

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

IN RE: :
Appeal of the Family Choice Charter School :
from the Denials of the Charter School : Docket No. CAB 2006-05
Application by the Towanda Area School :
District; Wyalusing Area School District; and :
the Northeast Bradford School District :

I. INTRODUCTION

This matter is before the Pennsylvania State Charter School Appeal Board (CAB) on Appeal by the Family Choice Charter School, Inc. (Charter School) from the denials of its Charter School Application by the Towanda Area School District; the Wyalusing Area School District; and the Northeast Bradford School District. The Charter School applied to these three school districts, as well as five others, to form a regional Charter School under 24 P.S. §17-1718-A. Each of the eight school districts rejected the Charter School’s application but only the three rejections that are before CAB have been appealed.

II. FINDINGS OF FACT

1. The Charter School submitted an Application for Charter Approval to the Northeast Bradford School District on or about November 11, 2005. (Exhibit 2 of the Certified Record.)
2. Thereafter, the School District Board of Directors of the Northeast Bradford School District, pursuant to 24 P.S. §17-1717-A(d) of the Charter School Law, held a Public Hearing concerning the Charter School’s Application on December 5, 2005. (Exhibit 4 of the Certified Record.)

3. On February 13, 2006, the Northeast Bradford School District executed Resolution 1-2006, which denied the Charter School's Application. (Exhibit 5 of the Certified Record.)
4. The Northeast Bradford School District provided the Charter School with a letter of deficiencies dated February 14, 2006, outlining the reasons for denying the Application as required under Section 1717-A(e)(5) of the Charter School Law. (Exhibit 6 of the Certified Record.)
5. Specifically, the Northeast Bradford School District found various deficiencies in the Charter School's Application, which included but were not limited to:
 - Failure to demonstrate sustainable support as required by Section 17-1717-A(e)(2)(i);
 - Lack of a proposed operating site located within the Northeast Bradford School District;
 - Failure to describe an adequate instructional plan and curriculum that could be reviewed and evaluated and that would provide comprehensive learning opportunities for pupils, in violation of Sections 1719-A(5) and 1717-A(e)(2)(ii) and 17-1702-A(1), (2);
 - Failure to describe an accountability system for meeting measurable academic standards as required by Sections 17-1702-A(6) and 17-1719-A(5);
 - Failure to demonstrate a financial plan with reasonable revenue and cost projections that would support or sustain the proposed program in violation of Section 1719-A(9);

- Failure in adequate planning to accommodate students with special needs in violation of Section 17-1732-A;
- Failure to comply with the legislative intent of the Charter School Law;
- Failure to provide any evidence that the Charter School would serve as a model for other public schools in violation of 17-1717-A(e)(2)(iv).

(Exhibit 6 of the Certified Record.)

6. The Charter School submitted an Application for Charter Approval to the Towanda Area School District on or about November 11, 2005. (Exhibit 7 of the Certified Record.)
7. The Towanda Area School District's Board of Directors, pursuant to 24 P.S. §17-1717-A(d) of the Charter School Law, held a Public Hearing on December 19, 2006, concerning the Charter School's Application. (Exhibit 10 of the Certified Record.)
8. The Towanda Area School District issued a Resolution dated February 21, 2006 denying the Charter School the Application. (Exhibit 11 of the Certified Record.)
9. The Towanda Area School District thereafter provided the Charter School with a letter of deficiencies outlining the reasons for denying the Charter School Application, as required under Section 1717-A(e)(5) of the Charter School Law. (Exhibit 12 of the Certified Record.)
10. Specifically, the Towanda Area School District found various deficiencies in the Charter School's Application, which included but are not limited to:
 - Lack of demonstrated sustainable support for the Charter School plan as required by Section 1717-A(e)(2)(i);

- Failure to demonstrate that the Charter School will provide comprehensive learning experiences to students as required by Section 1717-A(e)(2)(ii);
- A financial plan that was clearly insufficient to support the applicant's goals and mission;
- Providing only an address of the proposed physical facility;
- Failure to demonstrate that its proposed purpose and mission comply with the Legislative intent of the Charter School Law;
- Failure to demonstrate how it will serve as a model for other public schools as mandated by Section 1717-A(e)(2)(iv).

(Exhibit 12 of the Certified Record.)

11. The Charter School submitted an Application for Charter approval to the Wyalusing Area School District on or about November 11, 2005. (Exhibit 14 of the Certified Record.)
12. The Wyalusing Area School District's Board of Directors, pursuant to 24 P.S. §17-1717-A(d) of the Charter School Law, held a Public Hearing on December 5, 2005, concerning the Charter School's Application. (Exhibit 18 of the Certified Record.)
13. On February 13, 2006 the Wyalusing Area School District voted unanimously to deny the Charter School's Application. (Exhibit 20 of the Certified Record.)
14. Thereafter, the Wyalusing Area School District provided the Charter School with a letter of deficiencies outlining the reasons for the denial of the Application, as required under Section 1717-A(e)(5) of the Charter School Law. (Exhibit 21 of the Certified Record.)

15. Specifically, the Wyalusing Area School District found various deficiencies in the Charter School's Application, which included but were not limited to:

- Lack of demonstrated sustainable support for the Charter School by teachers, parents, other community members and students as required by Section 1717-A(e)(2)(i);
- Inadequate financial and audit plans;
- Failure to provide a description of an address for the physical facility in which the Charter School will be operated and the ownership and/or lease arrangements thereof as required by Section 17-1719-A(11) of the Charter School Law;
- Failure to show how the Charter School will improve pupil learning and did not demonstrate an increased learning opportunity for students;
- No encouragement for the use of innovative teaching methods;
- Lack of an effective accountability system for meeting measurable academic standards;
- Failure to demonstrate how the Charter School would serve as a model for other public schools as required by Section 1717-A(e)(2)(iv) of the Charter School Law.

(Exhibit 21 of the Certified Record.)

16. On April 25, 2006, the Charter School filed a Motion for Hearing in the Court of Common Pleas of Bradford County against the Towanda Area School District; the Wyalusing Area School District and the Northeast Bradford School District.

(Exhibit 23 of the Certified Record.)

17. The Charter School's Motion for Hearing requested that the Court issue a Decree establishing the sufficiency of the Signature Petition for each of the Defendant School Districts. (Exhibit 23 of the Certified Record.)
18. By Court Order dated May 4, 2006, the Court of Common Pleas of Bradford County decreed that the Charter School's Petition to Appeal was sufficient. (Exhibit 24 of the Certified Record.)
19. On August 30, 2006, the Charter School filed a Petition with CAB which was docketed at CAB 2006-5.
20. By letter dated September 19, 2006, CAB informed both the Charter School's Chief Administrative Officer and Counsel for the Towanda Area School District, the Wyalusing Area School District and the Northeast Bradford School District, that CAB had received the Charter School's Petition to Appeal the denials of the Charter School's Applications, and appointed a Hearing Officer, (Exhibit 27 of the Certified Record at pgs. 1-2.)
21. Thereafter, on December 5, 2006, the Hearing Officer held a Pre-Hearing Conference through a telephone call with the Charter School's Chief Administrative Officer, and Counsel for the Towanda Area School District, Wyalusing Area School District and the Northeast Bradford School District. (Exhibit 27 of the Certified Record at pgs. 14-16.)
22. The Charter School, the Towanda Area School District, the Wyalusing Area School District and Northeast Bradford School District waived their respective rights to have a Hearing pursuant to 2 Pa.C.S. §§501-508 and 1 Pa.Code Chapters

31-35, pertaining to the Appeal of the School Districts' denials to grant a Charter.
(Exhibit 25 and Exhibit 26 of the Certified Record.)

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 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 17-1719-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 has not demonstrated sustainable support for the Charter School program by teachers, parents, other community members and students as mandated by Section 17-1717-A(e)(2)(i).
4. As the Certified Record in this matter contains at best, minimal evidence of demonstrated sustainable support for the Charter School by teachers, parents, other community members and students as mandated by the Charter School Law, it is not necessary for CAB to address or otherwise analyze the other factors relied

on by the Towanda Area School District, the Wyalusing Area School District and the Northeast Bradford School Districts to deny the Charter School Applications.

IV. DISCUSSION

The Towanda Area School District, the Wyalusing Area School District and the Northeast Bradford School District (School Districts)¹ based their decisions to deny the Charter School's Applications upon numerous deficiencies. In reviewing the School Districts' decisions and the Charter School's objections to the decisions, CAB has found that one specific deficiency is so substantial that CAB does not believe it necessary under the circumstances to address in great detail the other deficiencies raised by the School Districts to support their denials of the Charter School's Application. As such, CAB concludes that the School Districts properly dismissed the Charter School's Applications for lack of sustainable support and has no choice but to deny the Charter School's Petition of Appeal.

The School Districts, in denying the Charter School's Applications, concluded that it failed to demonstrate that there is sustainable support for the Charter School by teachers, parents, other community members and students. In reaching this conclusion, the School Districts argue that the Certified Record contains little or no evidence of sustainable support by the Charter School. The School Districts further explain that:

“Mr. Hall² provided nothing in the way of a sustainable amount of signatures of applicable community members clearly indicating their support for the charter plan, no surveys indicate broad support from the community, no letters of intent to enroll by parents of children in the community, no pre-enrollment information of students who plan on attending the charter school, and little to no

¹ The three (3) School Districts which denied the Charter School's Applications for Appeal, were all represented by the same attorney. As such, the arguments that were presented by the School Districts' attorney were offered as collective arguments in favor of all of the School Districts' denial of the Charter School's Applications.

² Scott Hall is the Chief Administrative Officer for the Charter School.

support at the public hearing from teachers, parents, students, and other community members.”³

CAB agrees with the School Districts’ assertions as to the Charter School’s inability to demonstrate sustainable support for the Charter School. Section 17-1717-A(e)(2)(i) of the Charter School Law mandates that a Charter School Application must demonstrate sustainable support for the Charter School plan by teachers, parents, other community members and students including comment received at the Public Hearing held pursuant to the Charter School Law.

CAB has thoroughly reviewed the Certified Record in this case and agrees with the School Districts that the record contains minimal, if any, evidence to demonstrate that there is a broad level of community support for the Charter School. In fact, the Charter School’s Applications⁴ did not contain any petitions or other documents demonstrating community support nor was any such evidence presented at the Public Hearings held by the School Districts.⁵

In its Brief, the Charter School points specifically to a section in the Charter School Applications presented to each of the School Districts which it asserts, fulfills the requirements to demonstrate sustainable community support. CAB has reviewed these sections of the Charter School’s Applications⁶ which are recitations and assurances of community support. However, such references to community support contained within a narrative, written by the applicant are insufficient to prove that the proposed Charter School has community support.

³ In pertinent part from the Towanda Area School District, Wyalusing Area School District and Northeast Bradford School Districts’ Brief in Support of the Denial of the Application of the Family Choice Charter School dated January 5, 2007 at p. 8.

⁴ Exhibit 2, Exhibit 7 and Exhibit 14 of the Certified Record.

⁵ Exhibit 4, Exhibit 10 and Exhibit 18 of the Certified Record.

⁶ The Charter School Applications, as to this specific section, were identical in all of the three (3) Applications filed with the School Districts. Exhibit 2 at 39-41; Exhibit 7 at 39-41 and Exhibit 14 at 39-41 of the Certified Record).

CAB also found comments made by the Charter School's Representative during CAB's meeting on January 9, 2007 to be instructive on this issue of demonstrating sustainable support.

“MR. SHIPULA: The support, you mentioned 397 individuals that you spoke with. Was there any documentation or any reference to those individuals being from the district or were they --

MR. HALL: There is nothing in the documentation other than my word that we've gone around and conducted focus meetings. Prior to us even having the focus meetings, we'd gone out. We talked with a number of people trying to decide if this was something that would be considered. Is it something that was viable in our location? We talked to a couple of engineers up at Dupont, what their thoughts and feelings were. Dupont is one of the local -- one of the large industries in our area. They said they thought it was a great idea.

MR. SHIPULA: But I mean as far as parents.

MR. HALL: And they were parents. Those were parents as well, a whole host of people; but I don't have petitions specifically stating, you know, from them. But you've got my word as an officer in the military and so forth that I've talked to literally hundreds of people.

MR. SHIPULA: But there was no documentation or petition or so forth?

MR. HALL: Correct.”⁷

While CAB appreciates the Charter School's candor during the CAB meeting in this matter, CAB finds that the School Districts properly denied the Charter School's Applications for failing to present evidence that there is demonstrated, sustainable support for the Charter School plan by teachers, parents, other community members and students as required by the Charter School Law. In reaching this finding, CAB relies upon the significant body of its decisions in charter school appeals since 1999, many of which involve issues of support, the

⁷ In pertinent part from the transcript of the CAB meeting conducted on Tuesday, January 9, 2007 at pgs. 25-26.

means by which support may be demonstrated and even the extent of support that CAB has found sufficient to meet the legal standard. CAB's determinations in this regard have largely been adopted by the Commonwealth Court of Pennsylvania in the body of charter school jurisprudence represented by their discussions. *See, eg.* *Brackbill v. Ron Brown Charter School*, 777A.2d 131 (Pa. Cmwlth. Ct. 2001), *McKeesport Area School Dist. v. Propel Charter School McKeesport*, 888 A.2d 912 (Pa. Cmwlth. Ct. 2005).

As the Charter School clearly failed to satisfy this mandated element in its' application, it is not necessary for CAB to address in detail the other deficiencies found by the School Boards in denying the Charter School's Application. However, CAB has reviewed the entire record and agrees with and adopts those findings as well. For example, the applications are deficient in their descriptions of the curricula and assessments that will actually be used by the Charter School and in their discussion of how the curriculum will be implemented and how selected assessments will be administered to students. The charter application is an outline that lacks specific plans concerning how the elements of that outline will be applied to the students and their program. In addition, the applicant failed to show how the Charter School would serve as a model and did not contradict the contrary assertions of the districts. The applicant also failed to satisfy the facility requirements of law. The charter applications each contained a listing of eight potential alternative sites for the school and indicated that the Charter School intended to lease one of those sites. However, there is no evidence in the record that the owner of any facility had been contacted and was a willing lessor of the building. In fact, two of the buildings are owned by the Towanda Area School District and counsel testified before CAB that these buildings were not available.⁸

⁸ CAB meeting transcript at pg. 24

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ORDER

AND NOW, this 5th day of March, 2007, based upon the foregoing and the vote of this Board⁹, the Appeal of the Family Choice Charter School, Inc. is **DENIED** and the Charter School Application Denials of the Towanda Area School District, Wyalusing Area School District and the Northeast Bradford School District are hereby **AFFIRMED**.

For The State Charter School Appeal Board

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

Date Mailed: 3/5/07

⁹ At the February 20, 2007 meeting of the Board, the application was denied by a vote of 5-0-1, with members Zahorchak, Barker, Green, Reeves, and Shipula voting to deny and Ms. Schweighofer abstaining.