

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

MaST-Neshaminy Charter School,	:	
Petitioner,	:	
	:	
v.	:	Docket No. CAB 2014-02
	:	
Neshaminy School District,	:	
Respondent.	:	

OPINION

HISTORY

In accordance with the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, *as amended*, 24 P.S. §17-1701-A *et seq.* (hereinafter “CSL”), this matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter “CAB”) on the appeal by MaST-Neshaminy Charter School (hereinafter “MaST-Neshaminy” or “Charter School”) from the decision of the Board of School Directors of the Neshaminy School District (hereinafter “the District Board”) to deny its application for a charter.

On October 18, 2012, MaST-Neshaminy applied for a Charter to establish a charter school in the Neshaminy School District (hereinafter “School District” or “Neshaminy”) that would focus on providing science, technology, engineering and mathematics (hereinafter “STEM”) to students in Grades Kindergarten through Twelve (hereinafter “the Application”). After holding public hearings on November 29, 2012 and February 11, 2013, the District Board voted on February 11, 2013 to deny the Application. On March 18, 2013, the District Board adopted a Resolution with Findings of Fact and Conclusions of Law in support of its denial. The District Board based its denial on three main reasons: (1) lack of demonstrated sustainable support for the charter school; (2) failure to identify a suitable facility; and (3) failure to

demonstrate that the charter school would be a model for other public schools. MaST-Neshaminy commenced the signature petition process, and on January 31, 2014, the Court of Common Pleas of Bucks County issued an order that MaST-Neshaminy had established the sufficiency of the Petition so that it could proceed with its appeal.

On February 12, 2014, MaST-Neshaminy filed the instant appeal with CAB. The School District filed its Answer thereto on February 24, 2014. On April 17, 2014, the School District filed the Reproduced Record with CAB. Following receipt of the record the hearing officer held a telephonic pre-hearing conference with counsel, and on April 30, 2014, issued an Order permitting the parties to file various procedural motions and setting deadlines for the motions and briefs. The School District filed a Motion to Dismiss the Appeal for Failure to Identify a Suitable Facility. Both parties filed various Motions to Supplement the Record.

On April 7, 2015, CAB issued an Order denying the School District's Motion to Dismiss for Failure to Identify a Suitable Facility and granted MaST-Neshaminy's Second Motion to Supplement the Record. On May 8, 2015, the hearing officer issued an Order resolving the remaining outstanding Motions to Supplement the Record, establishing the Documentary Record before CAB and setting briefing deadlines.

The parties have timely filed briefs and other documents in support of their respective positions on the merits of the appeal. They presented their arguments to CAB on October 13, 2015.

For the reasons set forth below, CAB holds that the District Board had insufficient grounds to justify its refusal to grant the charter of MaST-Neshaminy under the criteria set forth in the CSL at Section 1717-A(e)(2), 24 P.S. §17-1717-A(e)(2).

FINDINGS OF FACT

I. Procedural History

1. MaST-Neshaminy is a Pennsylvania nonprofit Corporation, and on October 18, 2012, MaST-Neshaminy applied for a Charter to establish a charter school in the School District that would focus on providing science, technology, engineering and mathematics instruction to students in Grades Kindergarten through Twelve. R. 108-747.¹
2. Neshaminy School District is a public school district organized and existing under the Public School Code, 24 P.S. §§1-101, *et seq.*, having its administrative office at 2250 Langhorne-Yardley Road, Langhorne, Pennsylvania 19047. Official Notice.
3. Pursuant to the CSL, MaST-Neshaminy submitted an Application to the District Board on October 18, 2012 to establish a charter school within the School District. R. 108-747.
4. The District Board held public hearings on MaST-Neshaminy's Application on November 29, 2012 and February 11, 2013. R. 1-54, 1106-1169, 1238-1298.
5. At the end of the February 11, 2013 public hearing, the District Board went into Executive Session to begin the deliberative process. Upon completion thereof on February 11, 2013, the District Board voted, 4-3, to deny the Application. R. 1128.
6. On March 18, 2013, the District Board allowed further public comment on the Application at the beginning of the public meeting. R. 1170-1191, 1194.

¹ "R. ___" refers to the Record before the District Board which was filed with CAB on April 17, 2014 by the School District. The number following "R." refers to the bate-stamped page number of the Record. It should also be noted that following the bate-stamp on each page of the Record is a date: "04/14/2014." This date is the date the documents were bate-stamped, not the date the documents were submitted to the District Board. Further, some of the documents in the Record are CDs that have been made a part of the Record. For example, the Application is found in hard copy at R. 108-746 and found on a CD attached to R. 747. MAST-Neshaminy's video presentation at the November 29, 2012 public hearing is found on CD attached to R. 747 and found in hard copy at R. 1238-1298.

7. On March 18, 2013, after additional public comment was permitted, the District Board voted, 5 to 4, to adopt a Resolution setting forth the Findings of Fact and Conclusions of Law in support of its February 11, 2013 decision to deny the Application. R. 1191-1193, 1192a.²

8. The District Board based its denial of MaST-Neshaminy's Application on three reasons:

- a. lack of demonstrated sustainable support for the charter school,
- b. failure to identify a suitable facility, and
- c. failure to demonstrate that the charter school was unique and would be a model for other public schools.

R. 1231-1236.³

9. Pursuant to Section 1717-A(h)(2) of the CSL, 24 P.S. §17-1717-A(h)(2), MaST-Neshaminy gathered the required signatures and filed a Petition in the Court of Common Pleas of Bucks County; and on January 31, 2014, the Court of Common Pleas of Bucks County entered an Order that MaST-Neshaminy's Petition was sufficient and allowed MaST-Neshaminy to proceed to file its appeal with the CAB. R. 1237.

10. On February 12, 2014, pursuant to Section 1717-A(i) of the CSL, 24 P.S. §17-1717-A(i), MaST-Neshaminy filed the instant appeal with CAB. Official Notice-Docket No. CAB 2014-02.⁴

² The transcribed page containing a portion of the roll call vote on March 18, 2013 was inadvertently omitted from the Record filed with CAB. The page was submitted as a Supplement to the Record, is contained in the Binder submitted by MAST-Neshaminy on June 22, 2015, and is date-stamped "1192a." The Findings of Fact and Conclusions of Law adopted by the District Board are found at R. 1195-1236.

³ See Footnote 8, *infra*.

⁴ The original appeal in this matter was docketed at CAB Docket No. 2013-04. However, that appeal was withdrawn; and the appeal filed on February 12, 2014 was docketed at CAB Docket No. 2014-02 and is being treated as the new appeal in this matter.

11. On February 24, 2014, the School District filed an Answer to the Appeal. Official Notice-Docket No. CAB 2014-02.
12. A hearing officer was appointed to address any procedural issues raised in the case and to prepare the case for argument before CAB. Official Notice-Docket No. CAB 2014-02.
13. Following receipt of the record the hearing officer held a telephonic pre-hearing conference with counsel, and on April 30, 2014 issued an Order permitting the parties to file various procedural motions and setting deadlines for the motions and briefs. Official Notice-Docket No. CAB 2014-02.
14. Thereafter, the School District filed a Motion to Dismiss the Appeal for Failure to Identify a Suitable Facility and both parties filed various Motions to Supplement the Record and responses thereto. Official Notice-Docket No. CAB 2014-02.
15. On April 7, 2015, CAB: (1) issued an Order denying the School District's Motion to Dismiss for Failure to Identify a Suitable Facility; (2) granted MaST-Neshaminy's Second Motion to Supplement the Record, which contained four alternative proposed facilities; and (3) directed that the appeal proceed on the merits. Official Notice-Docket No. CAB 2014-02.
16. On May 8, 2015, the hearing officer issued an Order resolving all remaining outstanding Motions, establishing the Documentary Record before CAB, and setting briefing deadlines. Official Notice-Docket No. CAB 2014-02.
17. The parties have timely filed briefs in support of their respective positions on the merits of the appeal. Official Notice-Docket No. CAB 2014-02.

II. Sustainable Support

18. MaST-Neshaminy's founding coalition is made up of a cross-section of parents and professional educators who have served in various capacities for both public school districts and charter schools. R. 210-213, 752-755.
19. In its Application, MaST-Neshaminy submitted at least 393 pre-enrollment forms from residents of the School District which forms included the child's name, date of birth, grade level, address, gender and contact information. R. 626- 660.
20. In its Application, MaST-Neshaminy submitted petitions of support with at least 525 signatures from residents across the Neshaminy region. R. 661-705, 761-797, 1111.
21. At the February 11, 2013 public hearing, MaST-Neshaminy clarified that as of February 10, 2013, it had a total of 706 signatures on petitions of support and 567 pre-enrollment forms, and it provided those documents to the School District. R. 749-751, 1878-1982.
22. At the time of its original Application, twenty-seven (27) residents of the School District attended the MaST Community Charter School in Philadelphia (hereinafter "MaST Philadelphia"). R. 206.
23. At the time of its original Application, the MaST Philadelphia had a waiting list of 3000 students. R. 209.
24. Ten (10) people spoke in support of MaST-Neshaminy during the public hearings on the Application. R. 14-16, 1115-1117, 1119-1121.

III. Suitable Facility

25. In its Application, MaST-Neshaminy provided information about two possible facilities.

R. 1801; Official Notice - CAB's Decision on Neshaminy School District's Motion to Dismiss, p. 1, 4/7/2015.

26. In its Application, MaST-Neshaminy identified 1501 E. Lincoln Highway, Levittown, PA, as its first choice for the location of the charter school and provided a description of and address of the physical facility, information regarding the ownership thereof, and the existing lease arrangements. R. 17-18, 237-243, 1801.

27. During the hearing on the Application, there was testimony about the ownership of the property and the existing lease arrangements. R. 17-18.

28. The original two proposed sites have become unavailable during the appeal of the Application, and therefore, MaST-Neshaminy provided information about four (4) alternative locations in its Second Motion to Supplement the Record. R. 1802-1869.⁵

29. MaST-Neshaminy has provided information about a location at 181 Wheeler Court, Langhorne, PA, which, according to its statement in its Brief in Support of Its Second Motion to Supplement the Record, is now its first choice for the location of the charter school. Official Notice-MaST-Neshaminy's Brief in Support of Its Second Motion to Supplement the Record, p. 2-3, 2/5/2015; R. 1802-1806.

⁵ MaST-Neshaminy provided information about an alternative site in its First Motion to Supplement the Record, but CAB determined that the first Motion to Supplement was no longer relevant because during the pendency of these proceedings that facility had become unavailable. See CAB's Decision on Neshaminy School District's Motion to Dismiss, p. 3, 4/7/2015. As noted in CAB's Decision, MaST-Neshaminy continues to find and propose alternative sites as potential locations become lost. *Ibid.*, p. 2.

30. The information provided by MaST-Neshaminy includes an address of the physical facility; information regarding the ownership of the facility; a letter from the owner of the facility to the property developer indicating a willingness to lease or sell the facility for use by a charter school; a memorandum of understanding between MaST-Neshaminy and the property developer who will purchase and develop the property regarding the use of the facility as a charter school; a conceptual drawing as to how the property will be developed for the charter school; and budget information. R. 1802-1806.
31. MaST-Neshaminy has provided similar information about three additional sites should the location at 181 Wheeler Court, Langhorne, PA, become unavailable, which information includes an address of the physical facility; information regarding the ownership of the facility; a letter from the owner to the property developer indicating a willingness to lease or sell the facility for use by a charter school; a memorandum of understanding between the property developer who will purchase and develop the property and MaST-Neshaminy regarding the use of the facility as a charter school; a conceptual drawing as to how the property will be developed for the charter school; and updated budget information. R. 1807-1869.

IV. Model for Other Public Schools

32. MaST-Neshaminy intends to serve students in Grades K through 12 with its primary focus on “an integrated and constructivist model” that emphasizes “mathematics, science, and technology, incorporating the successful approaches of Science, Technology, Engineering, and Mathematics (hereinafter “STEM”) and career-focused choices.” R. 115, 119, 189.

33. During its first year of operation, MaST-Neshaminy intends to enroll 600 students in Grades K-12, with a total enrollment of 1275 students by its fifth year. R. 113, 208.

34. MaST-Neshaminy's objectives include:

- A system of continuous progress for every child in the charter
- A system of accountability and achievement
- A community deeply involved in the education of its young people
- A true school-to-career focus with on-site learning embedded in the STEM career principles
- A mobile device (iPads and notebooks) learning community that speaks to innovation and diversity

R. 114.

35. MaST-Neshaminy states that its overarching vision of the school is to have technology access for all grades through both notebooks and iPad initiatives; access to college-level faculty and worksite managers; linkages to colleges, technical schools, hospitals and employment opportunities; positive role models for at-risk students; hands-on, daily experiences in real life through internships and service learning projects; a living laboratory to study and implement current theories of learning; opportunity to access college-level courses; a demonstration site for best practices; cross-age mentoring and tutoring; leaving "no child uninspired" by engaging them in innovative strategies; and creating opportunities for success. R. 115-116, 119-120.

36. MaST-Neshaminy intends to model itself after MaST Philadelphia which it calls its flagship school. R. 114, 206.

37. MaST Philadelphia was named Charter School of the Year in 2007 and the best charter school in Philadelphia in 2012. R. 5.

38. MaST Philadelphia was ranked 34th out of 579 schools in Pennsylvania by *U.S. News*.
R. 5.
39. MaST-Neshaminy intends to house the students in Grades K through 12 within one building in order to provide individualized plans of instruction and permit the mixing of ages and skill groups so that students have the opportunity to learn at their own rate and ability level, which will be facilitated by having cross-age mentoring and tutoring and the K-12 curriculum aligned vertically and horizontally across grades and content areas. R. 7, 116, 119-120.
40. MaST-Neshaminy intends to utilize peer mentoring to help students learn individual responsibility and how to work independently and in groups. R. 116.
41. MaST-Neshaminy intends to be a mobile device school with information and state-of-the-art, up-to-date technology in every grade utilizing Apple and Google apps for instructional purposes. R. 7-8, 116, 120, 1110.
42. MaST-Neshaminy intends to utilize block scheduling at the high school level. R. 148, 1110.
43. STEM will be emphasized in every grade, K-12. R. 116, 120-121.
44. MaST-Neshaminy will utilize an on-going program of professional development for its teachers. The program will take place during the day after students are dismissed and will incorporate collaborative planning across grade levels based on data-informed instructional practices as determined by weekly monitoring of student achievement. R. 117-118, 121, 1110.
45. MaST-Neshaminy students will wear uniforms. R. 1110.

46. In addition to AP courses, MaST-Neshaminy intends to provide dual enrollment and summer enrichment courses for its students to provide them with first-hand college experience and college credits upon graduation. R.120-122, 181-182.
47. MaST-Neshaminy intends to utilize a “flipped classroom” in order to have more hands-on activities during class time. R. 121.
48. Service learning is a requirement to graduate. R. 1110.
49. MaST-Neshaminy intends to have an Outdoor Classroom with an Outdoor Lab where students can have daily immersion in eco-science. R. 146.
50. MaST-Neshaminy intends to create and utilize a 3D Interactive Learning Environment in its Media Technology and Science Center by year five (5) of its operation that would be integrated through Grades K-12. R. 8, 146-147.
51. MaST-Neshaminy intends to provide a full-year computer application course in Grades 7 and 8 and to require completion of four levels of technology courses in order to graduate. R. 165-175.
52. MaST-Neshaminy intends to offer courses in engineering, animation, programming and web design, design technology, media technology, video production, video journalism, and multiple courses in product design and virtual and physical modeling. R. 165-175.
53. MaST-Neshaminy intends to offer a full day Kindergarten. R. 190, 1110.

CONCLUSIONS OF LAW

1. CAB has jurisdiction in this matter under the CSL. 24 P.S. §17-1717-A(f) and (i)(1).
 2. A local board of school directors shall evaluate a charter school application based on criteria including, but not limited to, the following:
 - (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 [pursuant to the CSL].
 - (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 [of the CSL].
 - (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).
3. The local board of school directors must hold at least one public hearing, under the Sunshine Act,⁶ on the provisions of the charter application. 24 P.S. §17-1717-A(d).
 4. The local board of school directors must take formal action approving or denying a charter at a public meeting pursuant to the Sunshine Act. 24 P.S. §17-1717-A(e)(4).

⁶Act of July 3, 1986, P.L. 388, No. 84, *as amended*, 65 Pa.C.S.A. §701 *et seq.*

5. The local board of school directors must give to the applicant written notice of the denial of a charter application which shall clearly state the grounds for the denial including a description of deficiencies in the application. 24 P.S. §17-1717-A(e)(5).
6. The District Board complied with the procedural requirements of the CSL set forth at section 1717-A, 24 P.S. §17-1717-A. Findings of Fact Nos. 1-11.
7. CAB applies a *de novo* standard of review to the District Board's determinations. 24 P.S. §17-1717-A(i)(6); *West Chester Area District Board v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002).
8. When entertaining appeals from a local board of school directors' decision, CAB shall give due consideration to the findings of the local board of school directors while making an independent determination as to the merits, and shall specifically articulate reasons for agreeing or disagreeing with the local board of school directors. 24 P.S. §17-1717-A(i)(6); *West Chester Area District Board, supra*, 812 A.2d at 1180.
9. CAB is permitted to allow the charter school and/or the school district to supplement the record if the supplemental information was previously unavailable. 24 P.S. §17-1717-A(i)(6); *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400 (Pa. Cmwlth. 2003).
10. MaST-Neshaminy has the burden of proving that all of the enumerated requirements for the contents of the charter school application were satisfied, including introducing sufficient evidence of "demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students." 24 P.S. §17-1717-A(e)(2)(i).

11. "Sustainable support" means support sufficient to sustain and maintain the proposed charter school as an ongoing entity. *In re Independence Charter School Initiative*, Docket No. CAB 2000-2 at 11.
12. MaST-Neshaminy has demonstrated sustainable support in the aggregate as required by Section 17-1717-A(e)(2)(i). 24 P.S. §17-1717-A(e)(2)(i); Findings of Fact Nos. 18-24.
13. The CSL requires that the charter school application include a description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements. 24 P.S. §17-1719-A(11).
14. MaST-Neshaminy's Application and supporting material provided the information required in Section 17-1719-A(11) of the CSL regarding the facility it seeks to utilize for the charter school. 24 P.S. §17-1717-A(e)(2)(iii); Findings of Fact Nos. 25-31.
15. MaST-Neshaminy's Application and supporting material demonstrate that the proposed charter school can serve as a model for other public schools as required by section 1717-A(e)(2)(iv), 24 P.S. § 17-1717-A(e)(2)(iv); Findings of Fact Nos. 32-53.
16. The record in this appeal supports the grant of MaST-Neshaminy's Application for a charter under the CSL. Findings of Fact Nos. 1-53.

DISCUSSION

I. STANDARD OF REVIEW

The CSL provides:

In any appeal, the decision made by the local board of directors shall be reviewed by [CAB] on the record as certified by the local board of directors. [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).

CAB applies a *de novo* standard of review when entertaining appeals from a district board's denial of a charter school application under section 1717-A(i)(6), 24 P.S. §17-1717-A(i)(6). *West Chester Area District Board v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002). That means CAB considers the findings of the district board, articulates its agreement or disagreement with those findings, and makes an independent determination as to the merits of the application. *Id.*, 812 A.2d at 1179 n.9, 1180. In other words, while giving due consideration to the vote of the local board, CAB must independently review the record in accordance with the requirements of the CSL and may substitute its own findings and independent judgment for that of the local board.

Section 1717-A(e)(2) of the CSL provides that an application is to be evaluated based on criteria including, but not limited to, the following:

- (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 [pursuant to the CSL].
- (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-A⁷ 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).

II. THE MERITS OF THE APPLICATION

The District Board based its denial of MaST-Neshaminy's Application on three reasons.

It found that MaST-Neshaminy:

- a. lacked demonstrated sustainable support for the charter school,
- b. failed to identify a suitable facility, and
- c. failed to demonstrate that the charter school would be a model for other public schools.

R. 1231-1236.⁸

A. Demonstrated, Sustainable Support

The first ground on which the District Board denied the Application was its determination that MaST-Neshaminy lacked demonstrated sustainable support for the charter school. In order to be granted a charter, an applicant must show "demonstrated, sustainable

⁷ Subsection 11 of Section 1719-A of the CSL provides:

An application to establish a charter school shall include all of the following information:

- (11) A description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.

24 P.S. §17-1719-A(11). This is the only required information the School District contends MaST-Neshaminy failed to provide in its Application.

⁸The Conclusions of Law adopted by the District Board address a few other matters, R. 1231-1236; however, in its Brief in Opposition to the Appeal, the School District stated that these are the only three reasons on which the District Board denied MAST-Neshaminy's Application. See School District's Brief in Opposition to the Appeal, pp. 2, 3, 12, filed July 15, 2015.

support for the charter school plan by teachers, parents, other community members and students,” 24 P.S. §17-1717-A(e)(2)(i).

“Sustainable support” means support sufficient to sustain and maintain the proposed charter school as an ongoing entity. *In re Independence Charter School Initiative*, Docket No. CAB 2000-2 at 11. The *Independence Charter School* decision also enunciated the following general principles for considering whether an applicant has the requisite support required by the CSL:

... the indicia of support are to be measured in the aggregate rather than by individual categories. The statutory listing of “teachers, parents, other community members and students” indicates the groups from which valid support for the charter school plan can be demonstrated. It does not appear that the General Assembly intended this list to be mutually exclusive or exhaustive. Failure to demonstrate strong support in any one category is not necessarily fatal to an application. *Nevertheless, a reasonable amount of support in the aggregate must be demonstrated.*

Independence Charter School at 11-12 (*emphasis supplied*); see also *McKeesport Area School Dist. v. Propel Charter School McKeesport*, 888 A.2d 912, 916 (Pa. Cmwlth. 2005) (holding failure to demonstrate strong support in any one category is not necessarily fatal to a charter school application). Sustainable support may be shown in the application documents and by comments received at the public hearing. 24 P.S. §17-1717-A(e)(2)(i).

The District Board denied MaST-Neshaminy’s request for a charter based on its finding that MaST-Neshaminy lacked demonstrated sustainable support because: (a) only eight (8) community members spoke in support of the charter at the public hearings; (b) there was no support by teachers and school administrators who were not founding members of MaST-Neshaminy; and (c) the pre-enrollments did not demonstrate sustainable support or that the

charter school could be sustained as an ongoing entity. R. 1231, ¶¶ 193, 194, 195, 197; School District's Brief in Opposition to the Appeal, p. 6, filed July 15, 2015.

After a review of the record, CAB disagrees with the District Board's findings. The CSL does not require any minimum number of speakers or supporters to establish the appropriate sustainable support. See *Propel Charter School-East*, Docket Nos. CAB 2005-01 & 2005-02, at 6. CAB has found sustainable support on prior occasions when only a few community members spoke in support of an application at a hearing or when no one spoke in favor of the application at the public hearing. See *Propel Charter School-East*, *ibid.*, at 7 (seven (7) community members spoke in favor of the charter); *Renaissance Academy of Pittsburgh, Alternative of Hope Edison Charter School*, Docket No. CAB 2001-02, pp. 8-9 (sustainable support found based on the evidence in the application even though no one attended the public hearing to support the charter school).

In this case, ten (10) people spoke in support of MaST-Neshaminy's charter application during the public hearings. R. 14-16, 1115-1117, 1119-1121.⁹ While some of them appear to be affiliated with the school, R. 212, the District Board failed to give any reason why their support for the charter school should be given no weight. However, even if their support is discounted, the fact remains that the School District recognizes that eight (8) people, without ties to the proposed school, spoke in favor of the charter school at the hearings. In addition, the record does not support a finding that no educators or school administrators support the charter application.

⁹ At the November 29, 2012 public hearing on the Application, in addition to the three (3) charter school presenters, five (5) people spoke in favor of MaST-Neshaminy's Application, R. 14-16; and at the February 11, 2013 public hearing on the Application, seven (7) people spoke in favor of MaST-Neshaminy's Application, two (2) of whom had also spoken at the November 29, 2012 public hearing, R. 1115-1117, 1119-1121.

The School District acknowledges that some of the founding members of MaST-Neshaminy are educators or school administrators (*see* R. 210-212, 753-755); but it does not explain why that translates into no support by teachers and school administrators thereby demonstrating a lack of sustainable support from that group. Certainly, that educators are founding members of a charter school shows that they support the charter school.

In its Application, MaST-Neshaminy submitted at least 393 pre-enrollment forms from residents of the School District which forms included the child's name, date of birth, grade level, address, and gender and contact information. R. 626- 660. The District Board acknowledged 393 pre-enrollments, but found that number was insufficient to show sustainable support.

MaST-Neshaminy also submitted petitions of support with at least 525 signatures from residents across the Neshaminy region. R. 661-705, 761-797, 1111. The District Board did not explain why those petitions were not evidence of support.

At the February 11, 2013 public hearing, MaST-Neshaminy clarified that as of February 10, 2013, it had a total of signatures on 706 petitions of support and 567 pre-enrollment forms, and it provided those documents to the School District. R. 749-751, 1878-1982. Given MaST-Neshaminy's goal of enrolling 600 students in its first year, there appears to be sufficient evidence of record that MaST-Neshaminy could meet its targeted enrollment for the first year, let alone maintain the charter school as an ongoing entity.

CAB has previously ruled that such evidence is sufficient to establish demonstrated, sustainable support under the CSL. There is no requirement that a charter school have a certain number of preregistered students in order to show sustainable support. In prior decisions, CAB has found that pre-enrollment forms representing 34% of a school's projected enrollment

constitute sufficient evidence of sustainable support. *See In re William Bradford Academy Charter School*, Docket No. CAB 1999-8. *See also Montour School District v. Propel Charter School-Montour*, 889 A.2d 682, 684 (Pa. Cmwlth. 2006) (holding that 196 pre-enrollment forms out of a projected initial enrollment of 300 students, or 65%, was sufficient to show sustainable support). Here, accepting the minimum number of pre-enrollments acknowledged by the District Board of 393 forms, this still represents a potential of over half (66%) of MaST-Neshaminy's targeted enrollment of 600 students during its first year. "It is also not necessary to show that the parents were doing more than seriously considering enrolling their children in order to conclude that these parents do support the application." *See In re William Bradford Academy Charter School*, Docket No. CAB 1999-8 at 12.

Throughout its application and presentation to the District Board, MaST-Neshaminy stated that it intended to model itself after Mast Philadelphia, calling it its flagship school. The School District, however, argues that evidence that Mast Philadelphia has a waiting list of 3000 students and that some Neshaminy students attend Mast Philadelphia is irrelevant to the sustainable support inquiry and should not be considered by CAB. School District's Brief in Opposition, p. 6. CAB disagrees. As stated above, sustainable support is determined by looking at the record as a whole to determine whether or not the charter applicant has demonstrated, in the aggregate, sufficient support to sustain and maintain the proposed charter school as an ongoing entity. That there is a waiting list of approximately 3000 students for Mast Philadelphia and that some students from the School District where MaST-Neshaminy seeks to establish a charter school attend Mast Philadelphia, is relevant to the determination of whether or not there is enough support to keep MaST-Neshaminy operating as an ongoing entity. Overwhelming

demand for a program which the applicant intends to implement and replicate in its charter school may be utilized and evaluated in order to demonstrate that there is support sufficient to sustain and maintain the proposed charter school as an ongoing entity.¹⁰

Since support is measured in the aggregate, it was inappropriate for the District Board to isolate each potential type of support and find it inadequate on an individual basis. Accordingly, CAB holds that the evidence of record demonstrates sufficient sustainable support, in the aggregate, to meet the requirements of the CSL and rejects the District Board's finding to the contrary.

B. Suitable Facility

The School District argues that MaST-Neshaminy has "continually failed to comply with the CSL requirements in regards to identifying a suitable facility since the inception of its application in 2012 through its latest proposed facility in 2015." *See* School District's Brief in Opposition, p. 9. In support thereof, the School District states that MaST-Neshaminy never actually had possession of the site identified in its Application because the site was under lease to another entity nor did it have actual possession of the sites proposed in MaST-Neshaminy's Second Motion to Supplement because an unrelated third-party, not MaST-Neshaminy, has the authority to purchase or lease the proposed physical facility in which MaST-Neshaminy plans to locate the charter school. School District's Brief in Opposition, pp. 6-9. According to the supplemental materials regarding the current proposed site, this unrelated third party, John

¹⁰ While not used to determine sustainable support, CAB has found information about other "flagship" or model charter schools to be relevant in its evaluation of a charter application. *Cf. Propel Charter School-West v. Sto-Rox School District*, CAB Docket No. 2013-09 at 23 (finding that achievement of students at other Propel schools was relevant to evaluating the curriculum of an application for another Propel charter school).

Parsons, intends to purchase and develop the property and then lease it to MaST-Neshaminy for use as a charter school. R. 1802-1806. The School District contends that this is insufficient for purposes of designating a facility under the CSL. The School District also asserts that the conceptual floor plan and budget summary documents related to the new proposed sites are inadequate because the School District cannot determine from those documents whether any of the proposed facilities will comply with the CSL. *Ibid.*

The CSL requires that a charter school application include “a description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.” 24 P.S. §17-1719-A(11). CAB recognizes the practical difficulties faced by charter school applicants when trying to obtain real estate for a facility pending approval of a charter school application. Therefore, CAB has previously determined that the CSL “does not require that a lease be signed for a facility but requires that the facility be identified and the ownership and lease arrangements be described in at least a general way.” *In re: Appeal of Phoenix Academy Charter School*, Docket No. CAB 1999-10 at 21 (citing 24 P.S. §17-1719-A(11)).

In *Phoenix Academy* the charter school applicant did not include in its application or supplemental materials any of the CSL-required information regarding its proposed facility. *Phoenix Academy* at 21. Unlike the applicant in *Phoenix Academy*, MaST-Neshaminy, in its Application, provided information about two possible facilities: 1501 E. Lincoln Highway, Levittown, PA, as its first choice, or alternatively, 4595 New Falls Rd., Levittown, PA. MaST-Neshaminy specifically set forth a description of and address of the physical facility at 1501 E. Lincoln Highway, Levittown, PA; information regarding the ownership thereof; and the existing

lease arrangements. R. 17-18, 237-243, 1801. During the hearing on the Application, there was testimony about the ownership of the property and the existing lease arrangements, *i.e.*, that the property was leased to another entity, but that there were negotiations to terminate the lease. R. 17-18.¹¹ The Application and supporting evidence also contained a description of and address of an alternative physical facility, 4595 New Falls Road, which included information regarding the ownership thereof. R. 241-242.

The School District contends that the above information regarding the Lincoln Highway site was inadequate because it showed that the property was under lease to another entity, not MaST-Neshaminy, and thus, MaST-Neshaminy's Application was properly denied by the District Board. In making its argument, the School District misunderstands what the CSL requires. The CSL does not require a charter school applicant to have a written agreement to lease the proposed facility or all the zoning approved for a proposed facility in order to comply with the CSL. CAB has resisted requiring detailed facility plans and other detailed information in order to prepare the building for use as a school. For approval of the charter school, "the legislature intended [the CSL] to be liberally interpreted to encourage the development and growth of such schools, and ... the legislature could not have intended that School Districts require, as a condition of approval of a charter, that all necessary elements of the school's physical plant be established..." *In re: Leadership Learning Partners Charter School*, Docket No. CAB 2000-8 at 13. Thus, a charter should not be denied solely based upon the charter

¹¹ The testimony at the hearing was that MaST-Neshaminy did not yet have control of the Lincoln Highway site, but that there were negotiations regarding the termination of the lease. R. 17-18. MaST-Neshaminy identified the ownership of the proposed facility and submitted information regarding the availability of the site by stating that there were negotiations regarding terminating the lease. The District Board found the testimony to be not credible, but did not explain why it disbelieved the testimony. No contrary evidence was ever entered on the record.

school's failure to have all necessary plans and/or approvals for the facility included in the application. *In re: Environmental Charter School Appeal from Denial of Charter by Palisades School District*, Docket No. CAB 1999-14 at 16.

A review of the information provided by MaST-Neshaminy in its Application and at the hearing prior to the District Board's vote establishes that it met its burden to identify a proposed facility under the CSL. The District Board's finding to the contrary is rejected.¹²

Subsequently, both sites identified by MaST-Neshaminy in its Application became unavailable during the application/appeal process. R. 1801; Official Notice - CAB's Decision on Neshaminy School District's Motion to Dismiss, p. 1, 4/7/2015. Thereafter, MaST-Neshaminy provided information about four (4) alternative locations in its Second Motion to Supplement the Record. R. 1802-1869.¹³ MaST-Neshaminy has provided information about the location at 181 Wheeler Court, Langhorne, PA, which, according to its statement in its Brief in Support of Its Second Motion to Supplement the Record, is now its first choice for the location of the charter school. Official Notice-MaST-Neshaminy's Brief in Support of Its Second Motion to

¹² The School District argues that the District Board correctly denied the Application because the location originally proposed in the Application was never available to MaST-Neshaminy since at the time of the Application, the Lincoln Highway site was under lease to another entity, not MaST-Neshaminy. The School District contends that MaST-Neshaminy should not be permitted to cure this deficiency now by submitting sites that may be available to it. First, as stated above, the Application information provided by MaST-Neshaminy about the Lincoln Highway site was sufficient under the CSL. Second, CAB already determined that MaST-Neshaminy properly presented information and evidence of alternative sites to CAB and the School District when the originally proposed facilities were no longer available. *See* CAB's Decision on Neshaminy School District's Motion to Dismiss, p. 3, 4/7/2015. Third, because the original location was no longer available at the time of the CAB hearing, beyond what has been stated above regarding the sufficiency of the information provided in the Application, it will not be discussed further as the argument is moot.

¹³ MaST-Neshaminy provided information about an alternative site in its first Motion to Supplement, but CAB determined that the first Motion to Supplement was no longer relevant because that facility had become unavailable. CAB's Decision on Neshaminy School District's Motion to Dismiss, p. 3, 4/7/2015. As noted in CAB's Decision, MaST-Neshaminy continues to find and propose alternative sites as potential locations become lost. CAB's Decision on Neshaminy School District's Motion to Dismiss, p. 2, 4/7/2015.

Supplement the Record, p. 2-3, 2/5/2015; R. 1802-1806. The information provided by MaST-Neshaminy includes an address of the physical facility; information regarding the ownership of the facility; a letter from the owner to the property developer indicating a willingness to lease or sell the facility for use by a charter school; a memorandum of understanding between MaST-Neshaminy and the property developer, who will purchase and develop the property, regarding the use of the facility as a charter school; and a conceptual drawing as to how the property will be developed for the charter school. R. 1802-1806.¹⁴

CAB has previously determined that a letter of intent to lease a proposed charter school facility is sufficient evidence of a location for the charter school to comply with the CSL. *In re William Bradford Academy Charter School*, Docket No. CAB 1999-8 at 13. Thus, MaST-Neshaminy's identification of the facility at 181 Wheeler Court, Langhorne, PA, the description of the ownership thereof, and any lease arrangements, including a statement from the owner of the facility that it is available for sale or lease, the memorandum of understanding between MaST-Neshaminy and the property developer who will purchase and develop the property and lease it to MaST-Neshaminy, the proposed terms of the lease, a conceptual drawing as to how the property will be developed, and a revised budget to reflect the cost of this facility are sufficient to comply with the requirements of the CSL. The School District's contention that the conceptual drawings provided by MaST-Neshaminy are insufficient for it to determine whether

¹⁴ MaST-Neshaminy has provided information as to each of three additional sites should the location at 181 Wheeler Court, Langhorne, PA, become unavailable, which information includes an address of the physical facility; information regarding the ownership of the facility; a letter from the owner to the property developer indicating a willingness to lease or sell the facility for use by a charter school; a memorandum of understanding between the property developer, who will purchase and develop the property, and MaST-Neshaminy regarding the use of the facility as a charter school; and a conceptual drawing as to how the property will be developed for the charter school. R. 1807-1869.

the proposed facilities will comply with the CSL is rejected. The supplemental materials provided by MaST-Neshaminy meet the requirements of the CSL. However, under prior precedent, a school district has the opportunity to ensure that the facility ultimately constructed complies with all applicable laws. *See Montour School District v. Propel Charter School-Montour*, 889 A.2d 682 (Pa. Cmwlth. 2006). Thus, as a condition of granting a charter in this appeal, the facility ultimately constructed for the school must be a legally compliant school building and must be inspected and approved by the School District in order for the charter school to open.

C. Model for Other Public Schools

A charter school application is also to be reviewed based on the extent to which the charter school can serve as a model to other public schools. 24 P.S. §17-1717-A(e)(2)(iv). The District Board found that MaST-Neshaminy did not serve as a model for other public schools because, when comparing the School District's program to the charter school's proposal, it found that MaST-Neshaminy would not expand the curriculum choices for students stating that the School District's curriculum and opportunities exceeded those offered by MaST-Neshaminy. R. 1232-1233, ¶¶ 198-209. In reviewing the Application, the School District visited Mast Philadelphia to evaluate the flagship school's program and presented its findings to the District Board at the public hearing. The District Board found that there was no significant substantive difference between MaST-Neshaminy's curriculum and the School District's. *Ibid.* It found that the School District provided more offerings in the arts, extracurricular activities, AP courses, and electives than did MaST-Neshaminy. *Ibid.* Further, while the School District found that Mast Philadelphia contained more state-of-the-art technology than the School District's schools, it

concluded that such technology was not being utilized. *Ibid.* In its brief, the School District argues that the differences noted in its visit to Mast Philadelphia while evaluating MaST-Neshaminy's Application should not be credited to MaST-Neshaminy to support its claim that it can be a model for other public schools because the School District was evaluating Mast Philadelphia, the flagship school, not the program at MaST-Neshaminy. School District's Brief in Opposition, pp.11-12. Moreover, it argues that the differences in programs noted by the School District, *e.g.*, uniforms, block scheduling, all grades in one building, are minor and not "examples of innovative methods of models in vision by the CSL." School District's Brief in Opposition, pp.11-12. Thus, the School District contends that MaST-Neshaminy has not established that it can be a model for other public schools.

The CSL, however, does not provide any specific manner or degree to which a charter school must differ from the local school district. CAB has held that "the existence of similar programs in the school district does not prove fatal to a consideration of whether a charter school can serve as a model for other public schools pursuant to Section 1717-A(e)" of the CSL. *In Re: Infinity Charter School*, Docket No. CAB 2002-04 at 17; *Central Dauphin School District v. Infinity Charter School*, 847 A.2d 195, 204-05 (Pa. Cmwlth.). *See also Montour School District v. Propel Charter School-Montour*, 889 A.2d 682, 688 (Pa. Cmwlth. 2006)(holding the existence of similar programs in a school district is not fatal to a charter school's application for a charter when there is evidence of uniqueness.) Even if it were true that the School District provided all or even more of the educational choices proposed by MaST-Neshaminy, the CSL does not require MaST-Neshaminy to be more innovative or completely different from the School District. The purpose of the CSL 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.” *In Re: Sugar Valley Rural Charter School*, Docket No. CAB 1999-4 at 15 (emphasis in original). The District Board incorrectly emphasized the program of the School District. Its proper focus should have been on evaluating whether the educational program proposed by MaST-Neshaminy could serve as a model for other public schools.

Here MaST-Neshaminy, *inter alia*, intends to serve students in Grades K through 12 with its primary focus on “an integrated and constructivist model” that emphasizes “mathematics, science, and technology, incorporating the successful approaches of Science, Technology, Engineering, and Mathematics (STEM) and career-focused choices.” R. 115, 119, 189. MaST-Neshaminy states that its overarching vision of the school is to have technology access for all grades through both notebooks and iPad initiatives; access to college-level faculty and worksite managers; linkages to colleges, technical schools, hospitals and employment opportunities; positive role models for at-risk students; hands-on, daily experiences in real life through internships and service learning projects; a living laboratory to study and implement current theories of learning; opportunity to access college-level courses; a demonstration site for best practices; cross-age mentoring and tutoring; leaving “no child uninspired” by engaging them in innovative strategies; and creating opportunities for success. R. 115-116, 119-120. MaST-Neshaminy intends to model itself after MaST Philadelphia, which it calls its flagship. R. 114, 206. MaST Philadelphia was named Charter School of the Year in 2007 and the best charter school in Philadelphia in 2012. R. 5.

MaST-Neshaminy intends to house the students in Grades K through 12 within one building in order to provide individualized plans of instructions and permit the mixing of ages.

and skill groups so that students have the opportunity to learn at their own rate and ability level, which will be facilitated by having cross-age mentoring and tutoring and the K-12 curriculum aligned vertically and horizontally across grades and content areas. R. 7, 116, 119-120. MaST-Neshaminy intends to utilize peer mentoring to help students to learn individual responsibility and to learn how to work independently and in groups. R. 116. MaST-Neshaminy intends to be a mobile device school with information and state-of-the-art, up-to-date technology in every grade utilizing Apple and Google apps for instructional purposes. R. 7-8, 116, 120, 1110. MaST-Neshaminy will utilize block scheduling in the high school level. R. 148, 1110. STEM will be emphasized in every grade, K-12. R. 116, 120-121. MaST-Neshaminy intends to utilize a “flipped classroom” in order to have more hands-on activities during class time. R. 121. MaST-Neshaminy intends to offer a full day Kindergarten. R. 190, 1110.

MaST-Neshaminy will provide an expanded program of professional development for teachers on a regular basis after students are dismissed. R. 117-118, 121, 1110. MaST-Neshaminy students will wear uniforms. R. 1110. In addition to AP courses, MaST-Neshaminy intends to provide dual enrollment and summer enrichment courses for its students to provide them with first-hand college experience and college credits upon graduation. R.120-122, 181-182. Service learning is a requirement to graduate. R. 1110.

MaST-Neshaminy intends to have an Outdoor Classroom with an Outdoor Lab, where students can have daily immersion in eco-science. R. 146. MaST-Neshaminy intends to create and utilize a 3D Interactive Learning Environment in its Media Technology and Science Center, by year five (5) of its operation, that would be integrated through Grades K-12. R. 8, 146-147. MaST-Neshaminy intends to provide a full-year computer application course in Grades 7 and 8

and to require completion of four levels of technology courses in order to graduate. R. 165-175. MaST-Neshaminy intends to offer courses in engineering, animation, programming and web design, design technology, media technology, video production, video journalism, and multiple courses in product design and virtual and physical modeling. R. 165-175.

The Application and supporting materials describe a learning environment that is unique and different from that in the School District's public schools. The fact that the School District has some programs similar in nature to those outlined by MaST-Neshaminy is irrelevant to the consideration. The record establishes that MaST-Neshaminy's educational program is innovative and distinctive from the School District's. The record establishes, *inter alia*, different and innovative teaching methods would be utilized, new professional opportunities for teachers would be created, and more up to date state-of-the-art technology, different learning environments, including an outdoor classroom and 3-D technology, and an emphasis on STEM would be provided to students.

CAB concludes that the District Board erroneously determined that students who attend MaST-Neshaminy would actually have less choice than what is currently available in the School District and that there were no differences significant enough to constitute uniqueness in MaST-Neshaminy's program. Therefore, CAB disagrees with the District Board's conclusion that the Application does not provide parents and pupils with expanded curricular choices or encourage innovative and unique teaching methods. After a review of the record, CAB disagrees with the District Board's findings, and, consistent with the discussion above, finds that MaST-Neshaminy's program may serve as a model for other public schools.

CONCLUSION

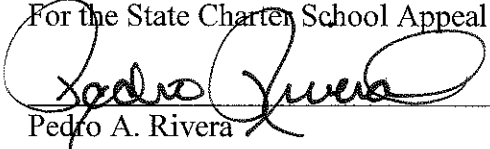
Based upon the foregoing analysis, the record does not support the District Board's findings and reasons for denying MaST-Neshaminy's Application. Accordingly, the following Order will issue:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

MaST-Neshaminy Charter School, :
Petitioner, :
v. : Docket No. CAB 2014-02
Neshaminy Public School District, :
Respondent. :

ORDER

AND NOW, this 6th day of January, 2016, based upon the foregoing and the vote of this Board,¹⁵ the appeal of the MaST-Neshaminy Charter School is **AFFIRMED**; and the Neshaminy Public School District is directed to issue a charter to MaST-Neshaminy Charter School pursuant to section 1720-A of the CSL, on the condition that a school facility in compliance with all applicable laws is constructed at one of the four sites proposed in MaST-Neshaminy's Second Motion to Supplement the Record. 24 P.S. § 17-1720-A.

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Date Mailed: 1/7/16

¹⁵ At the Board's meeting of December 9, 2015, the appeal was granted by a vote of 6 to 0. Board Member Dr. Jamie Bracey was absent.