

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

In Re: Washington Classical Charter School :
 :
 v. : **CAB Docket No. 2012-05**
 : **Appeal from Denial of Charter**
Trinity Area School District :

OPINION

This matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on an appeal by Washington Classical Charter School (herein “WCCS” or “Applicant”) from the denial of its Charter School Application (“Application”) by the Trinity Area School District (“District”).

PROCEDURAL HISTORY

On November 15, 2011, WCCS submitted its Application to the District to open a charter school in the District for students in kindergarten through sixth grade. A public hearing was held before the District’s Board of School Directors (“Board”) on December 19, 2011. Members of the Board of Trustees of WCCS testified and provided the Board with additional materials in support of the Application, including five additional letters of support, fifteen e-mail statements of support from the public, and 83 additional signatures in support of the Application. The Board denied the Application on March 1, 2012.

On May 18, 2012, WCCS filed its Petition for Sufficiency with the Court of Common Pleas of Washington County in order to be able to appeal the decision of the District. The District did not challenge any of the signatures in the Petition and, on June 20, 2012, the Court

entered an Order granting WCCS permission to appeal to CAB and directed the District to file the certified record. On July 13, 2012, CAB acknowledged receipt of WCCS Petition with CAB. On July 30, 2012, the District, through its counsel, filed the certified record with CAB as well as a Motion to Quash or in the Alternative for a More Definite Statement of the Matters Complained Of On Appeal. The matter was assigned to a hearing officer for the development of the record and to conduct a hearing, if necessary.

On October 25, 2012, the hearing officer issued a notice of prehearing conference and a schedule for filing prehearing statements. The prehearing conference was held on November 28, 2012. During the prehearing conference the parties agreed to accept the certified record as filed by the District. The parties also agreed that a copy of the Core Curriculum should be made part of the certified record. On December 28, 2012, a Post Hearing Conference Order was issued. On January 7, 2013, Applicant filed its Brief in Support of the Appeal and Proposed Findings of Fact. On January 23, 2013, the Applicant filed an Amended Petition to Appeal the Denial of a Charter School Application with the hearing officer. The record closed upon the District filing its Brief in Support of the Appeal and Proposed Findings of Fact on April 17, 2013.

FINDINGS OF FACT

1. WCCS is a non-profit corporation, organized and existing under the laws of the Commonwealth of Pennsylvania having as its purpose “the exclusively charitable purpose of educating children in Commonwealth of Pennsylvania,” with its principal place of business at 237 McConnell Road, Canonsburg, PA 15317. (Petition of Appeal, ¶ 1).
2. WCCS, on November 15, 2011, filed its Application with the District to operate a charter school in the District to be called Washington Classical Charter School to be located at

1530 Hillcrest Avenue, Strabane Township, in Washington County. (Petition of Appeal, ¶ 3).

3. On December 19, 2011, the Board of the District held a public hearing on the Application pursuant to a duly published public notice. (Record of December 19, 2011 meeting).
4. Members of the WCCS Board and of its Advisory Committee testified. (Record of December 19, 2011 meeting).
5. At the hearing WCCS also provided copies of its sample unit lesson plan, digital copies of its charter application, five additional letters of support, fifteen e-mails of public statements of support and 83 additional signatures on its petition in support of the WCCS Application. (Supplementary Materials).
6. The WCCS curriculum proposes to use the structure of a classical education, the sequence of the Core Knowledge Curriculum and the partnerships found in a whole child approach to education to offer a quality education to prepare students for the 21st century. (Application at 50).
7. WCCS has consulting relationships with the education faculty of California University of Pennsylvania and Washington and Jefferson College in the fields of primary source instruction and instructional leadership. (Application at 2).
8. WCCS intends to contract with health care and special education professionals to provide these services to its students and has provided for such costs in its budget. (Application at 93).

9. WCCS has identified the following as innovative aspects of its program:

- Extended school year to 190 days with the school concluding in late June and starting up in mid-August thereby reducing the loss in continuity of the traditional summer break in the traditional education calendar.
- Use of the educational tool known as “looping” students and teachers so that teachers follow students as they progress through grades.
- A Personal Student Achievement Plan (PSAP) for each student that identifies strengths and weaknesses and goals and objectives assessed on a weekly basis with monthly reports to parents for students at master level (80% or better) and weekly for those achieving at below master level.
- Science, Technology, Engineering and Mathematics (STEM) teaching method.
- Use of the Core Knowledge Curriculum.
- Latin instruction for all students beginning in kindergarten.

(Application, *passim*).

10. WCCS has identified a property at 1530 Hillcrest Avenue in Washington, Pennsylvania, known as the Patten-Kopka Building which consists of two floors, twelve classrooms, two offices, a multipurpose area, full-service kitchen and storage area. At the time of the hearing, the building was being used by a school program, but that school has informed the landlord that it would be vacating the building at the end of the 2011-2012 school year. (Application at 70).

11. WCCS acknowledges that certain improvements such as replaced windows and electrical repair will need to be done before the building can be used as an elementary school.

12. The landlord has signed a letter of intent to rent the building to WCCS at a monthly rent of \$8,500. (Application at 70-72, Appendix F).
13. The building is compliant with applicable building codes and accessible for individuals with disabilities. (Application at 71).
14. WCCS used data from an online survey of the community which the District conducted in 2010 to 2011 to assess the need for a charter school in the District.
15. Survey responders were asked whether they favored a charter school. Ten to 14% of parents responded that they were looking for something different such as more science, technology and engineering. (Notes of Transcript (“N.T.”) at 89-90).
16. There is no evidence that the positive response in the survey concerned WCCS in particular, or “Classical Education” with a focus on Latin instruction.
17. In its application, WCCS submitted a petition in support of a charter school in the District containing 79 signatures of which only twelve of the signatories were from District residents. At the December 19, 2011 hearing of the Board, WCCS presented five additional letters of support, fifteen emails of support, and 83 additional signatures. (Supplementary Materials).
18. WCCS plans to start its first school year with kindergarten to third grade and to add an additional grade each year until the school reaches its full complement of K-6.
19. WCCS projects enrolling 190 students in its first year in grades K-3, adding 50 students in each school year until the 2016-17 school year. (Application at 2-7).

20. The Charter School would be governed by a seven-member Board of Trustees comprised of parents selected by the school's founders and members of the community; other boards and committees would also be available for parent participation. (Application at 55-57).
21. The Board of Trustees would be responsible for accountability and performance assessments and annual reports to the District and the Commonwealth. (Application at 57-61).
22. At the public hearing, six founding members of the WCCS testified in favor of the charter school; two are elementary teachers and two are post-secondary teachers. (N.T. at 7-36).
23. At the public hearing, six members of the public asked questions or testified; one member of the public questioned the need for a charter school. (N.T. at 40-59).
24. One individual opposed charter schools generally. (N.T. at 52-53).
25. Three members of the public testified in favor of charter schools generally as providing parents in the District with more choices. (N.T. at 54-59).
26. WCCS has no startup capital. When the charter is awarded, the Board believes that it will be able to move forward in awarding contracts for financial services, food, nursing, and other services. (N.T. at 73-75).

CONCLUSIONS OF LAW

1. The appeal is properly before the State Charter School Appeal Board ("CAB") under the Charter School Law ("CSL"). 24 P.S. §§ 17-1701-A(i)(1).
2. CAB has the authority under the CSL to agree or disagree with the findings of the School District based upon its review of the certified record. 24 P.S. § 17-1717-A(i)(6).
3. The Application and supporting material demonstrate that WCCS can be a model for

other public schools, and can provide different and innovative teaching methods and offer expanded choices in education pursuant to section 1717-A(e)(2)(iv) of the CSL. 24 P.S. § 17-1717-A(e)(2)(iv).

4. The WCCS Application and supporting material contain a financial plan that complies with section 1719-A(9) of the CSL. 24 P.S. § 17-1719-A(9).
5. WCCS proposes a financial accounting process that conforms to state law. (Application at 74).
6. The needs assessment derived from the District's survey and the number of signatures on WCCS petition do not support the projections of WCCS for initial or subsequent enrollment.
7. The Applicant has not demonstrated sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing in accordance with section 1717-A(e)(2)(i) of the CSL. 24 P.S. § 17-1717-A(e)(2)(i).
8. The WCCS Application and supporting material fail to demonstrate that the school can provide comprehensive learning experiences to its students. 24 P.S. § 17-1719-A(e)(2)(ii).
9. The Application fails to meet all of the requirements of the CSL.

DISCUSSION

A. Standard of Review

Section 1717-A(e)(2) of CSL provides that a charter school application is to be evaluated based on the following criteria:

(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 held 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.

24 P.S. § 17-1717-A(e)(2).

In an appeal before CAB, the decision made by the local board of school directors shall be reviewed on the record as certified by the local board of school directors. CAB shall give due consideration to the findings of the local board and specifically articulate its reasons for agreeing or disagreeing with those findings. 24 P.S. § 17-1717-A-(i)(6).

The Commonwealth Court has held in the case of the denial of a charter school application that “[t]he General Assembly has unquestionably granted [CAB] the authority to substitute its own findings and independent judgment for that of the local board.” *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 461 (Pa. Cmwlth. 2000).

Therefore, while giving due consideration to the vote of the School Board, CAB independently reviews the record in accordance with the requirements of the CSL.

B. Preliminary Matter

WCCS contends that the Board did not properly serve WCCS with its decision. The decision bears a March 1, 2012 issue date. The record further shows that Debra Lyle, a founding member of the WCCS Board, was present at the Board meeting on March 22, 2012 and

commented on the Board's decision. The record does not reflect that Ms. Lyle raised a question regarding service of the decision. After the District certified the record to CAB, WCCS did not object to the certified record as filed. At a prehearing conference to discuss, *inter alia*, the supplementation of the certified record, the parties agreed that the District would provide a copy of the Core Knowledge Curriculum. Again, WCCS did not object to any alleged error of law in the service of the Board decision, much less an assertion that WCCS was in some manner prejudiced by its alleged failure. Thus, CAB finds the objection at this point to be moot.

In its prehearing statement of the issues, WCCS asserts that the District's denial relied on opinions, facts and documents which were not placed in evidence at the public hearing, and in doing so, the District denied Petitioners their legal rights to hear the evidence and cross examine witnesses against them. CAB finds this argument without merit. It is the charter school applicant, rather than the District, that has the burden to establish by sufficient and competent evidence that it has met the requirements of the CSL.

C. Disposition on the Merits

i. Facility Requirement

One of the bases for the District's denial of the Application was that it found that the proposed facility was not safe for staff or students because it was not in compliance with building codes and was currently the site of a school for adolescents with behavior issues.

The Application identified a former elementary school, referred to in the record as the Patten-Kopka facility, as the location under consideration as the site for the school. The Application included a letter of intent, effective upon approval of the charter application,

executed by the landlord to rent the facility to WCCS for a three-year period. The record indicates that, as of the date of the hearing, the facility was the site of Holy Family Day School with approximately fifteen students between grades five and twelve. At the hearing, WCCS President Gary Lyle testified that the present tenant of the facility will be vacating the building at the end of the 2011-12 school year. He testified that discussions with the landlord indicated that the owner would be responsible for major maintenance including HVAC, plumbing, electrical and structural repairs and that the building meets building codes and requirements for persons with disabilities.¹

In its appeal, WCCS acknowledges that some electrical repairs and window replacements are needed, but it asserts that the repairs are minor and in any event are covered by the agreement with the landlord. Mr. Lyle also testified that he had discussed with the owners of the Crown Mall the possibility of using their facility as an alternative site if the proposed site was unavailable.

In *Central Dauphin School District v. Founding Coalition of Infinity Charter School*, 847 A.2d 195 (Pa. Cmwlth. 2004), *appeal denied*, 580 A.2d 707, 860 A.2d 491(Pa. 2004), the school district found the charter school had failed to provide information on the dimensions of its classrooms; lavatory facilities; fire exits; handicapped accessibility; or heating, ventilation, air conditioning and electrical service, lacked a cafeteria or multi-purpose room, physical education area and nurse's office. Noting that the Charter School Law provides, in relevant part, that an application to establish a charter school shall include a description and address of the physical

¹ The Petition also includes a description of statements made by the landlord at a March 22, 2012 School Board meeting. The minutes of the meeting were not included with the certified record of the District or in the Appeal Petition. Therefore the statements will not be considered in this appeal.

facility in which the charter school will be located, the ownership thereof and any lease arrangements, the Court upheld CAB's conclusion that a simple description and address of the facility was sufficient. *See also Montessori Regional Charter School v. Millcreek Twp. School Dist.*, 55 A.3d 196 (Pa. Cmwlth. 2012).

The facts present in this case are analogous to those of *Central Dauphin* and *Montessori*. WCCS, in its application, provided a description and address of the physical facility in which the charter school will be located. Additionally, WCCS provided a letter of intent from the landlord of the facility. Accordingly, CAB concludes that WCCS has met the requirements of Section 1719-A(11) of the CSL. 24 P.S. § 17-1719-A(11).

ii. Curriculum/Comprehensive Learning Experience

Next, the District found that WCCS failed to demonstrate that it could provide comprehensive learning opportunities to students. The law requires that a charter school application include the curriculum to be offered and the methods of assessing whether students are meeting its educational goals. *See* 24 P.S. § 17-1719-A(5). Additionally, the law requires that a charter school application demonstrate "capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter." 24 P.S. § 17-1717-A(e)(2)(ii).

The Application stated that WCCS would use E.D. Hirsch's Core Knowledge Sequence. (Application at 11) The curriculum would be supplemented with the Imagine It—Open Court Reading Program for children K-2, Shurley K-8 English, Saxon Math, Engineering is Elementary, and science technology, engineering and mathematics programs. (Application at 16-19)

In its denial of the Application, the District, in part, found that the Core Knowledge Curriculum was not aligned with Pennsylvania standards and thus failed to provide a comprehensive learning experience as required by law. After a review of the proffered curriculum, CAB agrees with the District that the proposed curriculum is not aligned with Pennsylvania standards. Without a curriculum properly aligned to standards, CAB concludes that WCCS has failed to show that it can provide comprehensive learning experiences to students in accordance with the Charter School Law.

iii. Demonstrated, Sustainable Support

Section 1717-A(e)(2)(i) of CSL provides that an application is to be evaluated based on the “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. § 17-1717-A(e)(2)(i). “Sustainable support” has been defined by CAB as “support sufficient to sustain and maintain a charter school as an ongoing entity. *Bear Creek Community Charter School*, CAB Docket No. 2003-3.

One ground for denial asserted by the District was that there was inadequate need for the charter school. The District found that WCCS relied heavily upon the results of an online survey conducted by the District. However, the District’s position is that this survey was not suitable for use as a needs assessment. At the public hearing, the WCCS President testified that a great deal of the evidence of the need for a charter school in the District was based on the District’s survey of parents and students. He noted that 10-14% of parents responding felt that they were looking for something different such as more science, technology and engineering. (N.T. 89-90). WCCS also believes that the number of students enrolled in private schools and the pre-registration of

students in WCCS demonstrate the need for a charter school in the area. WCCS further references, in its Application and in testimony of the Founders, that a charter school would be able to provide a stable educational experience to children who, because of their family situation, would be required to undergo frequent changes in school placement. (Petition to Appeal, Response to School District Findings of Fact and Conclusions of Law, pp. 1-2).

The online survey was not, however, made a part of the record in this matter. Therefore, any inferences to be drawn from it would be largely speculative. Furthermore, neither the record in this matter nor any documentation or testimony from the District's public hearing, establish that any parent was committed to enrolling their child at WCCS. Thus, CAB concludes that WCCS failed to demonstrate sustainable support for its charter school proposal.

Additionally, the District found that WCCS provided minimal evidence of support for a charter school in the District. The finding cited WCCS' submittal of a petition with 79 signatures in support of establishing a charter school in the District wherein only twelve of the signatories listed their residence as within Trinity Area School District. At the public hearing before the Board of School Directors the following founding members of WCCS testified: Gary and Debra Lyle, Matthew North, Sarah Graci, Marcus Staley, and Stacy Adams-John. Two of the founding members possess certification in elementary school education and two are special education teachers. (N.T. at 10-25)

WCCS contends that the CSL does not specifically define the term "community," and that the District erred in limiting presenters at the hearing to those that live within the District. WCCS further argues that the sustainable support includes the population that resides within a reasonable travelling distance of the charter school location.

CAB has described the required demonstrated sustainable support as an “inherent variable” depending on the size of the proposed school, the community and other factors. *Environmental Charter School*, CAB Docket No. 1999-14. In *Vitalistic Therapeutic Center Charter School*, CAB Docket No. 1999-6, CAB held that the proper community for demonstrating sustainable support is the School District in which the charter school is to be located. In *Legacy Charter School*, CAB Docket No. 2000-14, CAB determined that where only 31 percent of 76 enrollment applicants were from within the district the demonstrated sustainable support for the charter school was not shown.

CAB decisions where evidence of sustainable support was found to have been established by the charter school demonstrate levels of support far in excess of that presented by WCCS. See *Gillingham Charter School*, CAB Docket No. 2010-7 (letters of intent to enroll 151 students in the first year); see also *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400, 405-406 (Pa. Cmwlth. 2003) (554 signatures in a petition, 126 pre-enrollment applications); *Montour School District v. Propel Charter School*, 829A.2d 682, 684-685, (Pa. Cmwlth. 2006) (196 pre-enrollment applications for 300 seats in year one).

WCCS projects that it will have an initial enrollment of 190 students in its first year in grades K-3, adding 50 students in each school year until the 2015-16 school year. Such projections would seem to indicate that there is a strong support for the charter school. However, the only basis for such projections is the Petition in support of establishing a charter school and the signatures on that Petition. WCCS has demonstrated that it has a core of experienced teachers (several of whom are founding members of WCCS) as evidenced by their testimony at

the District's hearing. However, the record shows minimal support from community groups and community leaders in the District.

For these reasons, CAB concludes that WCCS has failed to demonstrate sustainable support for the charter school as required by section 1717-A(e)(2)(i) of the CSL. 24 P.S. § 17-1717-A(e)(2)(i).

CONCLUSION

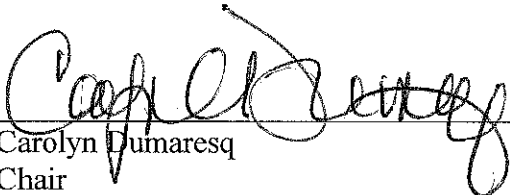
WCCS has not shown sustainable support from parents, teachers, community members, and students as required by the Charter School Law. Additionally, there was no evidence in the record indicating that the chosen curriculum was aligned with state standards. Thus, the decision of the Trinity Area School District to deny the Charter School Application of WCCS is upheld.

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ORDER

AND NOW, this 16th day of April, 2013, based upon the foregoing findings of fact and discussion, the Appeal of the Washington Classical Charter School is DENIED.²



Carolyn Dumaresq
Chair

For Petitioner:
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For Respondent:
Gary L. Lyle, President
Board of Trustees
Washington Classical Charter School
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Date mailed: 4/17/14

² At the March 25, 2014 meeting the Board voted 4-0 to deny the appeal with members Dumaresq, Henry, Munger and Yanyanin voting.