

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

IN RE: :
DR. LORRAINE K. MONROE :
ACADEMY CHARTER SCHOOL : Docket No. CAB 2000-16
: :
: :

OPINION AND ORDER

I. INTRODUCTION

This matter is before the Pennsylvania State Charter School Appeal Board (CAB) on an appeal by the Dr. Lorraine K. Monroe Academy Charter School (Charter School) from the denial of its Charter School Application (Application) by the Millcreek Township School District (School District).

II. FINDINGS OF FACT

1. On or about November 15, 1999, the School District received an Application on behalf of the Charter School seeking approval to operate a Charter School for the school year beginning in August of 2000. (Exhibit 1 of Volume I of the Certified Record)
2. Thereafter, the School District conducted hearings concerning the Charter School's Application on January 4, 2000, January 24, 2000 and February 28, 2000. (Exhibits A, B and C of Volume I of the Certified Record)
3. On March 13, 2000, the School District rejected the Charter School's Application. (Exhibit 1(B) of Volume II of the Certified Record)
4. The School District found that the Charter School failed to demonstrate sufficient evidence of complying with nine specific requirements:

- a. The Record lacked sufficient evidence of community input and support for the Charter School.
- b. The Charter School Application failed to include a description and address for the physical school facility and the leasing arrangements of the Charter School.
- c. The governance structure of the Charter School violated the Charter School Law.
- d. The Application failed to show that the Charter School would improve pupil learning.
- e. The absence of an executed Management Agreement and absence of the identification of a building presented a lack of demonstrated and sustainable support for the Charter School Application.
- f. The Charter School Application failed to show that the Charter School would increase learning opportunities for all students.
- g. The applicant failed to show its capability to provide a comprehensive learning experience.
- h. The applicant failed to provide the resumes of the Board of Trustees referenced in the School District's Policy 140.
- i. The Charter School failed to apply as a regional Charter School.

(Exhibit 1(B) of Volume II, pp. 22-29 of the Certified Record)

5. By Court Decree dated July 11, 2000, the Court of Common Pleas of Erie County held that the Charter School's Petition for Determination of Sufficiency of Signatures to Appeal the School District's Rejection of its Application was adequately completed.
6. The Charter School filed a Petition to Appeal with CAB on October 13, 2000.
7. By letter dated November 9, 2000, CAB informed both the School District Counsel and the Charter School Counsel that it had accepted the Charter School's Petition to Appeal the School District's denial of its Application.

8. On November 17, 2000 and December 1, 2000, the Hearing Officer held pre-hearing conferences with counsel for the School District and the Charter School.
9. During these pre-hearing conferences, counsel for the Charter School sought to include three additional documents to the record to be certified to CAB.
10. By letter dated December 6, 2000, the Hearing Officer admitted a Report authored by Dr. Michael Russell, dated April, 2000 and an Affidavit of Michael DiRaimo, Mosaica Education, Inc.'s ("MEI") Director of Partnership Development. The Hearing Officer concluded that both of these aforementioned documents were previously unavailable and therefore, permissible for inclusion in the Certified Record under the Charter School Law. (Exhibit 3 in Volume II of the Certified Record)
11. On December 7, 2000, the School District and the Charter School argued their respective positions regarding the Application to CAB.
12. On December 13, 2000, the parties simultaneously submitted Briefs to the Hearing Officer. (Exhibits 1 and 2 of Volume III of the Certified Record)
13. On December 20, 2000, the parties submitted Reply Briefs in support of their respective positions to the Hearing Officer. (Exhibits 3 and 4 of Volume III of the Certified Record)
14. The Charter School's Application did not provide a description and address of the physical facility in which the School would be located and did not provide any lease arrangements, but merely indicated that the "site is in Millcreek Township. Mosaica is presently seeking property." (Page 40 of Exhibit 1 of Volume I of the Certified Record)

15. At the hearing on January 4, 2000, Mr. DiRaimo testified that the site was at 4600 West Twelfth Street in Millcreek Township and that MEI intended to purchase the property and lease it to the Charter School. (Exhibit 1(A) of Volume I, pp. 171-72 of the Certified Record)
16. The Charter School did not provide any specific information to the School District concerning proposed temporary units that were to be utilized by the students of the Charter School during the construction of the permanent facility. (Exhibit 1(C) of Volume I, pp. 43-45 of the Certified Record)
17. At the third hearing before the School District, a representative of the Charter School stated that there was not currently a contract with a company to build the school. (Page 39-42 of Exhibit C of Volume I of the Certified Record)
18. Michael DiRaimo stated in an Affidavit, which was a supplementary document to the Certified Record, that the land originally identified to the School District as the property where the Charter School would be located, was no longer available. Mr. DiRaimo further stated in his Affidavit that an agreement for the purchase of another parcel of land had been entered into on May 21, 2000. (Exhibit 5 of Volume II of the Certified Record)
19. The Charter School's application contained petitions with signatures of 400 people supporting the Charter School.

III. 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 following factors for evaluation of the Charter School Application:
 - (i) 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 1702-A.
 - (iv) The extent to which the Charter School may serve as a model for other public schools.
3. The Charter School failed to provide an adequate description and address of the physical facility in which the Charter School will be located, the ownership thereof, and any lease arrangements as required by Section 17-1719-A(11), 24 P.S. § 17-1719-A(11).
4. The Charter School failed to demonstrate sustainable support for the Charter School, as mandated by Section 17-1717-A(e)(2)(i) of the Charter School Law, 24 P.S. 1717A(e)(2)(i).

IV. DISCUSSION

A. Preliminary Evidentiary Matters

This Appeal presents to CAB two evidentiary issues concerning the submission of supplementary documents into the Certified Record. First, two supplementary documents were included in the Certified Record by the Hearing Officer; second, two other documents were attached to the Charter School's Brief and Reply Brief.

1. Supplemental documents admitted by the Hearing Officer

The Hearing Officer held two pre-hearing conferences between counsel for the Charter School and counsel for the School District pursuant to the General Rules of Administrative Practice and Procedure, 1 Pa. Code. §§ 35.111-35.116. The parties discussed the submission of various documents by the Charter School. The parties also submitted written arguments regarding the admission of these supplementary documents into the Certified Record. Thereafter, the Hearing Officer admitted two documents into the Record and we will hereby adopt his action.

Section 17-1717-A(i)(6) of the Charter School Law permits CAB to "supplement the record if the supplementary information was previously unavailable." 24 P.S. § 17-1717-A(i)(6). Therefore, the dispositive issue concerning these two documents is whether both of them were unavailable prior to the School District's decision in this matter.

The first document is a report dated April, 2000 authored by Dr. Michael Russell. Dr. Russell supplied testimony at the third hearing before the School District. He testified that he was awaiting additional data and that it would take a few days in order to enter the data to determine its quality.¹ Thus, this data was not available before the district acted on the

¹ See Exhibit 1(C) of Volume I of the Certified Record, page 126, lines 5-12; page 90, lines 9-21 and page 113, lines 8-15.

Application. As such, Dr. Russell's report can be included in the Certified Record, as it contains information that was previously unavailable.

The second document that was admitted into the Certified Record was the Affidavit of Michael DiRaimo. The Charter School submitted the Affidavit because the Purchase Agreement for the land originally included in the Charter School's Application had lapsed and a new Purchase Agreement for a different property had been executed. As with the first document, the Affidavit contains information that was unavailable prior to the decision of the School District and it will be included in the Certified Record in this case.

2. Documents attached to the Charter School's Brief and Reply Brief

By letter dated December 14, 2000, counsel for the School District wrote a letter to the Hearing Officer objecting to the Charter School's act of attaching a document to its Brief. By letter dated December 15, 2000, the Charter School responded to this objection and asserted that the Pennsylvania Rules of Evidence allow for attachments to briefs. In addition, the Charter School submitted another document attached to its Reply Brief.

Thereafter, by letter dated January 16, 2001, the Hearing Officer informed Counsel for both parties that the Certified Record had already been submitted to CAB and would be supplemented only by the Briefs and Reply Briefs of the parties. In this aforementioned letter, the Hearing Officer expressed reluctance to physically separate the attached documents from the Brief and the Reply Brief filed by the Charter School and further asserted that it was outside the scope of his duties to do so. We agree.

This underlying action by the Charter School is troubling to CAB. Each of the attachments at issue contained information that was available prior to the issuance of the School District's decision in this matter. The only conclusion that CAB can reach in this matter is that

the Charter School attempted to circumvent the clear mandates of the Charter School Law regarding the supplementation of the Certified Record. The Certified Record was closed when it was submitted to CAB at its hearing on December 7, 2000, except for the briefs and reply briefs to be filed. The attempt to submit these additional documents, which contained information that was available prior to the District's decision, will not be permitted by CAB.

As such, the attachments to both the Charter School's Brief and Reply Brief will be stricken from the Certified Record in this matter and will not be considered or relied upon by CAB.

B. The School District properly denied the Charter School's Application

The School District based its denial of the Charter School's Application on nine separate grounds pertaining to the Charter School Law as well as its own requirements for charter school applicants². CAB concludes that the School District's denial was proper based on the reasons set forth below.

1. The description and address of the physical facility.

The School District, in its decision to deny the Application, found that the Charter School failed to fulfill the requirement of providing a description and address of the physical facility in which the Charter School would be located. The School District explained that the Charter School presented a letter of intent to purchase 5.7 acres of land at 4600 West 12th Street in Millcreek Township. However, the School District argued that the address related to a 6.688 acre parcel of land, and the Charter School failed to identify on what portion of the 6.688 acre parcel the school would be located. Further, the School District argued that it was not provided with the actual letter of intent with regard to the purchase of the property. Instead, the agreement

² CAB previously concluded that school districts may develop and apply other evaluative criteria provided that they are consistent with the Charter Law. In Re: Phoenixville Charter School, Docket No. CAB 1999-10.

was referenced in a letter for the purchase of property by MEI. (Exhibit 15 of Volume I of the Certified Record) Further, the School District noted that the applicant did not provide a description of the school facility, a site development plan of the proposed building, a list of alternative sites, or the specifics regarding temporary modular buildings to be used during the construction of a permanent building. Therefore, the School District concluded that the requirement to provide a description and address of the physical facility as required by the Charter School Law was not met. We agree.

Section 17-1719-A(11) of the Charter School Law, 24 P.S. § 17-1719-A, requires that an application to establish a Charter School shall contain:

“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)

After reviewing the record below, CAB concludes that the Charter School has not complied with this requirement of the Charter School Law. The Charter School failed to present any information concerning the specific “description of” the proposed facility it intended to build if the Application was granted. In fact, testimony was presented to the School District that a construction firm had not yet been engaged nor identified in order to build the school.³

Additionally, one of the witnesses for the Charter School testified that a design existed which was functional; however, this referenced design was never presented to the School District.⁴

Another witness who testified on behalf of the Charter School on February 28, 2000 stated:

“The point I would want to make is that we realize that the issue of property and the physical building of the plant is up in the air at the present time. That’s not something that either of us are happy

³ Page 41 of Exhibit 1(C) of Volume I of the Certified Record.

⁴ Page 178 of Exhibit 1(A) of Volume I of the Certified Record.

about. On the other hand, we can't open up the school in September or August without a code approved facility to be in."

(Page 44 of Exhibit 1(C) of Volume I of the Certified Record)

Based upon this evidence, CAB agrees that the School District properly denied the Charter School's Application because a sufficient description of the physical facility was not provided to the School District prior to its vote.

The fact that Mr. DiRaimo testified on January 4, 2000 that MEI would use modular units to house students in the event the school building would not be ready for the opening of school in August 2000, does not change CAB's opinion on this issue. Mr. DiRaimo provided insufficient information about these units or about where they would be placed. Therefore, the Charter School did not even provide sufficient information that a viable alternative was in place if the undescribed school building was not completed prior to the start of the school year.

As previously discussed, the Charter School also supplemented the Certified Record with an Affidavit of a Michael DiRaimo. Mr. DiRaimo stated in his Affidavit that the originally identified land that was presented to the School District was no longer available, but that an agreement had been entered into for the purchase of another parcel of land. The Charter School identified the location of the new parcel of land but did not attach the agreement to the Affidavit and did not provide any further identification of the facility. Thus, even this Affidavit does not provide sufficient information to properly identify and describe the facility. As CAB held in Appeal of Phoenix Academy Charter School, Docket No. CAB 1999-10, failure of a charter school applicant to identify the facility in the application or in any supplemental information provided to the School District **prior to a vote** is a fatal defect, thus validating a school district's denial of the charter school's application.

As the Charter School did not submit a proper description of the facility to the School District prior to its vote, the School District's denial of the Application on this issue is affirmed.

2. Demonstrated sustainable support

The School Board found that the Charter School failed to show demonstrated sustainable support of the Charter School plan because it did not have pre-registered students, did not provide a list of individuals who had submitted resumes for teaching positions, and that the record below did not reflect adequate support by the residents of Millcreek Township. Although we may not agree with all of the School District's stated reasons for finding lack of demonstrated community support, CAB agrees that such support has not been sufficiently demonstrated by the Charter School.

Section 17-1717-A(e)(2)(i) mandates that a Charter School applicant prove that there is:

“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).”

24 P.S. § 17-1717-A(e)(2)(i)

CAB has held that the term “sustainable support” is defined as support sufficient to sustain and maintain the proposed charter school as an ongoing identity. See In Re: Hills Academy Charter School, Docket No. CAB 1999-12 and In Re: Vitalistic Therapeutic Center Charter School, Docket No. CAB 2000-15. Further, CAB does not find relevant the size or voraciousness of the opposition, but rather, the degree of support in favor of the proposed charter school plan. See In Re: Hills Academy Charter School, Docket No. CAB 1999-12 at pages 15-16.

The School District argues that the evidence provided by the Charter School at the hearings below was insufficient to prove that there was sustainable support for the Charter School. We agree.

CAB has thoroughly reviewed the Certified Record and concludes that it does not contain the requisite amount of community support for the Charter School. The Charter School provided signatures of over 400 people who supported the establishment of the Charter School. However, the School District stated in its denial letter that the petitions identified 25 School District residents and 125 non-residents, but failed to identify whether the remaining individuals were School District residents. (Exhibit 26 of Volume II) In reviewing the petitions, CAB notes that on one petition a notation states that the 14 signatures represent non-Millcreek Township residents. On two other petitions, it is noted that 25 signatures represent Millcreek Township residents. Another petition with 25 signatures indicates that the residents are “mixed.” Finally, the remaining petitions do not indicate whether the signatures are from Millcreek Township residents or from others.⁵ It is troubling that only about six percent (25) of the people who signed the petitions were clearly identified by the Charter School as School District residents. This certainly raises questions about how many of the remaining signatures represent people who were not residents of the School District. It appears that the Charter School simply obtained signatures from anyone who would sign the petitions without making any sincere effort to limit the signatures to School District residents.

CAB also notes that the “founder” of the Charter School is from Harrisburg and not from Millcreek Township. As Mr. Pontillo testified at CAB’s meeting, there were no Millcreek

⁵ Because the issue of whether signatures on petitions are from persons residing in the school district in which the charter school is to be located has also arisen in other cases, CAB recommends that petitions used for the purpose of showing community support either include a statement at the top of the petition that the person is a resident of the relevant school district, or provide a space in which the person must identify their school district of residence. This should help eliminate some of the argument about the district in which the person lives.

Township residents involved in the process until after the application had been submitted to the School District. The Manufacturers Association of Northwest Pennsylvania, of which Mr. Pontillo is a member, strongly supports the Charter School, but is not headquartered in Millcreek Township. Therefore, the Association's support is beneficial to the Charter School, but CAB does not believe that this provides the level of sustainable community support required by the Charter School Law.

In addition to the concerns about the petitions and the lack of community involvement prior to the application being submitted to the School District, CAB is also concerned about the lack of any pre-registered students. Although there is no steadfast requirement that the Charter School must have a number of pre-registered students in order to show sustainable support, it certainly helps to demonstrate true sustainable support. In this case, the failure to have any pre-registered students, concerns about the reliability of the petitions, and the lack of local support in the initial stages of the Charter School, causes CAB to uphold the School District's finding that the Charter School failed to demonstrate sustainable support.

ORDER

AND NOW, this _____ day of _____, 2001, based upon the foregoing and the vote of this Board⁶, the appeal of the Dr. Lorraine K. Monroe Academy Charter School is **DENIED**, and the March 13, 2000 decision of the Millcreek Township School District is **AFFIRMED**.

For the State Charter School Appeal Board,

Eugene W. Hickok, Chairman

⁶ At the Board's February 22, 2001 meeting, the appeal was denied by a vote of 5-0 with members Bunn, Hickok, Melnick, Reeves and Shipula voting to deny the appeal. Ms. Aliota had previously recused herself from this case and Ms. Ford-Williams was not available.