

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

In Re: Penn Hills Charter School :
Appeal from Failure to Act on Revised : **Docket No. CAB 2001-7**
Charter School Application by :
Penn Hills School District :

OPINION AND ORDER

I. Background

This matter comes before the State Charter School Appeal Board (hereinafter "CAB") on an appeal filed by the Penn Hills Charter School (hereinafter "Charter School") pursuant to Section 17-1717-A(g) of the Charter School Law ("CSL"), Act of June 19, 1997, P.L. 225, (24 P.S. §17-1717-A(g), due to the failure of the Penn Hills School District (hereinafter "School District") to act on a revised Charter School Application filed on June 28, 2001. As a result of the School District's failure to act upon the revised application within the statutory time periods set forth in the CSL, the CAB will review the application under its original jurisdiction and make its decision as to whether to grant or deny the charter based upon the criteria set forth in Section 1717-A, 24 P.S. §17-1717-A(e)(2).

The record was filed in this matter on November 19, and November 30, 2001. The CAB Hearing was held on December 17, 2001. Thereafter, the parties filed post-hearing briefs.¹

¹ On January 7, 2002, the School District filed a petition to reopen the record to include additional documents regarding the operation of Mosaica Schools in Bensalem, Pennsylvania and in New Jersey. On January 9, 2002, the Charter School filed a response to the Petition objecting to the inclusion of the documents on the grounds that the documents were available to the School District on the date selected by the parties for the submission of material (November 19, 2001). The Charter School further contends that the documents are highly prejudicial and further argues that it has very little opportunity to respond to the items submitted. A review of these documents and the record indicates that the facts pertaining to the documents and their content were raised by the school board at the hearing on December 7, 2001 before the CAB. For this reason, the objection of the Charter School is not sustained and the documents are admitted and included in the record.

II. Findings of Fact

1. Petitioner Charter School, is a Pennsylvania non-profit corporation organized and existing under the laws of Pennsylvania with its registered office at 7300 Ridgeview Avenue, Pittsburgh, Pennsylvania 15235.

2. Respondent is the Penn Hills School District.

3. On November 15, 2000, the Charter School submitted its Application for Grant of Charter to the School District.

4. Pursuant to Section 17-1717A, 24 P.S. §17-1717-A, the Board of School Directors of the School District (the "School Board") held a public hearing on the application on December 20, 2000.

5. After the hearing, the Charter School made a supplemental presentation to the Directors.

6. On February 13, 2001, the School Board denied the grant of a charter to the Charter School and on February 14, 2001, the Board issued a written decision setting forth the grounds for its denial.

7. The Charter School filed a revised application with the District on June 28, 2001. Owing to a transition in the office of superintendent, the revised application was not sent to the School Board.

8. More than forty-five (45) days after the submission of the revised application, the School Board had failed to act to either grant or deny the application.

9. On September 7, 2001, the Charter School filed the instant appeal to the original jurisdiction of CAB based on the failure of the School Board to act on the revised application.

10. On October 22, 2001, the District filed a request for an extension of time to answer in which the District requested that the CAB remand the matter to the District for consideration of the revised application.

11. On November 6, 2001, the District's request for a remand was denied by CAB.

12. The Charter School submitted a petition listing 197 persons who have expressed support for the Charter School; however, the petition did not indicate whether the signers were parents of school-age children or whether they intended to enroll their children in the Charter School. (Certified Record, Tab 6)

13. The Charter School also submitted nine letters in support of the Charter School. All but three of the letters were written by persons who were connected with the Charter School or the Lincoln Park Community Center, the school's proposed location. One of the three unrelated letters was from a parent who stated a support of charter schools generally, and two letters were from former students of the School District who did not claim to be parents of school-aged children. (Certified Record, Tab 5)

14. At the public hearing, Oliver Montgomery, president of the Penn Hills NAACP Branch supported the initiative of, "Lincoln Park", but expressed concern about the effect of a charter school on taxation of senior citizens. (Certified Record, School Board Hearing Transcript, at 141-142)

III. Conclusions of Law

1. The CSL governs the application and approval processes and operation of charter schools in Pennsylvania.

2. CAB has original jurisdiction over this matter. 24 P.S. §17-1717-A(g).

3. In accordance with Section 17-1717-A(g), this matter is properly before the CAB, which shall review the application and make a decision to grant or deny a charter based on the criteria established in subsection 1717-A(e)(2) of the Charter Law. (24 P.S. §17-1717-A(g)).

4. In accordance with Section 17-1717-A(g), CAB will stand in the place of the School Board and render a decision based on the Charter School Application as it was

submitted to the School Board, together with any supplemental information permitted by CAB pursuant to §17-1717-A(i)(6).

5. The Charter School 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."

6. The Penn Hills Charter School Application fails to demonstrate sustainable support for the charter school plan, as required by Section 1717-A(e)(2)(i) of the Charter Law, 24 P.S. §17-1717-A(e)(2)(i).

IV. Discussion

DEMONSTRATED SUSTAINABLE SUPPORT UNDER §17-1717-A(e)(2)(i)

Section 17-1717-A(e)(2) sets forth the factors to be considered and analyzed by CAB in its evaluation of the application and in making its determination whether to grant or deny the charter. The first factor addresses the "demonstrated, sustainable support for the charter school plan by teachers, parents and community members and students..." 24 P.S. §17-1717-A(e)(2)(i). Section 17-1717-A(e)(2)(i) requires that the community support be shown in the application document or by comments received at the public hearings. In addition, Section 17-1719-A sets forth what is to be contained in the application, including information on the manner in which community groups will be involved in the charter school planning process. Section 17-1715-A(2) provides that a charter school shall develop and implement strategies for meaningful parent and community involvement. While the legislature did not define what it meant by "community involvement", CAB can rely upon other provisions of the CSL for guidance in its evaluation of the revised application.

The indicia of support are to be measured in the aggregate rather than by individual categories. Brackbill v. Ron Brown Charter School, 777 A.2nd 131, 138 (Pa. Cmwlth.2001).

The statutory listing of "teachers, parents, and other community members and students" indicates the groups from which valid support for the charter school plan can be demonstrated. CAB does not find 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. *Id.* Nevertheless, a reasonable amount of support in the aggregate must be demonstrated to show that the support will maintain the school as an ongoing entity. *Phoenix Academy Charter School* (Docket No. CAB 1999-10); *Hills Academy Charter School* (Docket No. CAB 1999-12).

The Charter School first contends that the School District waived any challenge to the demonstrated level of community support by failing to make a negative finding in this regard in its February 14, 2001 decision on the original application. The CAB rejects this argument for the following reasons. First, the appeal is taken to the original jurisdiction of the CAB; therefore, the CAB must make findings and conclusions of law necessary to support its order regarding the revised application of the charter school. Second, the Charter School cannot rely on the revised application and new evidence to support that application, but at the same time insist that the School District is bound by its determinations regarding the original application. Finally, the CAB has previously held that the CSL confers on it statutory authority and discretion that it "may make a *de novo* finding which was not the basis for denial by the school district." *Ricci J. Hausley Charter School* (Docket No. CAB 2001-4).

As to the merits of the revised application, the Charter School argues that prior decisions of CAB have found predictors of sustainable support that are also present in this case. The factors cited by the Charter School in other cases are pre-registration of students, testimony by three members of the public at a hearing and editorials and newspaper articles of support. See *Phoenix Academy, supra*, *Collegium Charter School* (Docket No. CAB 1999-9), and *Lehigh Valley Academy* (Docket No. CAB 2000-12).

The School District in contrast, relies on three subsequent decisions of CAB, which hold that some evidence of the intent of parents to enroll their children or of students to enroll in the charter school is a necessary element of a finding of sustainable support. *See Dimensions of Learning* (Docket No. CAB 2000-7); *Ricci J. Hausley Charter School* (Docket No. CAB 2001-4); and *Elan Charter School* (Docket No. CAB 2001-3).

The Charter School has not presented any evidence from parents that they intend to enroll their children in the proposed charter school, from students who wish to attend the proposed charter school, or from teachers who support the grant of a charter to the Charter School. The Charter School offered nine letters of support for the school. Only two letters were from parents of school-age children. These letters expressed support for charter schools in general and as an option in the Penn Hills School District, but leave unanswered the question of whether these parents desire to enroll their children in the Charter School. The Charter School also submitted Petitions containing 197 signatures of residents of Penn Hills or a neighboring municipality who support the establishment of the Penn Hills Charter School. The signatures are undated and in many cases do not indicate whether the signatory has children. In any event, it is not possible to draw any conclusions as to the willingness of the signers to enroll any child in the Charter School.

At the public hearing, Oliver Montgomery, President of the Penn Hills Branch of the National Association for the Advancement of Colored People (NAACP) stated that the NAACP was concerned about the school system and interested in looking at some alternatives and for that reason supported “the Lincoln Park initiative of Ms. Davis.” (N.T. p. 141-42) At the CAB hearing, Joyce Davis, the chair of the School’s Board of Trustees, and chair of the Penn Hills NAACP Education Committee, testified that education was a major focus of the organization for the year 2002 and that the organization would help families involved with the Charter School. While the statements of support are credible, and not disputed, the CAB agrees with the

School District that the statements do not appear to be directed as support for the particular Charter School Application at issue. For example, the NAACP educational emphasis to support families in education in 2002 would necessarily include all families regardless of where the students were enrolled.

On balance, the CAB finds the evidence insufficient to establish demonstrable support from parents, students, faculty and the community to establish the Charter School as an ongoing entity. Because of this shortcoming in the Charter School’s Application² and because this Board is acting in its original jurisdiction, the other required elements of the application will not be addressed and the following is entered:

² The ground discussed herein is sufficient to support the Board’s denial of the appeal and this opinion does not represent a determination that matters not discussed either meet or do not meet the requirements of the Charter School Law.

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ORDER

AND NOW, this 22nd day of March, 2002, based upon the foregoing and the vote of this Board, the appeal of the Penn Hills Charter School is denied.

For the State Charter School Appeal Board:

/s/
Charles B. Zogby,
Chairman