

order to obtain approval, the School District denied this Revised Application (PRO 02560-02587) by an 8-0 vote with one member absent. See PRO 02556- 02559.

Pursuant to Section 17-1717-A(i)(2) of the Charter School Law (“CSL”), Propel obtained signed petitions within 60 days after the September 20, 2012 denial and filed the same in the Court of Common Pleas of Allegheny County. PRO 02616-02690. On November 30, 2012, the Court of Common Pleas entered an Order directing the School District, if it intended to contest the Petition of Appeal, to file an Answer to the Petition by January 11, 2013 specifying which signatures it would be challenging. PRO 02614. Pursuant to the Order, if no Answer was filed by January 11, 2013, the Petition to Appeal would be deemed approved and the Order would become final. PRO 02614. By letter dated January 11, 2013, the School District notified Propel that it did not intend to challenge the sufficiency of the Petition for Appeal or file an Answer. PRO 02615. Therefore, on January 11, 2013, the November 30, 2012 Order became final. See PRO 02614. Propel filed the instant appeal with CAB on October 21, 2013. PRO 02616.

A Hearing Officer was assigned and conducted a pre-hearing telephone conference, issued two briefing Orders and an Order granting the motion to accept into the Record certain supplementary material requested by Propel. Sto-Rox filed a Motion to Quash and Brief in Support Thereof. Propel responded to the Motion and filed a brief in opposition. Both parties subsequently filed briefs on the merits of the appeal.

FINDINGS OF FACT

1. Propel Charter School-West is a Pennsylvania nonprofit corporation with a planned enrollment of 800 (400 in K-8 and 400 at the high school level). The school would open with grades K-4 and grades 9 and 10; one grade would be added to each elementary and secondary level each year until the school is at capacity. PRO 01356.

2. Propel initially submitted its Original Application on July 29, 2011 to establish a charter school within the School District. PRO 00001-01053.

3. The School District conducted public hearings on September 8, 2011 and November 17, 2011 to consider the Original Application. PRO 01059. On November 17, 2011, the School District denied the grant of a charter to Propel by a 9-0 vote. The School District issued its written decision on November 22, 2011. PRO 01249.

4. On June 5, 2012, Propel submitted a revised application (the "Revised Application") to address concerns raised by the School District in its Original Application. PRO 01352-02550. On September 20, 2012, after a period of time during which Propel voluntarily offered to scale back its school in order to obtain approval, the School District denied this Revised Application (PRO 02560-02587) by an 8-0 vote with one member absent. See PRO 02556- 02559.

5. The School District issued its written decision on September 24, 2012. PRO 02556-02559.

6. Propel obtained the requisite number of signatures on petitions to appeal and submitted the petitions to the Court of Common Pleas of Allegheny County on November 29, 2012 (70 days after the denial of the Revised Application by the School Board, and 66 days after the date of the written notification). See PRO 02614.

7. On November 30, 2012, the Court of Common Pleas of Allegheny County issued the following Order of Court:

AND NOW, this 30th day of Nov[ember], 2012, it is hereby ORDERED that the Sto-Rox School District, if it intends to contest this Petition, shall file and serve a verified Answer to the Petition of Propel Charter School-West by January 11, 2013 specifying which signatures that they will be challenging. In the event the District does not intend to file an Answer,

counsel for the District shall notify counsel for Propel by January 11, 2013 in writing of same.

If no Answer is filed by January 11, 2013, this Petition shall be deemed approved; this Order shall become final; and Propel will be permitted to proceed to file an appeal to the Charter Appeal Board.

If an Answer is filed, Propel will notify the undersigned who will then schedule a status conference to determine hearing procedures and scheduling.

PRO 02614.

8. On January 11, 2013, the School District informed Propel that it would not formally challenge the Petition or file an answer, and the Court's Order became final. PRO 02615.

9. On October 21, 2013 (13 months after the denial of the Revised Application), Propel filed a Petition of Appeal with CAB. PRO 02616, *et seq.*

Governance Structure

10. The incorporators of Propel will designate the first Board of Trustees. Individuals will be qualified as Trustees by their commitment to the mission of the school, their expertise in one or more areas relevant to the success of the school, and their willingness to invest the time necessary to be effective Trustees. PRO 01356; PRO 01452-01455.

11. The Board of Trustees will serve as the school's ultimate governing body with an Executive Committee empowered to act on behalf of the Board of Trustees. PRO 01357; PRO 01452-01455.

12. A School Council will provide a vehicle for involving parents and community in the governance of Propel. This School Council will "make known the needs of the school to the principal, CEO/Superintendent and Board of Trustees." PRO 01358; PRO 01461.

13. In the 2012 Revised Application, Propel stated: Propel-West will be “*an independent charter school* with its own principals and teaching staff, and it will *share administrative resources collectively with the federation of other Propel schools.*” PRO 01354 (emphasis added).

14. Tina Chekan, Ed.D., is the Chief Executive Officer and Superintendent of various Propel Charter Schools within the federation of Propel schools. She would also serve as the CEO and Superintendent of Propel Charter School-West. Plaintiff’s Exhibit A affixed to Propel’s Reply Brief (HO-11). (Affidavit of Tina Chekan, Ed. D.; Affidavit of Darryl Robinson).

15. The CEO/Superintendent would continue to serve, simultaneously, as the CEO/Superintendent of Propel-East, Propel-Homestead, Propel-McKeesport, Propel-Montour, and Propel-Sunrise Charter Schools. PRO 01371; PRO 02564.

16. On the Organization Chart, Dr. Chekan’s position is shown as “CEO/Superintendent ... *position shared across schools.*” PRO 01371 (emphasis in original).

17. If the charter for Propel is granted, the CEO/Superintendent would receive compensation from only the federation of Propel Schools and receive no compensation from individual Propel schools or any other charter school. Plaintiff’s Exhibit A affixed to Reply Brief of Propel Charter School-West (HO-11). (Affidavit of Tina Chekan, Ed. D.; Affidavit of Darryl Robinson).

18. Among the duties of the Board of Trustees would be the responsibility to “evaluate the work of Propel-West’s executive director on an annual basis. Each year this committee and the executive director will meet to review the previous year’s accomplishments relative to the year’s goals, and to establish new goals for the following year.” PRO 01358.

19. The proposed governance structure of Propel does not violate the CSL.

Admission Policy and Criteria

20. An open application period will commence thirty days after approval and will last for at least thirty days in the first year. After the open application period, a lottery will be held. Applications within the Sto-Rox Public School District will be given preference after which applicants from outside Sto-Rox will be selected. A waiting list will be created. PRO 01360.

21. The Revised Application included a copy of the pre-registration application (PRO 01381-01382); but it did not include a copy of the enrollment form that a family would be required to complete in order to accept an offer of admission.

22. Completed applications received during the open application period form the pool of potential attendees of the charter school. PRO 01360.

23. Children residing in the School District and children with a sibling already enrolled will receive preference, providing that their applications are timely completed. PRO 01361.

24. Propel's enrollment requirements are listed as:

- Completing a pre-application form for each child applying for admission which must, in turn, be mailed to the Propel headquarters in the South Side area of Pittsburgh;
- Requiring information about parent/guardian, including a daytime phone number and email address on the pre-registration application;
- An interview by families with "school staff" that is required before an applicant is able to accept an offer of admission; and,
- Completing an enrollment form in order to be eligible to accept an offer of admission.

PRO 01360-01361; PRO 01381-01382.

25. Propel's application documents specifically ask parents not to list on their application whether or not their child has a disability. PRO 01361.

26. Propel's stated enrollment procedure does not screen students in order to exclude students that it does not want to educate including, but not limited to, special education students or low income students.

27. Propel has no policy which would discriminate against, or limit the admission of, students with disabilities. PRO 02579.

28. The record contains no evidence of any correlations between Propel's enrollment procedures and the exclusion of students with disabilities.

29. The Revised Application does not burden enrollment requirements beyond the requirements of enrollment in a traditional public school.

Suitable Facility

30. In its Revised Application, Propel proposed the following:

Depending on the larger plan for public education in Sto-Rox, we believe it would make most sense to locate the school in any excess space that the District may have available. Co-location has worked effectively in other cities. Should the District find that co-location is not possible, we have attached a non-binding letter of intent for space at the former Boiler & Tank Building, situated on the former Pennsylvania and Lake Erie Railroad (P&L) property at 329 Linden Avenue, McKees Rocks, PA 15136-3518.

PRO 01366.

31. The former Boiler & Tank Building is no longer available. *See* Brief, HO-6, p. 16.

32. School Facility Development, Inc., a Pennsylvania nonprofit corporation, has entered into a Purchase and Sale Agreement dated April 10, 2014 to acquire property between

Hillcrest Avenue and Elizabeth Avenue in Stowe Township, Allegheny County, and intends to lease this property to Propel for use as the charter school. PRO 02691.

33. The site is currently zoned R-1 and is comprised of 2.4 acres over approximately 19 contiguous for-sale parcels that will require a 25 foot setback. PRO 02699.

34. Graves Design Group LLC has submitted a cursory study for the new K-8 school program contemplated by Propel. These conceptual plans show that a school building could be placed on the proposed site. PRO 02699 - 02703.

Sustainable Support

35. Propel submitted petitions of support containing the names of approximately 251 persons, including approximately 131 signatures from families interested in enrolling children in Propel and 243 signatures from people residing in Sto-Rox Public School District.² PRO 01135-01220.

36. Propel submitted evidence of 171 e-signatures, including 127 signatures from families who indicated a desire to place their child or children in Propel. Of these signatures, 106 represented signatures of Sto-Rox Public School District residents. PRO 01440-01446.

37. Numerous Sto-Rox residents and community leaders spoke in support of Propel during the Public Hearing on September 8, 2011. *See* PRO 01080-01119.

Curriculum

38. The Revised Application sets forth detailed explanations about the proposed curriculum, consisting of over a thousand pages of information and explanations. PRO 01352-02550.

² The Hearing Officer counted 252 petitions of support, including 136 signatures from families interested in enrolling children in Propel.

39. The Revised Application sets forth Propel's "Promising Principles," which form the foundation of the Propel education program. Through this program, the curriculum is designed to progress through continual evaluations which are based on the learning of each student which in turn drives the instructional method. PRO 01509-01510.

40. The Principles provide for the following core elements: (1) agile instruction; (2) embedded support; (3) culture of dignity; (4) fully valued arts program; (5) vibrant teaching communities; and (6) quest for excellence. *Id.* The Revised Application also sets forth Propel's extensive literacy and reading comprehension curriculum which couples integrated and personal teaching to help each student succeed. PRO 01513-01518.

41. Propel's education plan includes 190 days of school with 6 hours per day of instruction, an "exciting curriculum," small classes, and high standards for academic achievement, parent/community involvement, and tutorial and positive behavior support for students. *See* PRO 01354.

42. Propel's proposed plan would provide its students with 1140 hours of instruction a year, which is twenty-five percent (25%) more than the minimum mandated levels. PRO 01366.

43. Propel's small class sizes would allow for personal attention to each student, permitting each student to excel in a smaller learning community. PRO 01470; 01484-01485.

44. The outstanding achievements of students at other Propel schools demonstrate that the Propel curriculum provides students with the foundation to excel in educational forums and beyond. Students at other Propel schools have been awarded the Global Travel Scholarship of the World Affairs Council of Pittsburgh; successfully competed in the Marshall-Brennan Constitutional Literacy Project which consists of a Moot Court competition held at the

University of Pittsburgh School of Law; compiled and published an anthology of personal memoirs; and participated in energy-efficiency workshops to learn about and encourage others in ways to save energy through the Green Schools Pittsburgh Alliance to Save Energy program.
PRO 01494-01495.

CONCLUSIONS OF LAW

1. The Charter School Law sets no time limitation for the filing with CAB of an appeal from the denial of a charter application. *See* 24 P.S. §§17-1701-A, *et seq.*
2. The appeal is properly before CAB under the CSL. 24 P.S. §§ 17-1701-A(i)(1).
3. 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).
4. Propel has the burden of proving that all of the enumerated requirements for the contents of a charter school application were satisfied, including:
 - (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 1719-A and conforms to the legislative intent outlined in Section 1720-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).

5. Propel has demonstrated sustainable support for its plan both in its Revised Application materials and during the public hearings conducted to review the application. 24 P.S. §17-1717-A(e)(2)(i).

6. Propel is capable in terms of support and planning to provide comprehensive learning opportunities to its students. 24 P.S. §17-1717-A(e)(2)(ii).

7. Propel's application met the requirements of section 17-1719-A of the CSL and also satisfied the legislative intent of the CSL. 24 P.S. § 17-1717-A(e)(2)(iii).

8. Propel's admission policy criteria for evaluating the admission of students does not violate the CSL.

9. The application and supporting material demonstrate that Propel can be a model for other public schools, can provide different and innovative teaching methods and can offer expanded choices in education. 24 P.S. § 17-1717-A(e)(2)(iv).

DISCUSSION

I. Standard of Review

In an appeal before CAB, the decision made by the local board of school directors shall be reviewed on the record as certified. CAB shall give "due consideration to the findings of the local board of directors" and "specifically articulate its reasons for agreeing or disagreeing with those findings in its written decision." 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 the 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).

While giving due consideration to the vote of the School Board, CAB must independently review the record in accordance with the requirements of the CSL.

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. §1717-A(e)(2).

II. School District's Motion to Quash Based Upon Laches

A preliminary issue to be addressed herein is the School District's assertion that the appeal is untimely. The School District seeks dismissal because the appeal was filed by Propel more than thirteen months after the School District's board of directors denied the Revised Application. *See* Motion to Quash or Dismiss Petition of Appeal filed by School District on or about March 5, 2014 (HO- 3). As directed by the Hearing Officer (HO-2), both parties filed timely briefs on this issue (HO-3 and HO-4). Although the CSL contains numerous time limitations, there is no time limit for the filing of an appeal with CAB. 24 P.S. §§17-1701-A, *et seq.*; *see also Graystone Academy Charter School v. Coatesville Area School District*, No. 1336 C.D. 2013 (Pa. Cmwlth. Aug. 27, 2014). The School District alleges only that it has been

prejudiced by the delay because Propel has lost the site it proposed using. However, this issue will be addressed subsequently in this opinion. Thus, CAB holds that the time of filing of this appeal is not a basis for denying the appeal.

III. Evidence of a Newly-Proposed Site for the School

Next, we must address Propel's request that the record be supplemented with material related to a new proposed school site located between Hillcrest Avenue and Elizabeth Avenue in Stowe Township, Allegheny County (HO-7). Propel had lost the site contained in the Original and Revised applications. This proposed site postdates any of the School District hearings and decision. The parties previously agreed that Propel would submit a new proposed school site prior to or at the time of the CAB hearing. *See* Order re: February 5, 2014 Pre-Hearing Conference (HO-2). This evidence meets the statutory criterion of having been "previously unavailable," pursuant to 24 P.S. §17-1717-A-(i)(6), and thus will be accepted into the record as supplemental evidence.

IV. Disposition On The Merits

CAB has examined the entire certified record to determine if Propel's application meets the statutory requirements. However, in its brief, the School District has raised three primary grounds for the denial of the application: (1) the governance structure as set forth by Propel, pursuant to section 1719-A(4), violates the CSL; (2) the admission policy and criteria set forth by Propel pursuant to section 1719-A(6) violates the CSL; and (3) the proposed facility identified by Propel pursuant to section 1719-A(11) is not a suitable location for a charter school. These issues will be addressed first, followed by an analysis of the criteria in section 1717-A(e)(2) of the CSL.

(1) **Governance Structure**

The School District contends that the Superintendent for Propel-West would, at the same time, also serve as Superintendent for other Propel charter schools, each of which is independent: Propel-East, Propel-Homestead, Propel-McKeesport, and Propel-Montour. This governance structure, the School District believes, violates Section 1715-A(12), which provides:

A person who serves as an administrator for a charter school shall not receive compensation from another charter school.... A person who serves as an administrator for a charter school shall be a public official under 65 Pa.C.S. Ch. 11 (relating to ethics standards and financial disclosure). A violation of this clause shall constitute a violation of 65 Pa.C.S. §1103(a) (relating to restricted activities)....

24 P.S. §17-1715-A(12).

Propel does not deny that one superintendent would have responsibilities for other Propel charter schools, but it argues that the statutory provision merely prevents the person serving as an administrator for a charter school from *receiving compensation* from another charter school. The affidavits of Darryl Robinson, Chief Financial Officer of Propel schools, and Tina Chekan, Ed.D., Chief Executive Officer and Superintendent of the various Propel charter schools (Exhibit A to Propel's Reply Brief),³ confirm that the CEO/Superintendent of Propel-West Charter School would receive compensation only from the federation of Propel schools.⁴ The affidavits

³ CAB has the discretion to allow these affidavits as "previously unavailable" pursuant to 24 P.S. §17-1717-A-(i)(6). The Commonwealth Court has held that the term "previously unavailable" should be construed according to its plain meaning. 1 Pa.C.S. §1903. "Previously" pertains to timing. "In context, 'unavailable' means not accessible, unknown, or not discernable with due diligence." *Pocono Mountain Charter School, Inc. v. Pocono Mountain School District*, 88 A.3d 275 (Pa. Cmwlth. 2014). "In addition, the supplemental information 'must be relevant and probative to CAB's review....'" *Id.* Quoting *In re: Phoenix Charter School*, No. CAB 2001-06 at 9). The two affidavits attached to the Reply Brief were "previously unavailable" to the local board of directors. Because the School District has raised the issue of the compensation and administrative relationship of the new Superintendent to other Propel Schools, these affidavits provide information which is relevant to this issue. Consequently, the Hearing Officer admitted them to the record (HO-12).

⁴ CAB construes this representation to mean that Ms. Chekan, as Superintendent of five (5) separate Propel schools does not receive compensation from any of those schools, but rather is paid from the federation of all of the Propel Schools. CAB would consider any other arrangement for Ms. Chekan's compensation to be a misappropriation of charter school funds.

also confirm that Dr. Chekan would serve as Superintendent of multiple Propel locations, not just Propel Charter School-West.

Under the governance structure included in the Revised Application, the CEO/Superintendent continues to serve, simultaneously, as the CEO/Superintendent of Propel charter schools in Steel Valley, McKeesport Area, Woodland Hills, and Montour School Districts. PRO 01371. In the 2012 Revised Application, Propel stated:

Propel-West will be *an independent charter school* with its own principals and teaching staff, and it will *share administrative resources collectively with the federation of other Propel schools*. This arrangement will enable Propel West to be responsive to its local community's needs, while benefiting from the support of the educational leaders who have implemented the Propel model successfully in other schools and from operational economies of scale.

PRO 01354 (emphasis added). On the Organization Chart, this is shown as

“CEO/Superintendent ... *position shared across schools*.” PRO 01371 (emphasis in original).

The School District adopted the recommendation of the administration that such an arrangement violates section 1715-A(12) of the CSL, 24 P.S. §17-1715-A(12), PRO 02564-02565. It noted that Propel-Sunrise is now in operation. This would make “five separate school districts” operated by “one Executive Director and one Superintendent.” PRO 02564.

Propel argues that the statutory provision should be given its plain language interpretation and states that there would be no conflict of interest if the Superintendent serves more than one charter school under the same umbrella organization and receives compensation from the federation of Propel Schools. The Statutory Construction Act provides that: “[w]hen the words of a statute are clear and free from ambiguity, the letter of it is not to be disregarded under the

pretext of pursuing its spirit.” 1 Pa.C.S. §1921. Therefore, CAB rejects the finding of the School District that this arrangement violates the precise language of 24 P.S. §17-1715-A(12).

(2) **Admission Policy and Criteria**

The School District would have CAB find that the admission policy and criteria for evaluating the admission of students does not comply with the requirements of 24 P.S. §17-1723-A which provides:

(a) All resident children in this Commonwealth qualify for admission to a charter school within the provisions of subsection (b). If more students apply to the charter school than the number of attendance slots available in the school, then students must be selected on a random basis from a pool of qualified applicants meeting the established eligibility criteria and submitting an application by the deadline established by the charter school, except that the charter school may give preference in enrollment to a child of a parent who has actively participated in the development of the charter school and to siblings of students presently enrolled in the charter school. First preference shall be given to students who reside in the district or districts.

(b)(1) A charter school shall not discriminate in its admission policies or practices on the basis of intellectual ability, except as provided in paragraph (2), or athletic ability, measures of achievement or aptitude, status as a person with a disability, proficiency in the English language or any other basis that would be illegal if used by a school district.

(2) A charter school may limit admission to a particular grade level, a targeted population group composed of at-risk students, or areas of concentration of the school such as mathematics, science or the arts. A charter school may establish reasonable criteria to evaluate prospective students which shall be outlined in the school's charter.

(c) If available classroom space permits, a charter school may enroll nonresident students on a space-available basis, and the student's district of residence shall permit the student to attend the charter school.

24 P.S. §17-1723-A.

Specifically, the School District's argument is that Propel-West would not recruit any individuals; those potential students who actively seek out admission under the terms and conditions of the Propel enrollment process would become students. According to the School District's allegations, the Revised Application contains burdensome enrollment requirements beyond the requirements of enrollment in a traditional public school. Such practices include:

- Completing a pre-application form for each child applying for admission which must, in turn, be mailed to the Propel headquarters in the South Side area of Pittsburgh;
- Requiring information about parent/guardian including a daytime phone number and email address on the pre-registration application;
- An interview by families with "school staff" that is required before an applicant is able to accept an offer of admission; and,
- Completing an enrollment form in order to be eligible to accept an offer of admission.

PRO 01360-01361.

The School District contends that Propel's application process discriminates against low-income students and students with a disability. The Revised Application included a copy of the pre-registration application (the forms completed by families during the open application period) (PRO 01381 & 01382), but it did not include a copy of the enrollment form that a family would be required to complete in order to accept an offer of admission. The School District adopted the report of the administration that this enrollment procedure violated federal and state enrollment procedures, noting in relevant part that the enrollment procedure essentially screens students in order to exclude students that Propel does not want to educate, including, but not limited to, special education students. PRO 02565 & 02577-02579.

Contrary to this argument, Propel contends that with regard to students with disabilities, Propel's application documents specifically ask parents not to list on their application whether or not their child has a disability. PRO 01361. The School District admitted that Propel has no

policy which would discriminate against or limit the admission of students with disabilities (PRO 02579) and presented no evidence of a correlation between Propel's enrollment procedures and exclusion of students with disabilities. Having carefully reviewed the documents and procedures for enrollment, CAB finds no evidence of discrimination or departure from the requirements of the CSL. The School District's finding that Propel's enrollment policy violates applicable law is thus rejected.

(3) **Suitable Facility**

With its Original Application, Propel proposed two options for a facility to use for the charter school: classroom space currently owned by the Sto-Rox Public School District; or, in the alternative, the former Boiler & Tank Building situated in the Pennsylvania and Lake Erie Business Park. Similarly, with its Revised Application, Propel proposed the following:

Depending on the larger plan for public education in Sto-Rox, we believe it would make most sense to locate the school in any excess space that the District may have available. Co-location has worked effectively in other cities. Should the District find that co-location is not possible, we have attached a non-binding letter of intent for space at the former Boiler & Tank Building, situated on the former Pennsylvania and Lake Erie Railroad (P&L)(sic) property at 329 Linden Avenue, McKees Rocks, PA 15136-3518.

PRO 01366.

The former Boiler & Tank Building is no longer available; consequently, the new location proposed in the Revised Application is a presently vacant lot between Hillcrest Avenue and Elizabeth Avenue in Stowe Township, Allegheny County. (HO-7).

The School District argues that it has been disadvantaged by this last minute proposal in that the School Board has had no opportunity to examine this location. According to the supplemental materials, School Facility Development, Inc., intends to develop the property and

lease it to Propel for use as a charter school. PRO 02691. The specific lease arrangements will be negotiated. PRO 02691. Howard K. Graves, of Graves Design Group, LLC, has developed conceptual plans showing a school building that can accommodate the proposed Propel school. PRO 02699-02703.

The CSL requires that each charter school application include a “description of and address of the physical facility in which the charter school shall be located and the ownership thereof and any lease arrangements.” 24 P.S. §17-1719-A(11). The supplemental materials provided by Propel meet this standard. However, under prior precedents, as expressed in the case law, a school district must have the opportunity to insure that the facility ultimately constructed complies with all applicable laws. *See Brackbill v. Ron Brown Charter School*, 777 A.2d 131 (Pa. Cmwlth. 2001) and *Montour School District v. Propel Charter School-Montour*, 889 A.2d 682 (Pa. Cmwlth. 2006). Thus, a condition of granting a charter under this circumstance will be that a legally compliant school building must be constructed on the newly proposed school site and must be inspected and approved by the School District in order for the charter school to open.

(4) **Sustainable Support**

A charter school applicant must show “demonstrated sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at a the public hearing” 24 P.S. § 17-1717-A(e)(2)(i). In determining whether an application has established demonstrated, sustainable support, the Commonwealth Court has stated that “such support ‘is to be measured in the aggregate and not by individual categories’”; and that the “‘failure to demonstrate strong support in any one category is not necessarily fatal to a charter school application.’” *McKeesport Area School Dist. v. Propel Charter School*

McKeesport, 888 A.2d 912, 916 (Pa. Cmwlth. 20005) quoting *Carbondale Area Sch. Dist. v. Fell Charter Sch.*, 829 A.2d 400, 405 (Pa. Cmwlth. 2003); *Leadership Learning Partners Charter School*, CAB Docket No. 2000-8. Community support may be shown in the application documents and by comments received at the public hearings.

Propel maintains that its Revised Application establishes that Propel has sustainable support. The School District denied Propel's request for a charter based, in part, on its finding that Propel lacked sustainable support because the application was "lacking as [it had] no pre-enrollment forms," "no letters of support from community organizations," "no letters from parents," and no "applications for employment from potential teachers." PRO 02557.

Propel submitted petitions of support containing the names of approximately 251 persons, including approximately 131 signatures from families interested in enrolling children in Propel, and 243 signatures from people residing in Sto-Rox School District.⁵ PRO 01135-01220. In addition, Propel submitted evidence of 171 e-signatures, including 127 signatures from families who indicated a desire to place their child or children in Propel. PRO 01440-01446. Of these signatures, 106 represented signatures of Sto-Rox School District residents. PRO 01440-01446. Numerous Sto-Rox residents and community leaders also spoke in support of Propel during the Public Hearing on September 8, 2011. PRO 0109-01119.

CAB has previously ruled that such evidence is sufficient to establish demonstrated and sustainable support under the statute. *Propel Charter School – Hazelwood v. Pittsburgh School District*, Docket No. CAB 2013-02. In *Propel Charter School-Hazelwood*, CAB found that as "individuals testified in support of the charter school" at a public hearing, and because Propel's application included "petitions of support for establishment of the school, signed by 240

⁵ The Hearing Officer counted 252 petitions of support, including 136 signatures from families interested in enrolling children in Propel.

individuals, [and of] those 240 signatories, approximately 90 expressed the desire to enroll their children in the school, [and] based upon its review of the record . . . Propel [had] established demonstrated and sustainable support of its school.” *Id.* Thus, CAB similarly finds that sustainable support has been established by Propel in this appeal.

(5) Curriculum

As set forth by CAB, “in order to provide a comprehensive learning experience to students, a charter applicant must demonstrate adequate support and planning in the charter application” and “encourage the use of different and innovative teaching methods.” *In re: Environmental Charter School*, CAB No. 1999-14, p. 20; 24 P.S. 17-1702-A(3). In addition, the CSL sets forth that charter school applicants 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),(4)&(5). There is no definition in the CSL as to what is meant by “expanded choices.” However, CAB has established that “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.” *Sugar Valley Rural Charter School*, CAB Docket No. 1999-4, p. 15 (emphasis in original).

The School District found that “[n]o advantages or additional programs can be found in reviewing and comparing the educational opportunities offered by Propel-West. . .”. PRO 02568. According to Propel, its Revised Application sets forth detailed explanations about the proposed curriculum consisting of over a thousand pages of information and explanations. PRO 01352-02550. In particular, the Revised Application sets forth Propel’s “Promising Principles,” which form the foundation of the Propel education program. Through this program, the curriculum is designed to progress through continual evaluations which are based on the learning

of each student which in turn drives the instructional method. PRO 01508-01510. The Principles provide for the following core elements: (1) agile instruction; (2) embedded support; (3) culture of dignity; (4) fully valued arts program; (5) vibrant teaching communities; and (6) quest for excellence. *Id.* The application also sets forth Propel's extensive literacy and reading comprehension curriculum which couples integrated and personal teaching to help each student succeed. PRO 01513-01518.

Furthermore, Propel's education plan includes 190 days of school with 6 hours per day of instruction, an "exciting curriculum," small classes, and high standards for academic achievement, parent/community involvement, and tutorial and positive behavior support for students. *See* PRO 01352-02550. With regard to instructional hours, Propel's proposed plan would provide its students with 1140 hours of instruction a year, which is twenty-five percent (25%) more than mandated levels. PRO 01366. Propel's small class sizes allow for personal attention to each student, permitting each student to excel in a smaller learning community. PRO 01470; 01484-01485.

Commonwealth Court has previously held that Propel's curriculum (believed to be nearly the same curriculum set forth in Propel's Revised Application here) "encourages learning and provides increased learning opportunities . . .". *McKeesport*, 888 A.2d at 918. The Propel curriculum has likewise been approved by Commonwealth Court in other cases and numerous times by the CAB. *Montour School Dist. v. Propel Charter School-Montour*, 889 A.2d 682 (Pa. Cmwlth. 2006) (finding that the record established that Propel offered a learning environment that is unique and different from that in the District's public schools); *Propel Charter School v. Steel Valley School District*, Docket No. CAB 2003-1; *Propel Charter School-Hazelwood*, Docket No. CAB 2013-02.

Propel argues that the outstanding achievements of students at other Propel schools demonstrate that the Propel curriculum provides students with the foundation to excel in educational forums and beyond. Students at other Propel schools have been awarded the Global Travel Scholarship of the World Affairs Council of Pittsburgh; have successfully competed in the Marshall-Brennan Constitutional Literacy Project which consists of a Moot Court competition held at the University of Pittsburgh School of Law; have compiled and published an anthology of personal memoirs; and have participated in energy-efficiency workshops to learn about and to encourage others about ways to save energy through the Green Schools Pittsburgh Alliance to Save Energy program. PRO 01494-01495.

Based upon all of the above, CAB finds that Propel's curriculum shows the school's capability to provide comprehensive learning opportunities to students as required by the CSL.

CONCLUSION

In conclusion, for the reasons set forth above CAB denies the motion to quash and grants Propel's appeal. Thus, CAB makes the following:

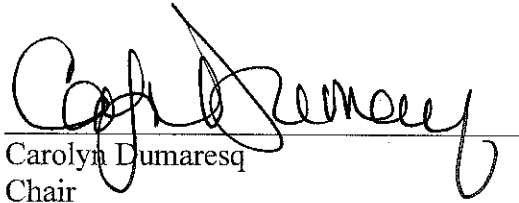
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

PROPEL CHARTER SCHOOL – WEST :
 :
v. : CAB Docket No. 2013-09
 :
STO-ROX PUBLIC SCHOOL DISTRICT :

ORDER

AND NOW this 5th day of September, 2014, based upon the foregoing and the vote of this Board,⁶ the Appeal of Propel Charter School - West is **GRANTED**; and the Sto-Rox Public School District is directed to issue a charter to Propel Charter School – West pursuant to section 1720-A of the Charter School Law, on the condition that a school facility compliant with all applicable laws is constructed on the vacant lot between Hillcrest Avenue and Elizabeth Avenue in Stowe Township, Allegheny County, Pennsylvania. 24 P.S. § 17-1720-A.

For the State Charter School Appeal Board


Carolyn Dumaresq
Chair

Date of mailing: Sept. 5, 2014

⁶ At the Board's meeting on July 29, 2014, the appeal was granted by a vote of 5 to 0 with Board Members Dumaresq, Henry, Miller, Peri and Yanyanin voting. Board Member Munger recused herself prior to argument and did not participate in the consideration or voting in this appeal.