachment I.5.B. Another eighteen signatures of support were submitted by staff of the Vitalistic Center indicating a desire to teach and carry out professional activities at the Charter School. Certified Record, Item 5, Attachment V.1-2.

The Charter School continued to demonstrate support through the application process. At the January 31, 2000 joint hearing before the Allentown and Bethlehem School Districts, twenty-two citizens testified in support of the Charter School (Certified Record, Item 3, Transcript pages 17-40). Approximately three hundred signatures and letters of support were attached with the Charter School's resubmitted application dated April 24, 2000. Petition to Review, Part A. In the Charter School's response to reasons for denial, dated June 1, 2000, the Charter School

attached an additional twenty-six letters and signatures of support signed, for the most part, in April 2000. Certified Record, Item 25.

The Charter School has clearly shown support from a cross-section of teachers, parents, community members, and parents of students during a long process. The indicia of support include many residents of the Bethlehem School District, including comments received at public hearings. Since the application is for a regional charter school, CAB must find that there exists demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students throughout the two school districts. The record amply demonstrates broad support across both school districts for the Charter School plan. In evaluating a regional charter school application, it would be unreasonable to construe the Charter School Law as requiring a majority of support from any one school district. In this instance, there exists substantial support in both school districts. Accordingly, CAB finds that the Bethlehem School District erred in finding a lack of demonstrated, sustainable support.

Capability Of The Charter School Applicant, In Terms Of Support And Planning, To Provide Comprehensive Learning Experiences To Students

The Bethlehem School District has questioned the ability of the Charter School to provide a comprehensive learning experience to its students. In its denial letter of August 17, 2000, the Bethlehem School District cited as its basis for denial the lack of separation between Vitalistic Center and the Charter School, inadequate planning for special education, curriculum and testing concerns, and budget and financial concerns.

Special Education

Bethlehem School District's denial letter stated that the Charter School does not include a special education plan for exceptional children. Part A of Certified Record, Item 1, Exhibit B. As we read the statute, there is no requirement that the Charter School set forth in its application

a specific plan for educating exceptional children. However, charter schools must comply with Federal laws and regulations governing children with disabilities, and a charter school's charter may be revoked or non-renewed if the charter school has violated any provision of Federal laws and regulations governing children with disabilities. 24 P.S. §17-1729-A(a)(5).

Exceptional children are included in the student population served by the Charter School, and the Charter School will perform testing to determine if there are students who have special education needs. To the extent that exceptional children may also be "at-risk" students, the Charter School has provided a plan for their education. The Charter School has proposed that: "Students identified as special education students will have an additional document, the Individual Education Plan (IEP)" (Certified Record, Item 5, Application at p. 4), and has proposed a specific plan to test for and evaluate special needs in a timely manner. Certified Record, Item 5, Attachment I.3.D.i; Part A of Certified Record, Item I, Exhibit A, "Special Education Guide." The Vitalistic Center currently enrolls students with special education needs and projects students with special education needs in the Charter School's future enrollment. In addition to providing special needs services directly, the Vitalistic Center works with local institutions and intermediate units to provide special services. Certified Record, Item 5, Application at pp.9-10; Attachment II.2.A. Bethlehem School District's denial based on an inadequate plan for special education students is not supported by the record.

Agreement between Vitalistic Center and the Charter School

Bethlehem School District objects to the fact that the proposed agreement between the Charter School and the Vitalistic Center has not been signed. The Charter School revised the proposed agreement to address the issues raised by the Bethlehem School District in its February 28, 2000 meeting and April 28, 2000 letter. Certified Record, Item 19, at 6. The revised

agreement was submitted to the Bethlehem School District on June 1, 2000. Certified Record, Item 25, Attachment 4. CAB has held that the Charter School Law does not require that a final management agreement be signed before the grant of a charter. *In Re: Collegium Charter School*, CAB 1999-9; *In Re: Leadership Learning Partners Charter School*, CAB 2000-8. The proposed agreement delineates the services and facilities that Vitalistic Center will provide and serves as a basis for a final agreement once a charter has been granted. We are satisfied that the management agreement is sufficient for purposes of the application. Thus, the Bethlehem School District's denial of a charter because the agreement was not signed is rejected.²

Curriculum Concerns

Bethlehem School District states that the proposed curriculum of the Charter School does not encourage or increase learning opportunities and does not encourage the use of different or innovative teaching methods. Part A of Certified Record, Item 1, Exhibit B at p.3. The Charter School Law does not require a Charter School to provide expanded educational opportunities as compared to the school district nor does it require a Charter School to enhance the school district's program operations. *In Re: Vitalistic Therapeutic Center Charter School*, CAB 1999-5.

The Vitalistic Center 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 5, p.2-9. 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 5, p.4.

² The final version of the agreement is, however, considered an element of the Charter School Application. Thus, any alteration prior to its final execution must first be presented to the Bethlehem School District.

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 constructs and dynamics of the child and his or her family. Id. at p. 4-6. Although the child is the focus of the educational/therapeutic program to be offered, the family component is also a critical part of the Charter School's program. The Charter School also will attempt to improve parenting skills and support families in managing family stressors. Certified Record, Item 5, at p.16.

The curriculum proposed by the Charter School is explained in detail in the record. Certified Record, Item 7. Moreover, the Charter School's application identifies two specific teaching methods to enhance student learning, as well as therapeutic teaching methods. Certified Record, Item 5, Application at p.5-9. Whatever specific concerns the Bethlehem School District may have about the curriculum and testing, these concerns are not spelled out in the denial letter. We reject Bethlehem School District's finding that the Charter School's curriculum does not encourage or increase learning opportunities and does not encourage the use of different or innovative teaching methods.

Budget and Financial Concerns

Bethlehem School District expressed concern about the financial viability of the Charter School and Vitalistic Center. Bethlehem School District asserts that a funding shortfall for Vitalistic Center would impact on the Charter School because the Vitalistic Center would not be able to provide (at no charge) the mental health services that it has contracted to provide and which is the very basis of its application. Part A of Certified Record, Item 1, Exhibit B.

The Charter School Law requires that the application include a “financial plan for the charter school and the provisions which will be made for auditing the school.” 24 P.S. §17-1719-A(9). The budget need only show that there is “a sufficient basis from which to conclude that the Charter School has considered fundamental budgeting issues and has determined that it will have the necessary funds to operate.” *In Re: Lincoln-Edison Charter School*, CAB 2000-11.

The Charter School is seeking funds only for the educational component of its program. Part A of Certified Record, Item 9, Reply Brief at 2. The Charter School application contains detailed information about its budget. Certified Record, Item 5, Attachment IV.1.C. Given its projected limited enrollment of 96 students for K-3, the financial budget appears reasonable.

The Charter School Law recognizes that a charter school may be established by teachers, parents, a nonsectarian corporation not-for-profit, any corporation, association, partnership, or any combination thereof. 24 P.S. §17-1719-A(a). The fact the Charter School will rely on another organization to provide some of the services and facilities it will use does not disqualify the Charter School. *In Re: Lincoln-Edison Charter School*, CAB 2000-11. While CAB cannot rule on the financial viability of Vitalistic Center, we note that Vitalistic Center has a 28-year history of providing services to the community. Certified Record, Item 5, Executive Summary.

Thus, we find that the Charter School has provided sufficient budgetary and financial information and reject the district’s contention.

The Extent To Which The Charter School May Serve As A Model For Other Schools

An amendment to the Charter School Law, Act 1999-36 enacted on June 26, 1999, specifically permits a charter school to limit admission to "targeted populations composed of at-risk students . . . and may establish reasonable criteria to evaluate prospective students which

shall be outlined in the school's charter." 24 P.S. §17-1723-A. The Charter School Law defines an "at-risk student" as "a student at-risk of educational failure because of limited English proficiency, poverty, community factors, truancy, academic difficulties or economic disadvantage." 24 P.S. §17-1703-A.

In its application, the Charter School defines "at-risk" children as children needing individualized education plans and therapeutic interventions due to exposure to poverty, substance abuse, family instability, or developmental disabilities. Certified Record, Item 5, p. 2. The Charter School and the statute's definition of "at-risk" are substantially similar. Thus, the Charter School may limit admission to this targeted population of "at-risk" students.

The Charter School intends to be a model in assisting public schools in assessing the following issues affecting "at-risk" 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 A, p. 7.

The Bethlehem School District believes that the Charter School offers little, or nothing, more than programs the District already offers to "at-risk" students. Part A of Certified Record, Item 1, Exhibit B. In its denial letter, the Bethlehem School District listed a number of programs that it has established for "at-risk" or exceptional children. While we commend the Bethlehem School District for offering these programs, it does not preclude an application for a charter school for "at-risk" children. The Bethlehem School District does not explain how its programs for at-risk children are superior to the program proposed by the Charter School for the age group to be served by the Charter School. In the past, the Bethlehem School District has asserted that the Charter School's only unique aspect is its smaller class size, a feature that the Bethlehem School District asserts cannot serve as a model for other schools because of fiscal realities. *In*

Re: Vitalistic Therapeutic Center Charter School, CAB 1999-6. This overlooks the fact that the Vitalistic Center has a track record of providing a quality, integrated program of education for “at-risk” children.

CAB finds that the certified record does not support the Bethlehem School District's finding that the Charter School will not serve as a model for other schools. A distinctive feature of the Charter School is smaller classes and an integrated educational/therapeutic approach, and that approach, if successful, could serve as a model for other public schools to emulate. *In Re: Vitalistic Therapeutic Center Charter School, CAB 1999-6.*

Failure To Conform With Legislative Intent

Finally, the Bethlehem School District denied the Charter School application because the application failed to conform with the legislative intent of the Charter School Law, based on the reasons enumerated above. Part A of Certified Record, Item 1, Exhibit B. Since the application for the Charter School is for a regional charter school, which serves a targeted audience of “at-risk” students, and the application meets all the requirements of the Charter School Law, we find that the legislative intent of the Charter School Law has been met.

Therefore, CAB concludes that the Charter School has satisfied the requirements of the Charter Law and a charter shall be issued to the Charter School.

ORDER

AND NOW, this ____ day of January, based upon the foregoing and the vote of this Board,³ the appeal of the Vitalistic Therapeutic Center Charter School of the Lehigh Valley is affirmed, and the Bethlehem Area School District is directed to grant the application and sign Vitalistic Therapeutic Charter School of the Lehigh Valley's charter pursuant to 24 P.S. § 17-1720-A.

For the State Charter School Appeal Board,

Eugene W. Hickok
Chairman

³ At its December 7, 2000 meeting, the appeal was granted by a vote of 6-0, with members Aliota, Bunn, Hickok, Melnick, Reeves and Shipula voting to grant the appeal.