

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

IN THE MATTER OF:

William Bradford Academy Charter School	:	
Appeal from Denial of Charter School	:	Docket No. CAB 1999-8
Application by the Keystone Oaks	:	
School District	:	

SYNOPSIS

Findings of Fact

1. The Keystone Oaks School District (District) is comprised of the Boroughs of Castle Shannon, Dormont and Green Tree, which have a total population of 23,812, according to the 1990 federal census.
2. The District had a student population of 1,277 attending its elementary schools in the 1998-1999 school year, with an additional 193 students in private and parochial schools or in-home education programs.
3. On September 3, 1998, the Board of School Directors (Board) for the District received a formal regional charter school application to establish the William Bradford Academy Charter School (Applicant) in the District, with the region consisting of the District as well as the Mount Lebanon School District.
4. The Board adopted a resolution on September 21, 1998, to schedule a public hearing on the charter school application on October 15, 1998, authorizing advertisement of the public hearing and establishing hearing procedures.
5. The resolution established that the definition of "community" for the Board review process was the residents and taxpayers of the District, together with individuals from whom the Board would receive public comment at the hearing or in writing.

6. The resolution specifically referenced an Exhibit C, Keystone Oaks School District 1998-1999 Charter School Overview Review Process, but the actual attachment to the resolution which was designated as Exhibit C was blank.
7. Some time subsequent to its September 21, 1998 resolution, the Board developed the overview review process that was to have been Exhibit C, which consisted of a technical review checklist.
8. The Applicant did not receive the developed technical review checklist until October 8, 1998.
9. The resolution of September 21, 1998 also provided that the Board would review the charter school application and would provide any questions to the Applicant five days before the scheduled public hearing.
10. On October 14, Applicant received from the Board a document entitled "William Bradford Charter School Application Administrative Review" (Administrative Review), which document was described as being "an overview of concerns and/or deficiencies identified based solely on review of the application material."
11. The public hearing of the Board was held on October 15, 1998, and the Applicant made a presentation in support of its position and also answered questions, which had been set forth in the Board's written Administrative Review. Additional documents and comments were received from various representatives of the Applicant as well as from residents and employees of the District.
12. At the scheduled conclusion of the October 15, 1998 public hearing at 10:30 p.m., the Applicant was advised that it would be provided an additional opportunity to respond, in writing, to any remaining unanswered questions in the Administrative Review and to respond to written concerns and questions that had been presented at the hearing by the President of the Keystone Oaks Education Association.
13. Applicant accepted the opportunity to supplement the application materials and address the concerns and questions raised at the October 15, 1998 public hearing.

14. The Board subsequently submitted additional written questions to Applicant.
15. Applicant responded in writing to both the additional questions of the Board and to the questions presented by the Education Association.
16. Applicant was informed that the deadline for submission of written information to the Board was November 20, 1998.
17. At its meeting of December 7, 1998, the Board postponed its scheduled vote on the application, in order to review additional material submitted that same day by the Applicant and to consider comments of individuals who addressed the Board during the meeting.
18. On December 17, 1998, the Board reconvened and adopted a resolution denying the Applicant's application for a charter by finding that it was substantially deficient in many material respects and fulfilled neither the statutory standards of Act 22 of 1997, 24 P. S. § 17-1701-A, et seq., (hereinafter referred to as the Charter School Law), nor the local standards established in the resolution of September 21, 1998, in the following manner:
 - a. failed to demonstrate sufficient sustainable support by teachers, parents and other community members and students from the District's community;
 - b. failed to demonstrate capabilities of support and planning to provide comprehensive learning experiences;
 - c. failed to conform to the legislative intent of the Law and contain the elements required by the Law; and,
 - d. failed to demonstrate that the charter school could serve as a model for other public schools.
19. The Board of the Mount Lebanon School District also rejected the regional application for a charter school and Applicant did not resubmit its application to that district.

20. Applicant made a formal resubmission of its charter school application to the Board on January 28, 1999, which application was for a single district charter, rather than as previously submitted for a regional charter school.
21. Without additional public hearing, the Board denied the resubmitted application for a charter school by resolution of March 15, 1999.
22. From the period of time of its initial application for a charter school until resubmission of its application, the Applicant presented the following documentation to the Board:
 - a. thirty-six (36) letters of support that represented fifty-one (51) residents and taxpayers of the District;
 - b. comments at the public hearings by seventeen (17) residents, twelve (12) of whom were duplicative because they addressed the Board twice in both letter and comment;
 - c. a petition of seventeen (17) names presented at the December 7, 1998 Board meeting;
 - d. sixteen (16) additional signatures of residents in support of approval of the charter application included in the resubmitted application on January 28, 1999;
 - e. a letter from the Dormont Public Library stating its willingness to provide library support to the Applicant;
 - f. statements of support from twenty-five (25) families representing at least thirty-seven (37) children who were seriously considering enrollment of their children in the charter school;
 - g. a revised target enrollment of one hundred eight (108) students;
 - h. a proposed curriculum that includes Spanish language instruction;
 - i. a letter of intent from the leasing agent for the Borough of Dormont to lease space at the Dormont Municipal Center (Center), subject to the

- approval of Dormont Borough Council and the approval of the charter school application, however, space at the Center was not available at the time of Applicant's projected date of occupancy;
- j. a letter from Emanuel Evangelical Lutheran Church (Church) giving permission to use its facility as a potential, temporary location for the charter school Applicant until completion of its permanent site;
 - k. four (4) letters of support from state legislators;
 - l. prior to the resubmission of its application, the Applicant was not incorporated with elected officers, but one of its founders had signed documents using the title of president;
 - m. at the time of the resubmission of the charter school application, Applicant had become a non-profit corporation known as William Bradford Academy Charter School, Inc., and elected six of seven officers of its board of trustees, in accordance with its by-laws;
 - n. criminal history records and child abuse clearances for four (4) individuals who might seek employment with the Applicant, if the charter was approved, with two (2) of the individual's records or clearances being out-of-date and invalid;
 - o. a revised budget that only included the rental cost for the permanent location of the Center and no rental cost for the potential temporary location at the Church;
 - p. a revised budget line item for consultants indicating an allocation of \$25,000.00, which included proposed costs for \$12,000.00 to the Carnegie Science Center and provided less than \$13,000.00 available for the costs of curriculum consultant, physical education teacher, reading specialist services and other consulting services, despite the

assertion in the application that \$15,000.00 is available for such consultants.

23. On July 1, 1999, Applicant filed a petition of appeal with the State Charter School Appeal Board ("CAB").

Conclusions of Law

1. The Board did not commit reversible error in its adoption and use of supplementary criteria and definitions for the factors set forth in the Charter School Law for the review of charter school applications.
2. The Charter School Law does not specifically define "community" and thus it was proper and reasonable for the Board to define this as the residents and taxpayers of the District.
3. Applicant was not denied due process nor prejudiced by the adoption and application of procedures and review criteria by the Board after the initial submission of Applicant's charter school application.
4. The indicia of sustainable support are to be measured in the aggregate, and not by each individual category from which that support might be measured. Failure to demonstrate strong support in any one category is not necessarily fatal to an applicant.
5. The Applicant presented sufficient documentation and other evidence to demonstrate sustainable community support for its application, as provided by the factors of review in the Charter School Law and as refined by the Board.
6. The letter of intent to lease the Center, subject to the approval of Borough Council and approval of the charter school application by the Board of School Directors, was sufficient to demonstrate that the Applicant had an acceptable facility, however,

because the Center was not available on the Applicant's projected opening date, this was insufficient to satisfy the requirement of the Charter School Law.

7. The Applicant otherwise failed to demonstrate an available facility on its projected opening date, which made the Applicant incapable of providing comprehensive learning experiences to students pursuant to the Charter School Law.
8. The Applicant failed to provide in its application the mandatory information requested in Section 17-1719-A of the Charter School Law by not including valid reports of criminal history records and official clearance statements regarding child injury or abuse as set forth at Subsections 17-1719(15) and 17-1719(16).¹
9. The Board properly determined that errors and discrepancies existed in the budget included in Applicant's resubmitted application, that the budget could not sustain the educational program and, thus, that the Applicant was incapable of providing comprehensive learning experiences.
10. The Applicant demonstrated significant and substantive differences between its proposed program and the District's program, including for example, instruction in the Spanish language.
11. The Board properly determined that deficiencies in the application demonstrated the Applicant's failure to serve as a model to other public schools.

Discussion

The General Assembly enacted the Charter School Law, 24 P. S. § 17-1712-A, to provide opportunities for the establishment and maintenance of public schools that operate

¹ This Board recognizes that it is often unlikely that charter applicants will have any potential or actual employees identified before the school district's decision on the application. In such circumstances, the application will be deemed acceptable if it specifies that the required clearances and background checks will be secured and provided prior to employing individuals who will have contact with children. In contrast, however, in this case the Applicant identified potential employees but provided stale information. We cannot hold this to satisfy either the language or the intent of the pertinent provisions of the Charter School Law.

independently from existing public school districts. To establish a charter school or regional charter school, an application must be submitted by November 15 of the preceding school year for review and consideration by the local board of director(s) of the district where the charter school is to be located. Id. at §§ 17-1717-A(c) and 17-1718-A. The approval of the charter requires a majority vote of the directors. Id. A denied application may be resubmitted to the local board of directors and, if again denied, an appeal may be taken to the Appeal Board. Id. at §§17-1717-A(e) and 17-1717-A(i)(1).

Section 17-1717A(e)(2) provides the local board of directors with a list of criteria to consider in their review of an application, which include, but are 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 regarding the application;
- (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-A² and conforms to the legislative intent outlined in section 1702-A; and,
- (iv.) the extent to which the charter school may serve as a model for other public schools. Id.

The appeal of a denied application to the CAB is subject to review and consideration under this same list of factors.

Pennsylvania Local Agency Law provides that an adjudication of a local agency is invalid unless a party has been afforded reasonable notice of a hearing and an opportunity

² This statutory provision specifies the contents of a charter school application and includes a list of seventeen items.

to be heard. 2 Pa. C. S.A. § 553. The agency law further defines an "adjudication" as being the following:

Any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made.

Id. at § 101.

Applicant asserts that the action of the Board of School Directors in promulgating and then applying its own review standards in this case was reversible error on several grounds. First, Applicant suggests that, because these review standards were not given the Applicant until after the application for the charter was submitted, Applicant's alleged property right to a charter was denied without due process of law. Assuming for the sake of discussion that the Applicant has a substantial property right, the Applicant did not raise this point with the Board of School Directors. It is well established that a party may waive their rights to guarantees of due process. Lewis v. School District of Philadelphia, 690 A.2d 814 (Pa. Commw. 1997). Thus, because this issue was not raised below, we consider it to have been waived. Moreover, even had this issue been preserved, the Board of School Directors in this case certainly afforded the Applicant ample opportunity to provide information, supplement its application and respond to written and oral questions. For example, at the conclusion of the October 15, 1998 hearing, Applicant was given additional time, until November 20, 1998, to supplement its application and answer questions. Even thereafter, when the Applicant submitted additional materials to the Board at its December 7, 1998 meeting, when the Board had been scheduled to vote on the application, the Board postponed the vote in order to consider those materials. In sum, the Applicant was afforded approximately three months time to respond to the standards and criteria adopted for the Board's administrative review. This period of time and the Board meetings to discuss the application and address issues certainly represent reasonable notice and adequate opportunity to be heard. Thus, we conclude that the Applicant was not denied due process

rights to notice and a hearing and was not prejudiced by the action of the Board of School Directors.

In addition, contrary to the Applicant's position, the legislative list of factors set forth above is not exhaustive. Other factors may be considered to the extent that they are consistent with the Charter School Law and relevant to the charter application. Moreover, in that the application here was ultimately denied based upon statutory grounds, we reject Applicant's argument. Finally, the listed factors are not defined in the Charter School Law and the local board of directors may provide such definitions as long as the school district's definitions are consistent with, and rationally related to, the plain meaning of the legislative terms. The Board acted properly in providing the definition for the community for the initial review factor and Applicant was not denied due process by the Board's action.

In addition, we note that each factor to be considered in reviewing a charter application involves subjective judgments and can be viewed differently by different individuals and groups. Several of the factors also appear as if they would be measured on a continuum. In this case, the Board developed a technical review checklist of which the content is rationally related to, and consistent with, the factors for review provided in the Law. The Board, therefore, acted properly in establishing criteria for its review of the application for a charter school. Having disposed of this procedural issue, we move now to the substance of the appeal.

In the instant appeal, the Board denied the application on the basis of all four listed factors. They will be discussed below seriatim.

A. Demonstrated, Sustainable Support.

The first factor upon review of a charter application, "demonstrated, sustainable support for the charter school plan," is an inherent variable based upon the size of the proposed school, the size of the community and other factors. Support can only be measured in levels or degrees and not absolutes. Because the list of factors is not

exhaustive and is subjective in nature, the Board properly determined to adopt the definition of the community as consisting of residents and taxpayers of the District and individuals who commented at the public hearings or in writing.

In considering this factor, we conclude that only the degree of support for the charter school plan is relevant, not the degree of opposition or indifference. Sustainable support for the charter school plan means sufficient support to sustain and maintain the proposed charter school as an on-going entity. The indicia of support are, therefore, to be measured in the aggregate. Failure to demonstrate strong support in any one of the categories "teachers, parents, other community members and students" is not necessarily fatal to the application. An applicant is only required to demonstrate a reasonable amount of support in the aggregate.

The Board reviewed the Applicant's evidence in relationship to the District's 23,812 population and 1,470 school-age students. It also noted the support of the public library as a community institution but noted that there was no other community support and that no teachers supported the Applicant. However, in viewing the evidence in this manner, the Board took a very restrictive view and one, as discussed above, differs from the manner in which the statute can and should be read. Our analysis of this evidence follows.

The Applicant provided thirty-six letters of support representing fifty-one residents and taxpayers. Twenty-five parents representing thirty-seven children presented statements that they were seriously considering enrolling their children in the charter school. This represents at least a potential third of the number of students of Applicant's targeted enrollment of 108 students. Applicant also provided a petition of seventeen names, letters from state legislators and a letter of support from the community library. In addition, at least seventeen taxpayers made comments of support at the public hearing before the Board.³

³ As noted in the findings of fact, some of the charter's supporters are included in more than one of these groups.

The fact that the statements and letters contained inconsistencies and some erroneous information about the charter school application does not require them to be discounted as support. It is also irrelevant that the statements included support of the existing school program of the District. The Charter School Law does not require supporters to be dissatisfied with the local district, but only provides for the opportunity of charter schools to be operated independently of the local district. Also, it is 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.

Thus, we conclude that the petitions, letters, public hearing statements and statements of intent to enroll students demonstrate a reasonable amount of support for the charter school plan. In contrast, we find that the Board, based on the above discussion, improperly determined that the evidence was insufficient to satisfy the criteria of the Charter School Law.

B. Capability to Provide Comprehensive Learning Experiences.

The second factor, "the capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students", is also a matter of degree, but much less so than the first factor. The term capability suggests at least a minimum absolute threshold of acceptability. The Applicant must, however, be capable of delivering comprehensive learning experiences.

The initial item reviewed by the Board of School Directors under this factor was the Applicant's evidence of obtaining a commitment from a facility in which to locate the charter school. Applicant presented evidence of a letter of intent to lease the Dormont Municipal Center (Center) that was executed by the authorized leasing agent for the Borough of Dormont. This letter of intent was made conditional upon the approval of the Borough Council and the District's approval of the charter school application. Moreover, even had these conditions been satisfied, the Center would not have been available for the date of

occupancy being proposed by the Applicant. As an alternative, the Applicant presented a letter from the Emmanuel Evangelical Lutheran Church (Church). In the letter, the Congregational Council President stated that the Church could be listed in the charter school application as a "potential, temporary location" for the fall of 1999. The letter made clear that the Church was making no binding commitment. Moreover, the President wrote that several issues needed to be reviewed by both the Church and the Applicant before a commitment or a vote on use of the facility could occur. The statement also indicated that it was not to be considered as agreement with the substance of the Applicant's program and there would be continued research into the proposal.

The letter of intent to lease the Center is sufficient evidence of a location for the charter school. The Applicant should have not been required to obtain a legal commitment or the vote of the Borough Council prior to obtaining the Board's approval of its application. It was, however, necessary for the Applicant to designate a temporary location in the application until such time as the Center was ready for occupancy. The Church's reticent permission to be named a "potential, temporary location" was too tenuous as to constitute more than a possibility, not an actual available location.

The Board could and did properly consider the availability of a location to house the program under this factor.⁴ The absence of an actual available temporary location for the Applicant was sufficient ground for the Board of School Directors to determine that the Applicant was incapable of providing comprehensive learning experiences. Although the Applicant requested that the Board grant a conditional approval in regard to this matter, the Charter School Law does not require that a Board grant such approval and we will not disturb the Board's judgment on this issue.

The Board of School Directors also considered the governance structure of the Applicant because of the use of corporate office designations prior to the Applicant's

⁴ We also note that the information provided by the Applicant concerning the Church facility does not meet the physical facility requirement related to the charter application. 24 P.S. §17-1719-A(11).

incorporation and election of officers. The Charter School Law permits individuals to establish a charter school and, therefore, the lack of incorporation and elected officers is irrelevant. The erroneous use of the corporate office designation is a mere technical matter that was subsequently ratified through the Applicant's incorporation and election of officers. Moreover, this issue has no bearing on the capabilities of the Applicant to operate a charter school. In addition, we note that the Board of School Directors was overbearing in its criticism of the Applicant's understanding of statutory sovereign immunity and various federal and state statutes that could result in liability notwithstanding such immunity. The Charter School Law does not require charter school founders to be legal experts.

In addition, the Board of School Directors concluded that the Applicant failed to demonstrate the capacity to provide comprehensive learning experiences to students because the financial information submitted with the application was inconsistent and insufficient. First, the revised budget in the resubmitted application did not include an allocation for rental costs of the temporary facility proposed to be leased from the Church. In addition, there was a significant discrepancy between the amount of funds allocated for consulting services and the description of the consulting services to be used by the charter school. These issues could properly be viewed by the Board of School Directors as additional evidence of the Applicant's inability to sustain the educational program and as support for its finding that the Applicant was not capable of providing comprehensive learning experiences.⁵

⁵ Deficiencies in a charter applicant's proposed budget, without more, would not be sufficient grounds for denying an application. The Charter School Law only requires limited information regarding finances, which includes: (1) the charter school's financial plan, (2) how the accounts of the charter school treasurer will be annually audited according to section 437 of the Public School Code of 1949, as amended, and (3) how the charter school will provide adequate and appropriate insurance coverage for the school, employees and board of trustees. 24 P.S. §17-1719-A(9)&(17). If this information is provided, then the application is sufficient in this respect. However, fiscal deficiencies and concerns can be used to supplement a finding, as here, that another prong of the statutory test has not been met.

C. Extent to which the Application Considers Information Statutorily Requested and Conforms to the Legislative Intent.

Although the third factor contains two parts, the Board of School Directors apparently limited its review to the portion of this factor regarding the extent to which the application conformed to the information included in Section 17-1719-A of the Charter School Law. The Board determined that the application failed to conform because of the absence of a list of proposed faculty for the charter school and corresponding reports of criminal history records and official clearance statements regarding child injury or abuse for all individuals who would have direct contact with students. In its resubmission, the Applicant did provide the names of at least four proposed faculty members for the charter school. Under the statute, the inclusion of the identity of all proposed faculty is unrealistic and, therefore, immaterial.⁶

The resubmitted application included criminal history information and official clearance statements in regard to child injury or abuse for the four individuals who would be working in the charter school. Upon review of this information, however, the Board correctly found that the criminal history background checks for two of these individuals were invalid because they were stale. The Charter School Law specifically provides that the charter school application "shall" contain the above information for all individuals who shall have direct contact with students. Id. at. § 17-1719 (15) and (16).

The rules of statutory construction provide that words and phrases shall be construed according to rules of grammar and according to their common and approved usage.

1 Pa. Consol. Stat. Ann. § 1903. The courts have construed the term "shall" as being either permissive or mandatory, depending on the legislative intent. Tyler v. King, 344 Pa. Super. 78, 496 A. 2d 16 (Pa. Super. 1985). One of the circumstances under which "shall" has been

⁶ We note a charter applicant may not, at the time of application, be able to identify potential employees and such is not required by the Charter School Law. In such case, the application is sufficient if it specifies that the applicant will comply before individuals are employed. However, where potential employees are identified, these documents must be provided and they must be current.

held to be mandatory is when the public welfare requires that it be given such meaning. In re Fear, 344 Pa. 624, 26 A.2d 457 (1942). In a charter school application, the subject record and clearances certainly involve the public welfare and safety of elementary school children. Thus, in regard to these two application requirements, if individuals are identified, provision of the information is mandatory.

Although the information was provided in the resubmitted application, it was inaccurate. Such reports and clearances are, however, readily attainable and it is realistic to have expected the Applicant to provide current information. For these reasons, we conclude that the Board of School Directors acted properly in finding the application to be deficient in this regard and in using this as a basis for denial of the charter application. Thus, we adopt this finding of the District.

D. Extent to which the Charter School May Serve as Model.

The final criterion for consideration is 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 Board determined that the Applicant did not serve as a model for other public schools because of the deficiencies the Board had identified under the other statutory factors and the absence of significant substantive differences between the Applicant's program and the District's program. The Board found that there was no significant substantive difference in the curriculum or in parent involvement with the school, when comparing the charter school proposal to the District. The only exception it noted was the charter school's proposal to teach comparative religion.

The Charter School Law, however, does not provide any specific manner or degree to which a charter school must differ from the local district. In addition, to the comparative religion noted by the District, we find that the Applicant also proposed to include in its program the teaching of Spanish language, which does not occur in the District. Although the District disagrees with including this language in the curriculum, such disagreement

does not negate the fact that its very inclusion creates a curricular difference between the charter school and the District. Thus, we conclude that the District erroneously determined that there were no differences in the program. That the Board properly determined that the Applicant had failed to satisfy factors two and three above is significant but, this does not mean that the Applicant also failed to demonstrate that the charter school may serve as a model for other public schools. Thus, we reject the Board's finding in this regard and, consistent with our discussion above, find that the Applicant's program could serve as a model.

Consequently, based upon our adoption of the District's findings regarding the second and third prongs of the review criteria in the Charter School Law, the Board properly determined that the application to establish a charter school should be denied.

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

IN THE MATTER OF:

William Bradford Academy Charter School	:	
Appeal from Denial of Charter School	:	Docket No. CAB 1999-8
Application by the Keystone Oaks	:	
School District	:	

ORDER

AND NOW, this _____ day of November, 1999, based upon the foregoing and the vote of this Board⁷, the March 15, 1999 decision of the Keystone Oaks School District denying the Revised Charter School Application of the William Bradford Academy Charter School is affirmed and the July 1, 1999 appeal of the Charter School is denied.

For the State Charter School Appeal Board,

/s/
Eugene W. Hickok
Chairman

⁷ At the Board's August 18, 1999 meeting, the appeal was denied by a vote of 4-2, with members Aliota, Bunn, Melnick and Shipula voting to deny the appeal and members Tait and Hickok voting to grant the appeal.