

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

In Re: Propel Charter School – Duquesne :
Appeal from Failure of Duquesne : Docket No. CAB 2006-06
City School District to Act :

OPINION AND ORDER

I. Introduction

Propel Charter School – Duquesne (“Propel”) submitted an application for a charter to the Duquesne City School District (“Duquesne”) on June 6, 2006. Duquesne’s Board of Control held a public hearing regarding Propel’s charter school application on July 18, 2006. On September 26, 2006, Duquesne’s Board of Control held a public meeting and one item on the agenda was Propel’s charter school application. Duquesne’s Board of Control did not act on Propel’s application at the September 26, 2006 public meeting or at any subsequent time.

On October 20, 2006, the State Charter School Appeal Board (“CAB”) received a Petition of Appeal from Propel (“Appeal”). This Appeal was filed as a direct appeal pursuant to section 1717-A(g) of the Charter School Law (“CSL”) because Duquesne’s Board of Control allegedly failed to timely act on Propel’s charter school application. In response to Propel’s Appeal, Duquesne filed a Motion to Dismiss Appeal (“Motion”) and Brief in Support thereof on November 14, 2006. On November 28, 2006, Propel filed its Answer to Duquesne’s Motion and a Brief in Support thereof. Argument on the Motion was held on February 20, 2007.

II. Discussion

Section 1717-A of the CSL provides procedures for the establishment of a charter school. 24 P.S. §17-1717-A. These procedures require that a charter school applicant submit an application to the school district in which the charter school is to be located. 24 P.S. §17-1717-

A(c). The school district’s board of school directors must hold at least one public hearing within forty-five (45) days of receipt of an application. 24 P.S. §17-1717-A(d). The board of school directors must make a final decision whether to grant or deny a charter no earlier than forty-five (45) days and no later than seventy-five (75) days from the date of the first public hearing. 24 P.S. §§17-1717-A(e). If the board of school directors fails to act within these time periods, the charter school applicant may file its application as an appeal to CAB. 24 P.S. §17-1717-A(g).

There is no factual dispute that Duquesne failed to take action to grant or deny a charter to Propel within the time periods prescribed by the CSL. However, Duquesne argues that it was not required to follow the CSL time periods because Duquesne is an empowerment school district under the Education Empowerment Act, 24 P.S. §§17-1701-B *et seq.*, and that the Empowerment Act does not require empowerment school districts to adhere to certain timelines set forth in section 1717-A of the CSL. 24 P.S. §17-1708-B.

Section 1708-B of the Empowerment Act provides that the board of directors or the board of control established under the Empowerment Act “**may** approve a charter school pursuant to [the CSL]. 24 P.S. §17-1708-B(a)(emphasis added). In addition, charter schools approved pursuant to Section 1708-B “**shall not** be subject to Section 1717-A(b), (c), (d), (e), (f), (g), (h) and (i)....” 24 P.S. §17-1708-B(b). Subsections (d) and (e) of Section 1717-A pertain to the time periods by which a school district is to grant or deny a charter to a charter school applicant. Based on Section 1708-B, Duquesne argues that as an empowerment school district it was not required to meet the time periods prescribed by Section 1717-A(d) and (e) of the CSL, and therefore, Propel’s appeal to CAB is not ripe for consideration and CAB lacks jurisdiction over this matter.

In response, Propel argues that Section 1708-B creates an option for empowerment school districts to approve charter schools but it does not create an option for disapproval or inaction. Thus, the charter applicant argues that Section 1717-A of the CSL still applies to Duquesne's inaction on the Propel charter application. Propel argues, in the alternative, that even if this option set forth in Section 1708-B applies to disapproval and inaction by an empowerment school district, Duquesne specifically made an election under 1708-B and chose to proceed in accordance with Section 1717-A of the CSL.

CAB finds that Section 1708-B does allow for alternative processes by which empowerment school districts may consider charter school applications, and that these alternative processes apply both to approval or disapproval of applications. Although Section 1708-B references the approval of charter schools, some of the subsections of Section 1717-A referenced in Section 1708-B pertain to disapproval or inaction by a school district. For example, subsection (f) advises that if a charter school application is denied, the charter school applicant may revise and resubmit the denied application to the school district or the charter school applicant may appeal to CAB. In addition, subsection (g) provides that if a school district fails to meet the time periods set forth in subsections (d), (e) and (f), the applicant is permitted to file its application as an appeal to CAB. Thus, Section 1708-B must be read as applying to either situation regardless of its specific language.¹

However, CAB disagrees with Propel's analysis of the effect of the district's selection under Section 1708-B(a). CAB construes this provision as allowing an empowerment school district to either decide to follow the process set forth in Article XVII-A when receiving and considering a charter school application, or to ignore Article XVII-A and develop its own

¹ To conclude otherwise would violate the statutory construction rule that provisions must be read to avoid an absurd result. 1 Pa.C.S.A. §1922(1).

process and criteria. However, in either event, subsection (b) must be read independent of subsection (a) and its language must not be ignored. 1 Pa.C.S.A. §§1921(a), 1922(2).

Subsection 1708-B(b) specifies that the provisions regarding establishment of a charter school in Article XVII-A do not apply, even if an empowerment district chooses to otherwise follow other requirements (such as those detailing the necessary components of an application, *see*, 24 P.S. §1719-A), with the exception of subsection 1717-A(a), which controls who may form a charter school.

In reviewing Propel's charter application, Duquesne chose to follow the process set forth in Section 1717-A. During the July 18, 2006 public hearing regarding Propel's application, the chairman of Duquesne's Board of Control referenced the CSL and even Section 1717-A. (*See*, Transcript, attached as Exhibit A to Propel's Brief). However, notwithstanding the references to Section 17-1717-A in the chairman's comments, the Education Empowerment Act controls and charter school applicants and the procedure for consideration and appeal in an empowerment district cannot be subject to the temporal and other requirements of section 1717-A(b) through (i).

CAB is not persuaded by Propel's argument that one must read the subsections of Section 1708-B together and that the election made under subsection (a) obviates the language of subsection (b). The rules of statutory construction do not support such a result. Duquesne clearly decided to follow the provisions of the CSL, however, this election did not include the time periods set forth in Section 1717-A for granting or denying a charter to Propel.

Thus, Duquesne's Motion to Dismiss is granted and Propel's application is remanded to the district for appropriate action consistent with the CSL.

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ORDER

AND NOW, this 5th day of June, 2007, based on the foregoing Discussion and the vote of CAB,² the Motion to Dismiss filed by the Duquesne City School District is **GRANTED**, and Propel Charter School – Duquesne’s application is **REMANDED** to Duquesne.

For the State Charter School Appeal Board

Diane Castelbuono
Chairperson

Date Mailed:

² At its May 15, 2007 meeting, CAB voted 6-0 to grant Duquesne’s Motion to Dismiss with members Barker, Green, Reeves, Schweighofer, Shipula and Castelbouno all voting to grant the Motion.