

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

IN RE: Phoenix Charter School :

Appeal from denial of :

charter school application by the : **Docket No. CAB 2001-06**

School District of Philadelphia :

OPINION AND ORDER

I. Background

On November 5, 2000, the Phoenix Charter School (hereinafter “Phoenix”) submitted a charter school application to the School District of Philadelphia (hereinafter “School District”). Phoenix proposes to enroll 250 students in grades K-3 in Philadelphia for its first year. The school will be organized into “non-graded communities.” The curriculum includes reading, speaking, writing, listening, math, science, social studies, and communication technology. Using an untraditional non-graded approach, “children will move through the curriculum at their own pace.” The application proposes a growth from 250 to 1000 students in three years.

On February 26, 2001, the Philadelphia Board of Education, the governing body of the School District, voted to deny the application by Phoenix. The Board cited several reasons for the denial.

Phoenix attempted to address the School District’s concerns, and resubmitted its application. On May 7, 2001, the Philadelphia Board of Education again voted to deny the application by Phoenix.

Phoenix has appealed the denial to the Charter School Appeal Board (hereinafter “CAB”).

II. Findings of Fact

A. Procedural History

1. On November 5, 2000, pursuant to the Charter School Law, 24 P.S. §§17-1701-A – 17-1732-A, the Phoenix submitted a charter school application to the School District. (Ex. A)
2. Phoenix is incorporated as a non-profit corporation to operate a public charter school in Philadelphia. (Ex. A, at 49)
3. On December 19, 2000, the School District held a public hearing at which it received testimony from representatives of Phoenix. (Ex. B)
4. The Philadelphia Board of Education held a hearing on January 22, 2001, where two speakers spoke in favor of the proposed Phoenix. (Ex. C and D)
5. On February 26, 2001, the Philadelphia Board of Education, the governing body of the School District, voted to deny a charter for the proposed Phoenix. (Ex. E)
6. Phoenix resubmitted its application to the School District with a reply that attempted to address the School District's concerns. (Ex. F)
7. On May 7, 2001, the Philadelphia Board of Education voted to deny the resubmitted application. (Ex. G) The Board's reasons were substantially similar to its earlier rejection. (Ex. H)
8. Pursuant to 24 P.S. §17-1717-A(h)(2), Phoenix obtained signed petitions and filed those petitions with the Court of Common Pleas, Philadelphia County. The Court, on July 25, 2001, determined that the petitions were valid and satisfied the requirements of §17-1717-A(h)(2).
9. On August 10, 2001, Phoenix filed a petition for appeal with the CAB, which was docketed at CAB 2001-6.

10. On September 7, 2001, the CAB accepted the appeal filed by Phoenix to review the School District's denial of Phoenix's application.
11. On September 7, 2001 CAB appointed a hearing officer to review and develop the record. The hearing officer conducted a telephone pre-hearing conference to obtain all documents and the record from Phoenix and the School District.
12. On October 2, 2001, the hearing officer issued Pre-Hearing Order No. 1, requesting that the parties designate the contents of the record and file any requests to supplement the record before the CAB. The School District filed its designation of the contents of the record on October 3, 2001.
13. On October 7, 2001, Phoenix concurred with the documents designated, but reserved the right to request supplementation of the record.
14. On October 15, 2001, Phoenix filed a motion to supplement the record requesting that 16 documents be included. The School District responded to the motion on October 22, 2001. Phoenix filed an additional response dated October 26, 2001.
15. On October 29, 2001, the hearing officer, in an opinion and order, denied the request to supplement the record, except for documents directly relating to Phoenix's application before the School District.
16. On November 11, 2001, after a conference call and submission of the petitions by Phoenix, the hearing officer admitted the petitions attached to Exhibit F, which previously had not been attached.
17. The hearing officer certified the record before the CAB on December 17, 2001, at its regularly scheduled meeting.
18. At oral argument before the CAB, counsel for Phoenix sought to introduce an additional

exhibit (a letter dated November 21, 2001), concerning the school's proposed location.

B. Phoenix's application

19. Phoenix's application reflects an understanding of the charter school model and the purposes of the charter law. (Ex. A)
20. Phoenix's application proposes a non-graded K-3 school where each child will move through the curriculum at his or her own pace. Phoenix provides for six major curricular areas: computer skills, social studies, mathematics, science, healthful living, and arts. Phoenix will be organized by "communities," through which each child will move based on his/her skills. (Ex. A, at 1-12)
21. Phoenix discusses in its application and testimony that students will be evaluated and moved through "communities" based on their performance in a battery of tests, such as the Metropolitan Achievement Test, the Woodcock Reading Mastery Tests, and Key Math Tests, and how they perform in relation to a skills bank detailing the skills a student should be able to master at each level, starting with kindergarten. (Ex. A, at 5-11; Ex. B, at 65-69)
22. Phoenix included six letters in its application, which generally advocated an alternative approach to education and supported Phoenix's proposed approach. (Ex. A, at Appendix. C)
23. Phoenix referred to public meetings that it has held where the attendance demonstrated that it had support for its plan. (Ex. B, at 61-62)
24. Phoenix provided minutes, attendance sheets, or petitions of support from these meetings. (Ex. F, at Attachment)
25. Phoenix did not provide statements by teachers who are willing teach at the school or by parents who are committed to enrolling their students at the school.

C. The School District's Statement of Deficiencies in the Application

26. The School District found that Phoenix does not describe the criteria that determine mastery and does not state how long students will remain in the school if mastery does not occur. (Ex. E, at 3)
27. The School District found that there would be difficulty measuring the performance and progress of the school because of Phoenix's non-graded system and vague proposals for monitoring performance. (Ex. E, at 4-5)
28. The School District found that, among other items, though Phoenix may draw a language diverse student population, Phoenix's application does not describe a detailed plan for English-as-a-second-language instruction or support. Additionally, the School District found that Phoenix's plan to provide services to students with special needs was not adequate. (Ex. E, at 4)
29. The School District found that the application contains very little evidence that parents and community members understand and are committed to the school. (Ex. E, at 6)
30. The certified record does not contain either letters of support from parents committing to enroll their children in Phoenix or letters of support from teachers wanting to work at the school. (Ex. F)
31. Phoenix indicates in its application that it is considering several properties "in the West Philadelphia/Center City areas of the city," but provided no further details. (Ex. A, at 47)
32. Phoenix stated at the December 19, 2000 hearing that the school would locate in either West Philadelphia or North Philadelphia, and mentioned three possible sites. (Ex. B, at 59-60)
33. The School District found that Phoenix presented conflicting budget statements in its application. One example the District provided is that Phoenix estimates teacher salaries at

\$29,000 and rent at \$75,000 in one portion and salaries at \$40,000 and rent of \$195,000 in another. (Ex. A at 46, A-54; Ex. E at 6-7)

III. Conclusions of Law

1. The Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, 24 P.S. §17-1717-A *et seq.*, governs the application and approval processes and operation of charter schools in Pennsylvania.
2. The CAB has appellate jurisdiction in this matter in accordance with §17-1717-A(i)(6).
3. Section 17-1717-A(e)(2) of the Charter School Law, 24 P.S. §17-1717-A(e)(2), sets forth the factors to be used in the evaluation of the proposed Charter School application:
 - (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.
4. The CAB concludes that the certified record supports the School District's finding that there was a lack of demonstrated sustainable support for Phoenix's plan from parents and community members as required by Section 1717-A(e)(2)(i).
5. The CAB concludes that the certified record, in large part, supports the School District's

conclusion that Phoenix did not sufficiently demonstrate its capability, in terms of support and planning, to provide comprehensive learning experiences to student. 24 P.S. §17-1717-A(e)(2)(ii).

6. The CAB concludes that Phoenix’s application fails to provide much of the information requested in Section 1719-A of the Charter School Law.

IV. Discussion

A. Standard of Review

The Charter School Law, 24 P.S. §§17-1717-A – 17-1732-A, permits an appeal to the CAB. 24 P.S. §17-1717-A(i). The standard of review is *de novo*, meaning the CAB will review the evidence submitted to the local school board and determine whether, based on that evidence, to accept or reject the school board’s findings and conclusions. 24 P.S. §17-1717-A(i)(6); see also School District of the City of York v. Lincoln-Edison Charter School, 772 A.2d 1045, 1048 (Pa. Cmwlth. Ct. 2001). A *de novo* review “involves full consideration of the case anew.” Young v. Department of Environmental Resources, 600 A.2d 667, 668 (Pa. Cmwlth Ct.. 1991). Thus, the Board reevaluates Phoenix’s application in light of the criteria set forth in §17-1717-A(e)(2) and §17-1719-A. If the CAB finds that Phoenix’s application meets the criteria set forth in those sections, the CAB can grant Phoenix’s application.

Phoenix claims that the process for consideration of charter school applications before the School District violates the due process and equal protection clauses of the U.S. Constitution because the School District relies on factors other than those intended by the legislature in considering charter school applications and because the School District has relied on *ex parte* communications in the process. (Phoenix Brief, at 4-5) Phoenix has not, however, identified the specific factors or communications relied upon by the School District to the detriment of

Phoenix.

Moreover, Phoenix has appealed to CAB for a review of the School District's denial. According to the Commonwealth Court, "[t]his procedure is in accord with the '[m]inimum requirements of due process' which 'demand that a litigant have, at some stage of a proceeding, a neutral fact-finder.' ...[O]ur supreme court noted that the local school board is not 'an independent and impartial adjudicator.' Similarly, here, we cannot ignore the fact that local school boards have a significant interest in whether charters are granted; indeed the legislative history contains frequent references to the bias of local school boards against charter schools. Thus, here ... there is a need for a neutral fact finder at **some stage** of the proceedings - one which will consider the findings made by the local school board but which will remain free to '**disagree[] with those findings**' and draw its own conclusions after 'due consideration' of those findings." West Chester School District v. Collegium Charter School, 760 A.2d 452, 461 (Pa. Cmwlth. Ct. 2000) (citations omitted; emphasis in original)

Based upon the plain language of subsection 17-1717-A(i)(6) and due process requirements for an independent and impartial factfinder, the CAB does not need to inquire into alleged bias in the proceedings before the School District in order to judge this application.

B. Supplementation of the Record

On October 2, 2001, the hearing officer issued Pre-Hearing Order No. 1, requesting that the parties designate the contents of the record and file any requests to supplement the record before the Board. The School District filed its designation of the contents of the record on October 3, 2001. On October 7, 2001, Phoenix concurred with the documents designated, but reserved the right to request supplementation of the record. On October 15, 2001, Phoenix filed a motion to supplement the record requesting that 16 documents be included. The parties

submitted memoranda in support of their respective positions. The hearing officer issued a written decision on the motion on October 30, 2001, admitting one document, but denying the request to admit the others. The CAB has the discretion to permit the parties to supplement the record with information that was not available at the time the School District considered the application. 24 P.S. §17-1717-A(i)(6). However, this supplementary information must be relevant and probative to the CAB's review. See e.g., Shenango Valley Regional Charter School v. Hermitage School District, 756 A.2d 1191 (Pa. Cmwlth. Ct. 2000) (holding that the Board did not err by refusing to admit evidence that was neither relevant nor probative). Phoenix sought to enter into the record newspaper articles about Philadelphia School Board members and other charter schools, which Phoenix claims supports its view that the School Board was biased. The School District's rationale for granting another school's application simply is not on review before the CAB. These documents have little, if anything, to say regarding this particular application and there is no evidence that the authors had any knowledge of the contents of Phoenix's application. The hearing officer issued an opinion and order regarding supplementation of the record on October 29, 2001. The CAB affirms the decision of the hearing officer.

C. Sustainable Support

Section 17-1717A-(e)(2)(i) of the Charter School Law requires that an applicant for a charter school demonstrate sustainable support for the charter school plan by teachers, parents, other community members and students. "Sustainable support" means support sufficient to sustain and maintain the proposed charter school as an ongoing entity. Ronald Brown Charter School, Docket No. CAB 1999-1. The support should include evidence of actual support for the establishment of the charter school from parents, teachers, students, or other community

members. Ricci Hausley Charter School of Business, Docket No. CAB 2001-4. The Commonwealth Court has approved this Board's interpretation of Section 1717-A(e)(2)(i) to mean that "[t]he indicia of demonstrated, sustainable support is to be measured in the aggregate and not by individual categories from which that support is to be measured" and concluded that "[f]ailure to demonstrate strong support in any one category is not necessarily fatal to charter school application." Brackbill v. Ron Brown Charter School, 777 A.2d 131, 138 (Pa. Cmwlth.Ct. 2001)

The existence or lack of pre-registered students, although not a prerequisite, has a bearing on the issue of sustainable support. Dr. Lorraine Monroe Academy Charter School, Docket No. CAB 2000-16. Phoenix states that they have met the support criteria because, at several meetings which they held, "more than 500 parents expressed their support for this application and signed petitions, accordingly." (Phoenix Brief, at 6) These petitions are part of the record. (Ex. F) The petition states, *inter alia*, "My signature below indicates my endorsement or support." (Ex. F) The petitions on which Phoenix relies are "Sign In/Attendance" sheets at informational meetings. The "statement" is part of the sign-in list, and therefore, the signatures may or may not signify support. Furthermore, the petitions do not provide a statement that the signatories actually will be enrolling their children in the school, or that they have school children in the ages to be served by Phoenix. While the signatures of attendance represent some interest in the school, the signatures may mean no more than that. There should be substantial evidence in the record to suggest that students will actually enroll in the charter school from that group of supporters, if the charter is granted.

Phoenix included in its application six letters that generally advocated an alternative approach to education and supported Phoenix's proposed approach. (Ex. A) Phoenix also had

two members of the community testify at the January 22, 2001 hearing. The summaries of these remarks demonstrate that, while the individuals that spoke on behalf of Phoenix were in support of its program, they were not prepared or able to enter their children in the school. (Ex. C and D) Phoenix did not have any parent testify or sign statements regarding their desire and intention to enroll their child in Phoenix. Phoenix also did not have potential teachers testify or sign statements indicating their desire and intention to teach at Phoenix. See Ricci J. Hausley Charter School of Business, CAB 2001-4, at 13-15. The documents submitted by Phoenix demonstrate less support than we have seen in other cases in which we have approved a charter. See Lehigh Valley Academy Regional Charter School, CAB 2000-12, at 7-8; Vitalistic Therapeutic Center Charter School, CAB 2000-15, at 10-11.

Based on the foregoing, the CAB agrees with the finding of the School District and finds that Phoenix did not adequately demonstrate sustainable support for the charter school plan by teachers, parents, other community members and students.

D. Facility

Section 17-1719-A(11) of the Charter School Law requires that the applicant include, in their application, “[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.” This information is incorporated into the criteria the local board is to consider in evaluating an application. §17-1717-A(e)(iii). “Although an applicant must include a proposed facility in its application, there is no requirement that the facility be under a contractual obligation before the charter is granted.” Brackbill v. Ron Brown Charter School, 777 A.2d 131, 139 (Pa. Cmwlth.Ct. 2001).

Phoenix contends that it has secured a site at 800 North Orianna Street in Philadelphia, but that negotiations were underway for an alternate site in West Philadelphia. (Phoenix Brief, at

5) In its application, Phoenix stated only that it was considering sites in West Philadelphia or Center City. At the December 19, 2000 hearing, Phoenix stated that the school would locate in either West Philadelphia or North Philadelphia, and mentioned three possible sites, one of which was the 800 North Orianna Street site. (Ex. B, at 59-60) During the hearing, a member of the School District observed that these sites are in two “very different parts of the city.” (Ex. B, at 61) At no point has Phoenix provided a description of any of these sites. Phoenix failed to offer any additional details of a lease or description of the facilities in its motion to supplement the record. Phoenix has only offered the street address of the proposed facility. Therefore, the School District has properly concluded that the requirement to provide a description and address of the physical facility as required by the Charter School Law was not met. See Dr. Lorraine K. Monroe Academy Charter School, CAB 2000-16, at 8-9.

In Souderton Charter School Collaborative, CAB 1999-2, the Souderton School District evaluated a facility that was “minimally acceptable.” The CAB conditionally approved the charter, recognizing that with the passage of time, more current information about the facility may be necessary. In Souderton, the CAB made the distinction between an application which was admittedly “temporary,” but included information about location, classroom size, recreational space, and bus access, from one which failed to provide any information on a facility. The CAB concluded that, whereas “[f]ailure to provide any such information prior to the school district's vote [is a proper] basis for the CAB affirming the school district's denial of the charter, ... the Collaborative provided enough information about the proposed facility to meet the requirements of the [CSL].” Souderton Charter School Collaborative, CAB 1999-2, at 14-15. The Commonwealth Court affirmed the distinction drawn by the CAB. Souderton Area School Dist. v. Souderton Charter School Collaborative, 764 A.2d 688 (Pa. Cmwlth.Ct. 2000).

On December 17, 2001, during the argument of this matter before the CAB, counsel for Phoenix sought to have the CAB consider a letter dated November 14, 2001, purporting to identify a potential site for Phoenix located at 65th Street and Chester Avenue in Philadelphia. Again, Phoenix failed to offer any description of the facility. Since Phoenix had the opportunity to supplement the record with this information after it filed its appeal, and since it did not supplement the record with this information before the certified record was filed, the CAB will not consider this letter. In any event, the School District should have been given the opportunity to consider this new information.

Based on the foregoing, the CAB agrees with the School District's finding that Phoenix has not adequately identified and provided a description of its proposed facility in accordance with the Charter School Law.

E. Curriculum and Accountability Issues

Section 1717-A (e)(2)(ii) of the Charter School Law requires that a charter school application be evaluated based on criteria, including "the capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experience to students pursuant to the adopted charter."

Phoenix's charter application proposes a non-graded K-3 school where each child will move through the curriculum at his or her own pace. Phoenix provides for six major curricular areas: computer skills, social studies, mathematics, science, healthful living, and arts. The school is designed to enable students who complete the program to achieve a competency level appropriate to entrance into the fourth grade. (Ex. A) Phoenix outlined a number of ways that student achievement will be measured. Students will take a Metropolitan Achievement Test (MAT 7) before enrolling and at the conclusion of each year. Students will also take the

Woodcock Reading Mastery Tests and Key Math Test to determine individual level of achievement. (Ex. A, at.27). A student would move on to the next skill or set of skills when the student achieves mastery of a previous skill. Phoenix' charter application presented some evidence that a non-graded structure may be workable.

The School District found this non-graded approach to be problematic, since “the applicant fails to provide methods of measurements or standards of performance so that stakeholder will know when goals have been met.” (Ex. E, at 4)

Phoenix attempted to address this issue in its resubmission and reply, explaining what is meant by “acceptable competency” in a particular set of skills. (Ex. F, at 1-2). Phoenix anticipates that “children will remain in the school for [no] more than the normal ‘year of growth for a year spent in school,’ however, no child should stay in school for more than five years, or one year longer than the traditional K-3 program.” (Ex. F, at 2).

While the School District is justifiably concerned that mastery of skills is hard to measure, in fact, mastery is measured regularly in graded and non-graded schools through tests. These tests, or their equivalents, will be given in the proposed Phoenix Charter School. (Ex. F, at 2) For this reason, the CAB disagrees with the School District's conclusion that the applicant failed to describe an accountability system for meeting measurable academic standards.”

While the concept of a non-graded structure for K-3 education is not novel, it provides an innovative alternative to traditional education. Such a non-graded structure, if properly implemented, could provide a model for its targeted student population for other public schools. 24 P.S. §17-1717-A(e)(2)(iv). In this specific aspect, the CAB disagrees with the finding of the School District.

E. Financial Plan and Budget

Charter school applicants must provide a financial plan and proposed budget for the school in accordance with §17-1719-A(9) & (17). Although Phoenix did submit a budget with its application, the budget and plan presented conflicting figures about teachers and salaries. For example, Phoenix estimated that teacher salaries would be \$29,000 per teacher on page 46 of the application, yet on its budget form Phoenix lists teacher salaries at \$40,000 per teacher. (Ex. A, at Appendix G, A-54) Also, Phoenix states in its application that each community (100 students) will be served by a team of five teachers and five aides (Ex. A, at 5), with a projected enrollment of 250 in the first year (Ex. A, at 12). This equates to a student to teacher/aide ratio of 10:1. However, the budget form for the first year shows 13 teachers and 4 teaching assistants. (Ex. A, at Appendix G, A-54), far less than the 10:1 ratio. Phoenix also estimates rent at \$75,000 on page 46, yet at Appendix G, page A-54, Phoenix lists rent of \$195,000. The School District raised discrepancies like these as a matter of concern in its decision to deny the charter. Although the CAB does not examine every proposed budget in detail, the gross difference between Phoenix's budgetary figures in its application raises concerns regarding Phoenix's ability to plan for operations. For the foregoing reasons, the CAB agrees with the School District and will not disturb its finding that Phoenix's financial plan and budget does not satisfy the requirements of the Charter School Law.

In summary, the CAB finds that the School District identified deficiencies in its decision sufficient to deny the Phoenix charter in the areas of sustainable support, financial planning and budgeting, and the identification and description of the school facility. The CAB agrees with the School District in these findings.

