

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

In Re: Appeal of Denial of Charter for : Docket No. CAB 2006-1
City College Prep Charter School :

OPINION AND ORDER

I. Introduction

This matter is before the Pennsylvania State Charter School Appeal Board (CAB) on an appeal by the City College Prep Charter School (City College) from the denial of its charter school application (Application) by the Board of School Directors (Board) of the Pittsburgh Public School District (District).

II. Findings of Fact

1. On July 25, 2005, City College submitted a charter school application to District.
2. A public hearing regarding the application was held on September 19, 2005.
3. A District review team conducted an evaluation of the application, which was completed on October 20, 2005.
4. The review team presented its results to the Board on November 1, 2005.
5. The review team recommended that the Board deny the charter application.
6. On November 15, 2005, City College submitted information to amend the application.
7. The District denied the request to amend the application.

8. On November 22, 2005, the Board voted to deny the charter application and communicated this decision to City College.
9. On December 23, 2005, City College filed a Petition to Appeal the denial of its charter application in the Court of Common Pleas of Allegheny County at docket no. GD 05-03314.
10. On February 8, 2006, City College served its Petition of Appeal on the District and the Charter School Appeal Board (hereinafter CAB).
11. On February 22, 2006, the District served its Answer to Petition of Appeal upon City College and CAB.
12. A pre-hearing conference was conducted by the Hearing Officer on March 31, 2006.
13. A hearing was held before CAB on May 23, 2006.
14. The curriculum set forth by City College in its application will not provide expanded choices for students in the District.
15. The application clearly indicated that the founders of City College intended that it be operated as a college preparatory school.
16. The application does not provide plans to meet the needs of students who do not plan to pursue post-secondary education.
17. City College would not provide a comprehensive learning experience to its students.
18. The application did not show support from students.
19. There were no pre-applications nor was any other evidence of student enrollments presented in the application

20. There was no evidence to show that those who supported the school would continue to do so, if the student body could not be limited to those who plan to seek post-secondary education.
21. City College failed to demonstrate sustainable support for the charter school by teachers, parents, other community members and students.
22. City College was unable to demonstrate that its programs were innovative and would serve as a model for other public schools

III. Conclusions of Law

1. The present appeal is properly before the CAB, pursuant to the Charter School Law, 24 P.S. §§ 1701-A, *et seq.*
2. The standard that the CAB must apply in making a decision in this case is set forth in 24 P.S. § 1717-A(e)(2).
3. The criteria for evaluating a charter school application under Section 1717-A(e)(2) of the Charter School Law are:
 - a. 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 section (d);
 - b. 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.
 - c. 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; and

- d. The extent to which the charter school may serve as a model for other public schools.
4. The CAB must give due consideration to the findings of the School District.
5. The applicable standard of review is not the standard used by appellate courts because the CAB has the authority, under the Charter Law, to agree or disagree with the findings of the school district, and to allow the charter school and/or the local board of directors to supplement the record if supplemental information was previously unavailable.
6. Nothing in the Charter Law requires that the District accept supplemental information after the date of the District's hearing on the application.
7. City College failed to demonstrate sustainable support by teachers, parents, students, and other community members.
8. City College has failed to establish that the school will provide a comprehensive program for all students who may choose to enroll, in compliance with to P.S. § 17-1717-A(e)(2)(ii) of the Charter School Law.
9. The Commonwealth Court has found that the proper standard of review that is to be applied by the CAB in charter denial cases is "*de novo.*" *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (Pa.Cmwlt. 2000).

IV. Discussion

A. Evidentiary Issues

Before addressing the merits of the appeal, several preliminary evidentiary matters must be addressed. City College seeks to include five items in the certified record: 1) an opinion letter from Sylvester Damianos, R.A.; 2) Photographs of the facility, including interior and exterior photos; 3) A lease letter of intent; 4) A report of William. W. Penn, Ed. D.; and 5) Letters of support garnered as a result of a public meeting convened by the City College.

1. Letter from Sylvester Damianos

Damianos was an architect, who toured the proposed charter school facility and opined upon whether it could be used as a school. The District's denial however was not based on the facility to be used. As a result this document is irrelevant to the appeal before the CAB. In addition, this is information that could have been made available to the District in the original application. This information is not supplemental information as contemplated by the Charter Law. The CAB has not, therefore, considered the report of Sylvester Damianos in reaching its decision.

2. Photographs of the Facility

These items suffer from the same deficiency as the Damianos letter in that the District's denial was not based on the facility to be used. Thus this document is also irrelevant to the matter before the CAB. In addition, these photographs could have been made available to the District in the original application. This information is not supplemental information as contemplated by the Charter Law. The CAB has not, therefore, considered the photographs of the facility in reaching its decision.

3. Lease Letter of Intent

The CAB has not considered the lease letter of intent in reaching its decision for all the same reasons as stated herein above.

4. Report of William W. Penn, Ed. D

This item is a review of the District's decision to deny the City College application for a charter. This report seeks to supplant the review of the CAB. It is the obligation of the CAB to review the application and the denial of the application to see if the District acted properly. There is no provision for expert testimony on this issue to be presented to the CAB. The CAB has not, therefore, considered the report of William W. Penn in reaching its decision and excludes it from the record.

5. Letters of Support

The final evidentiary issue concerns a number of letters of support for City College. Only one of those letters is dated. It is not possible to determine when the remainder of the letters were gathered. The Charter Law contemplates that information that was not available at the time of the District's decision may be considered by the CAB. It is clear that the intent of the law is to allow for the admission of information that does not exist at the time of that decision. It is clear that the intent of the Charter Law was to require that the applicant submit all information that it could produce that supports its application at the time of the application. The law does not provide for serial supplementation of the record after deliberation by the District. If information did not exist, and could not have existed, at the time of that hearing, the CAB could decide to consider that information in reaching its decision. These letters of support could have been made

available to the District. Since it could have been available, the CAB did not consider it in reaching its decision.

B. Discussion of Application Denial

The District based its denial of the City College application on four factors:

1. The proposed charter does not provide the School District of Pittsburgh with expanded choices in the types of students in educational opportunities currently being offered by the school system, and is not able to serve as a model to other schools in the system.
2. The proposed charter does not have plans to meet the needs of students with disabilities, bilingual and at-risk students.
3. The proposed charter does not have sustained support from teachers, parents, students and community.
4. The proposed charter does not comply with all federal, state and local regulations pertaining to health, safety, civil rights and education of students, specifically in the areas of IDEA and NCLB.

1. Model to Other Schools

The District has asserted that the proposed charter school does not provide the District with expanded choices in the type of educational opportunities offered, and that it would not serve as a model to other schools in the District.

In asserting that the proposed charter school does not provide the District with expanded choices, the District has misconstrued the intent behind the legislative promotion of charter schools. There is no definition in the Charter School Law as to what is meant by expanded choices. As the CAB stated in *Sugar Valley Rural Charter School*, CAB Docket No. 1999-4, “The purpose of the statute is to **encourage** the use of innovative methods, not to exclude charter applicants whose proposed methods may not be as innovative or as different as the school district believes they should be.” (emphasis in original.)

That said, however, the charter school must to some extent expand the curricular choices available to students and encourage innovative and different teaching methods. 24 P.S. §17-1702-A(3)&(5). Based upon our review of the entire record, we find, as did the District, that City College does not satisfy these requirements. As set forth in the report of the District’s review team, many of the curricular areas posited as being unique in the application, actually were not and such program were available, in many cases, throughout the District. Answer to Appeal, Exhibit B, p. 8. For example, one of the aspects touted by City College is the availability tutoring to students and their proposed regular participation in tutoring. However, tutoring is also available in the District, in all grades, at all schools and on every school day. Also, at the CAB hearing, one of the City College representatives indicated that the advisory system was the most innovative aspect of the proposed school. However, even accepting that premise, the Charter School Law would appear to require more than one innovation, especially for a charter school to be able to serve as a model. Thus, we adopt the finding of the District and conclude that the applicant failed to establish that it can serve as a model for other public schools.

2. Comprehensive Learning Experience

The Charter School Act states, in pertinent part, “[A] charter school shall not discriminate in its admissions policies or practices on the basis of intellectual ability....” 24 P.S. § 17-1723-A(b)(1) The act further states that “[A] charter school shall not unlawfully discriminate in admissions, hiring or operation.” 24 P.S. § 17-1715-A(3). There is ample evidence in the record to show that the actual operation of the school will result in discrimination.

It is clear from the record that the founders of City College intended that the school be operated as a college preparatory school. For example, the Preface to the application states,

“City College Prep Charter School (CCP) is a tuition-free college preparatory charter school...”

The application further states in its mission statement, “This outstanding academic program will provide an excellent opportunity to all students of multiple capabilities to improve their potential and will ensure that they receive necessary preparation for post-secondary education”

The application does not provide plans to meet the needs of students who do not intend to pursue a post-secondary education. Nor does it address plans to deal with the needs of students who are not intellectually capable of pursuing post-secondary education.

Based on the clear intent of the founders of City College that it be operated as a college preparatory school and the lack of programs intended to address the needs of students who do not desire to attend college or other post-secondary education or to address the needs of students with disabilities, including those students with autism, other health impairments, emotional disturbances and physical challenges, the CAB concurs with the District and finds that City College would not offer a comprehensive learning experience as required by 24 P.S. § 17-1717-A(e)(2)(ii).

3. Sustainable Support

City College must show “demonstrated sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing...” 24 P.S. § 17-01717-A(e)(2)(i). This support must be demonstrated when the application is submitted and considered. *Id.* The District determined that the City College Application did not demonstrate sustainable support for the charter school plan by teachers, parents, other community members and students within the District.

The indicia of support must be measured in the aggregate rather than by individual categories. Although the failure of an applicant to demonstrate strong support in any one

category is not necessarily fatal, a reasonable amount of support in the aggregate must be demonstrated. In this case, there is no evidence of support from teachers. In addition, there is no evidence to show that the supporters of the school would continue to support it, if it was clearly understood that the school would not be able to limit its student body to students who plan to seek post-secondary education. In addition, the application did not provide any pre-applications or any other evidence of potential student enrollment.

Thus CAB finds that the District's determination that City College failed to demonstrate sustainable support for the charter school by teachers, parents, other community members and students is supported by the record.

4. Compliance with Federal, State, and Local Regulations

As written, it is not clear that the District intended to include deficiencies with the site in its denial of the application. In its brief, the District argues that was the intent.

The Charter Law specifically provides that, "the reasons for the denial, including a description of the deficiencies in the application, shall be **clearly** stated in the notice," 24 P.S. § 17-1717-A(5) (emphasis added). Accordingly, the CAB will consider only the deficiencies specifically and clearly listed in the District's November 23, 2005, letter. Where a denial does not specifically mention a failure to satisfy a requirement of the Charter Law, the CAB has consistently found that the District has agreed that the applicant has met the requirement. See In re: Wonderland Charter School, CAB 1999-3.

Since it is not clear from the November 23, 2005, letter that the District found the site to be deficient, the CAB will not consider any arguments related to the site in making its decision.

With regard to other compliance issue, there is no evidence before the CAB that City College would not comply with all Federal, State and local requirements. Thus this ground for denying the application is specifically rejected.

V. Conclusion

City College has not shown sustainable support from parents, teachers, other community members and students as required by the Charter School Law. Nor has it shown that it will offer a comprehensive learning experience to all students who might be admitted. Due to the failure to show sustainable support and the failure to show that a comprehensive learning experience will be provided, the decision of the District to deny the City College Charter School Application is upheld.

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ORDER

AND NOW, this 29th day of August, 2006, based on the foregoing and the vote of the Board¹, the appeal of the City College Prep Charter School is hereby **DENIED**.

For the State Charter School Appeal Board

s/s
Gerald L. Zahorchak, D.Ed.
Chairman

Date Mailed 08/29/06

¹ At the Board's June 27, 2006 meeting, the appeal was denied by a vote of 4-0 with members Bunn, Reeves, Shipula, and Zahorchak voting to deny the appeal.