

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

IN RE: David P. Richardson	:	
Academy Charter School	:	
Appeal from Denial of Charter	:	
School Application by School	:	Docket No. CAB 2001-8
District of Philadelphia	:	

OPINION AND ORDER

I. Background

This matter is before the Pennsylvania State Charter School Appeal Board (CAB) on an appeal by the David P. Richardson Academy Charter School (Charter School) from the School District of Philadelphia's (School District) denial of the resubmission of the Charter School's Application (Application).

II. Findings of Fact

1. On or about November 15, 2000, the School District received the Charter School's Application seeking approval to operate a Charter School with a projected school opening date of September 2001. (Exhibit 3 of Volume I of the Certified Record)
2. On January 22, 2001, the School District conducted a hearing concerning the Charter School's Application. (Exhibit 4 of Volume I of the Certified Record)
3. By written decision, dated February 26, 2001, the School District denied the Charter School's Application. (Exhibit 6 of Volume I of the Certified Record)
4. The Charter School revised and resubmitted its Application to the School District. (Exhibit 7 of Volume I of the Certified Record)
5. On May 7, 2001, the School District denied the Charter School's resubmitted Application. (Exhibit 8 of Volume I of the Certified Record)

6. The School District found six (6) deficiencies in the Charter School's resubmitted Application. Specifically, the District found that the applicant failed to:
- Describe a curriculum and instructional plan reasonably probable of providing comprehensive learning opportunities for pupils, as required by Sections 1719-A(5) and 1717-A(e)(2)(ii);
 - Describe an accountability system for meeting measurable academic standards, as required by Sections 1719-A(5), 1702-A(6) and 1715-A(2);
 - Provide for an adequate governance structure, as required by Section 1719-A(4);
 - Provide a financial plan with reasonable revenue and cost projections that would support or sustain the proposed program, as required by Sections 1719-A(9) and 1719-A(17);
 - Describe a reasonable plan for the procurement and financing of an adequate facility for the proposed school, as required by Section 1719-A(11); and
 - Describe an adequate plan for accommodating students with special needs, as required by Section 1732-A.

(Exhibit 9 of Volume I of the Certified Record)

7. By Court Decree dated September 25, 2001, a Judge of the Philadelphia County Court of Common Pleas, Trial Division, July Term 2001, decreed that the Charter School's Petition to Appeal the Denial of an Application for a Charter was sufficient in accordance with 24 P.S. §17-1717-A(i)(5).

(Attached to Exhibit 1 of Volume I of the Certified Record as Exhibit B)

8. The Charter School then filed an appeal with CAB from the denial of its Application.

9. By letter dated October 5, 2001, CAB informed both the School District and the Charter School that CAB had accepted the Charter School's Petition to Appeal.
10. On October 29, 2001, the Hearing Officer held a Pre-Hearing Conference with counsel for the School District and the Charter School.
11. At CAB's meeting on December 17, 2001, the School District and the Charter School presented oral arguments in support of their respective positions.
12. The parties simultaneously submitted briefs to the Hearing Officer on January 3, 2002. (Exhibits 1 and 2 of Volume II of the Certified Record)
13. On January 11, 2002, the Charter School filed a letter Reply Brief with the Hearing Examiner. (Exhibit 3 of Volume II of the Certified Record)

III. Conclusions of Law

1. The Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, 24 P.S. §17-1701-A, et. seq., (CSL) governs the application and approval process for charter schools in Pennsylvania.
2. Section 1717-A(e)(2) of the CSL, 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 on 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-A and conforms to the legislative intent outlined in Section 1702-A.
 - (iv) The extent to which the charter school may serve as a model for other public schools.

3. The Charter School failed to show it is capable in terms of support and planning to provide a comprehensive learning experience to students who would enroll in the Charter School, as mandated by Section 1717-A(e)(2)(ii) of the CSL, 24 P.S. §1717-A(e)(2)(ii).
4. The Charter School failed to demonstrate that it can meet measurable academic standards, as mandated by Section 1719-A(5) and Section 1702-A(6) of the CSL, 24 P.S. §17-1717-A(5) and §1706-A(6).
5. The Charter School's proposed governance structure includes a description and method for the appointment and/or election of the members of the Board of Trustees as mandated by Section 1719-A(4) of the CSL, 24 P. S. §17-1719-A(4).
6. The Charter School failed to provide a viable financial plan and auditing process for the Charter School, including the provision of adequate liability insurance for the Charter School, its employees and the Board of Trustees as mandated by Sections 1719-A(9) and 1719-A(17) of the CSL, 24 P.S. §§17-1719-A(9) and A(17).
7. The Charter School failed to include an adequate description and address of the physical facility in which the Charter School will be located, the ownership thereof and any lease agreements as required by Section 1719-A (11) of the CSL, 24 P.S. §17-1719-A(11).
8. Although the Charter School must comply with laws and regulations pertaining to the provision of special education services, the Charter School is not required to describe a specific plan for accommodating students with special needs, under Section 1732-A of the CSL, 24 P.S. §17-1732-A.
9. The School District properly denied the Charter School's resubmitted Application.

IV. Discussion

The School District based its decision to deny the Charter School's resubmitted Application upon six (6) separate deficiencies. In reviewing the School District's decision and the Charter School's objections to the decision, timely filed in the Petition of Appeal, CAB concludes that the School District's denial of the Charter School's Application was proper, and therefore, denies the Charter School's appeal.

A. Provision of a Comprehensive Learning Experience

Section 1717-A(e)(2)(ii) of the CSL, requires the School District to determine whether the Applicant has demonstrated in its application "[t]he capability ..., in terms of support and planning, to provide comprehensive learning experience to students ..." 24 P.S. §1717-A(e)(2)(ii). The School District, in denying the Charter School's Application, concluded that the submitted curriculum and instructional plan failed to meet the CSL's requirement that a charter school be able to provide a comprehensive learning opportunity for pupils.

The Charter School argues that it has proposed to provide a comprehensive learning experience to its students. Specifically, the Charter School argues that the "entrepreneurial and business theme will be used as the integrating framework for curriculum purposes."¹ Although this representation is accurate, it does not squarely, nor effectively address the issues raised by the School District. These issues include, for example, lack of a description of how non-traditional components such as the Penn State 4-H Youth Development Entrepreneur Program are integrated into the Charter School's curriculum.² In regard to this and many of the other concerns raised by the School District, CAB has thoroughly reviewed the Charter School's Application and agrees with the School District. Thus, CAB concludes that, as a whole, the Charter School has not demonstrated that its curriculum and

¹ Exhibit 1 of Volume II of the Certified Record at page 4.

² Exhibit 5 of Volume I of the Certified Record at page 1.

focus will be able to provide a comprehensive learning experience to students as required by the CSL.

B. Accountability Regarding Measurable Academic Standards

The School District, in its decision to deny the Charter School's Application, concluded that the Charter School failed "to describe an accountability system for meeting measurable academic standards, as required by Sections 1719-A(5), 1702-A(6) and 1715-A(2)."³ Specifically, the School District concluded that the Application does not adequately provide for, nor articulate, an accountability system to ensure that the Charter School students can meet measurable academic standards as mandated by the CSL.⁴

The Charter School counters that its resubmitted Application contains clear and concise methods of assessing whether Charter School students would meet educational goals as required by the CSL.

CAB disagrees. Having thoroughly reviewed the Charter School's resubmission, CAB agrees with the School District that the Charter School has failed to articulate and sufficiently identify methods of accountability to determine whether students are meeting various educational goals. For instance, the Application in Section II.2.B., Entitled Measuring Student Performance, asserts that "Rubrics will be used to assess student multidisciplinary and serviced learning projects."⁵ However, the Application does not define the term "Rubric", nor does the Application explain how these "Rubrics" will be used in order to measure the Charter School student's performance.

As such, CAB agrees with the School District that the Charter School failed to meet the requirements of the CSL as to this issue and properly denied the Charter School Application.

³ Exhibit 9 of Volume I of the Certified Record.

⁴ Specifically, the School District cites Section 1719-A(5) of the Charter School, 24 P.S. §17-1719-A(5); Section 17-1702-A(6), 24 P.S. §1702-A(6) and Section 1715-A(2), 24 P. S. §1715-A(2) law.

⁵ Exhibit 7 of Volume I of the Certified Record at page 35.

C. Governance Structure

The School District also denied the Application because it failed to describe an adequate governance structure as required by the CSL. Specifically, the School District is concerned that the Application simply identifies the founding members as being “entrepreneurs,” and fails to include any explanation of the experience or expertise required of the founding members. The School District suggests, therefore, that the Charter School is unable to properly implement the proposed entrepreneurial curriculum.⁶ The School District, in reaching its decision that the Application failed to describe an adequate governance structure, cited Section 1719-A(4) of the CSL, 24 P. S. §17-1719-A(4), which requires that the Application include:

“The proposed governance structure of the charter school, including a description and method for the appointment or election of members of the board of trustees.”

The Charter School counters this argument by asserting that the resubmitted Application does fulfill the requirements of the CSL. Specifically, the Charter School refers to sections of its Application that describe how the founding coalition was created and provide the biographies of the members of the coalition.

CAB has reviewed the sections of the Charter School’s resubmitted Application, particularly Section III.2.B, entitled Selection of Board of Trustees and Section III.2.D, entitled Board Roles and Responsibilities.⁷ Based upon this review, the Charter School’s Application does comply with the CSL. It includes the description of and methods for the appointment and/or election of the Board of Trustees of the Charter School. In addition, the section of the CSL cited by the School District does not require each member of the Board of Trustees to possess experience or expertise necessary to implement the specific curricular goals of the Charter School. CAB interprets this section of the CSL to mandate only that the Charter School applicant include a description and a method for the appointment/election of

⁶ See Exhibit 8 of Volume I of the Certified Record.

⁷ Exhibit 7 of Volume I of the Certified Record at pages 41-42.

the members of its Board of Trustees. More information might be beneficial, but it is not required. Thus, the School District's finding to the contrary is rejected.

D. Financial Planning

The next reason for the School District's denial was that the Charter School's Application allegedly failed to provide a financial plan to support or sustain the proposed program. The School District specifically argues that the Application does not allocate the proper funding to provide special education services to children who have special needs, does not allocate the proper funding to either lease and/or improve proposed facilities, fails to provide for the professional development of the teachers and does not reflect an adequate amount for an average teacher's salary within the City of Philadelphia.

Section 1717-A(9) mandates that a Charter School Application include information that provides for "[t]he financial plan of the Charter School and the provisions which will be made for auditing this school under Section 437." 24 P. S. §17-1719-A(9).

The Charter School asserts that the Application's budget is "Fiscally sound, reflects good business judgment, and reflects the best financial practices of currently operating charter schools."⁸

CAB has reviewed the proposed Budget contained in the Application and agrees with the School District that it fails to provide a sound financial plan that will enable the Charter School to operate. Therefore, CAB concludes that the School District properly denied the Charter's School's resubmitted Application as to this issue.

E. Description and Address of the Physical Facility

The School District also determined that the Charter School's Application failed to describe with specificity an adequate facility for the proposed school as required by the CSL. Specifically, the School District points out that no specific address for the proposed facility was listed. Further, argues the School District, the Charter School Application does not articulate when the proposed facility renovations will be completed and where the school will

⁸ Exhibit 1 of Volume II of the Certified Record at page 5.

be temporarily located while the proposed facility is being renovated. Therefore, the School District concludes, the CSL as to this requirement has not been met.

Section 1719-A(11) requires that an application to establish a Charter School **shall** contain “[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).

The above requirement of the CSL has not been fulfilled by the Charter School. The Application identifies the proposed site as “located on David P. Richardson Boulevard” and identifies a specific corner of the Boulevard, but does not provide a street address.⁹ The Application explains that the proposed facility is larger and contains more than the required thirty thousand (30,000) square feet needed by the proposed Charter School. In addition, the Application asserts that the facility has “a new exterior and interior finish, new HVAC and roof.”¹⁰ However, the letter of intent attached to the Application, concerning the identification of the proposed facility, does not support these assertions that the facility, at present, contains a new exterior and interior finish. To the contrary, the letter of intent states:

“The space **could be completed** to a ‘Base Building’ finish 60 days from a building permit. PSDC estimates that the Tenant Improvements (TI) could be completed in ninety days after the Base Building is finished.”¹¹ (Emphasis Added)

Based upon these discrepancies between the Charter School’s resubmitted Application, and the Charter School’s assertions about the description of the location, the CSL section at issue has not been satisfied. Thus, CAB supports the School District’s denial on this ground.

F. Accommodation of Students with Special Needs

⁹ Exhibit 7 of Volume I of the Certified Record at page 56.

¹⁰ Exhibit 7 of Volume I of the Certified Record at page 56.

¹¹ Exhibit 7 of Volume I of the Certified Record at page 80.

The School District lastly concluded that the Charter School's Application was deficient, in part, because the Charter School failed to describe an adequate plan for accommodating students with special needs as mandated by Section 17-1732-A of the CSL.

CAB has reviewed Section 17-1732-A of the CSL, 24 P. S. §17-1732-A and concludes that this section does not require a Charter School to include in its Application a specific description or plan for accommodating students with special needs. To the contrary, this section of the CSL provides that Charter Schools are subject to various Pennsylvania Laws. Further, this section of the CSL bestows on the Secretary of Education, the authority and responsibility to ensure that charter schools comply with Federal laws and regulations governing children with disabilities and to promulgate regulations implementing this provision. CAB acknowledges that charter schools must comply with all laws and regulations governing children with disabilities who enroll in their schools. However, CAB finds no support for the School District's interpretation that this section of the CSL requires an Application to include specific plans to accommodate students with special needs. As such, the CAB rejects this argument as set forth by the School District.

However, and as previously articulated, CAB has concluded that the School District properly denied the Charter School's resubmitted Application based upon other criteria. As such, CAB will uphold the School District's denial.

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ORDER

AND NOW, this 29th day of April, 2002, based upon the foregoing and the vote of this Board,¹² the appeal of the David P. Richardson Academy Charter School is **DENIED** and the decision of the Philadelphia School District dated May 7, 2001 is hereby **AFFIRMED**.

For the State Charter School Appeal Board,

_____/s/_____
Charles B. Zogby,
Chairman

¹² At the Board's February 13, 2002 meeting, the appeal was denied by a vote of 5-0, with members Bunn, Melnick, Reeves, Shipula and Zogby voting to deny the appeal.