

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

In Re: Propel Charter School – East :
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:
Appeal of Denial by Woodland Hills : Docket No. CAB 2005-01 & 2005-02
School District and Failure to Grant or :
Deny Charter by Penn Hills School :
District :

OPINION AND ORDER

Propel Charter School – East (“Propel”) submitted applications to the Woodland Hills School District (“Woodland Hills”) and the Penn Hills School District (“Penn Hills”) seeking a charter to operate a regional charter school. Woodland Hills denied Propel’s application citing five reasons to support the denial. Penn Hills failed to take action on Propel’s application.¹ On January 25, 2005, Propel filed an appeal with the Charter School Appeal Board (“CAB”) from Penn Hills’ failure to take action on its application. On January 27, 2005, Propel filed an appeal with CAB from Woodland Hills’ denial of its application.

Regional Charter Schools

Section 1718-A of the Charter School Law (“CSL”) states:

The provisions of this article as they pertain to charter schools and the powers and duties of the local board of school directors of a school district and the appeal board shall apply to regional charter schools except as provided in subsections (a) and (b) or as otherwise clearly stated in this article.

24 P.S. §17-1718-A(c).

Thus, the contents of the application to establish a charter school are the same as the contents required to establish a regional charter school, as proposed by Propel. Section 1719-A of the CSL sets forth this information.

¹ Penn Hills signed a stipulation that it would be bound by the decision of the Charter School Appeal Board regarding Woodland Hills’ denial of the charter.

The Facility

The CSL requires that certain information be included in an application to establish a charter school. Among the required contents is “[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).

Propel first submitted its written application for a regional charter to Woodland Hills on July 8, 2004. Pages R-1 to R-90 of the record comprise the application.² Page 12 (R-14) of the application provides the following written description of the facility in which the regional charter school would be located;

XI. Address of the School and Lease Arrangements

We have investigated several potential locations for the school both in Penn Hills and in communities of Woodland Hills. These sites include the former Sun Book Store on Rodi Rd., the former Ames store, and 701 Rodi Rd. in Wilkins Township. We are actively exploring these and other sites and will provide additional information on the arrangements involved.

Propel’s first response to the facilities information requirement was inadequate. There was no description given, no owner named and no lease arrangements set forth. Supplemental application information was provided on July 21, 2004 when Propel submitted its completed “Woodland Hills Charter School Application.” (Pages R-92 to R-125). The facility was again a subject. Section III of the Woodland Hills Application Form (R-97, p. 6) is titled “Facilities.” The form asks for the following details:

- A. Provide descriptions of and addresses for all physical facilities being considered for the proposed Charter School. Identify the owners of such facilities as listed and include anticipated lease or purchase agreements concerning the facility.

² The record referred to is the record of the application process at Woodland Hills. It has not been supplemented and there has been no request for supplementation.

- B. Describe any other facilities which may need to be added for the use of the proposed Charter Schools within the next five years.
- C. Explain how these sites would be suitable for the proposed Charter School. If renovations of any facility or property are considered to be necessary, describe the renovation including the purpose of the renovation and the anticipated cost as well as a time-line for completing the renovation.
- D. Provide building lay-out diagrams and site plans for all facilities, current and projected, to be used for the proposed Charter School.
- E. If an existing public school is proposed to be converted, include copies of the required petitions showing that at least fifty percent (50%) of the parents/guardians associated with that public school support this action. The parent/guardian petition must include the signers' addresses.
- F. Discuss plans for the custodial care and maintenance of the facilities described above.

Propel's response to Section III was "Please see 7/9 application materials (XI. Address of the school, p. 12)." The details requested in Section III of the Woodland Hills Application Form go beyond the requirements of Section 1719-A(11) of the CSL. However, Section III. A. requests the same information required by the CSL. However, Propel failed to add any information about the facility, and thus, its response remained inadequate.

Propel next made an oral presentation to Woodland Hills on August 16, 2004. Materials submitted for that meeting make-up the record at pages R-127 to R-189. The transcript of the meeting makes-up R-193 to R-291.

The written materials include two letters to Propel from a broker at PRC Commercial. Both letters are dated August 10, 2004. (R-187, R-188). Each asks that Propel send a "request for proposal" for a particular building and promises a lease proposal in response. There was, in

these letters, no description of the properties,³ no identification of the owners, and a only a promise of a lease proposal in the future.

The transcript of the August 16 presentation reflects a discussion of the facility question. At R-199 and R-200, Jeremy Reznick, who is the Chief Executive Officer for Propel Schools, testified on the subject. Mr. Reznick made reference to Propel's interest in a building not previously mentioned, the Eastmont School, which was owned by Woodland Hills. His two sentence reference, however, merely suggests that Propel would welcome finding "a way to get a letter of intent or some kind of letter of interest from the school district" about selling the building to Propel.⁴

Alternatively, Mr. Reznick said this about Propel's plans to locate its school:

[W]e have two additional buildings that we are having architects inspect and do drawings for. One of them is at 701 Rodi Road in Wilkins Township. The other is at 1611 Monroeville Avenue in Turtle Creek. The owners of each of these properties have expressed their interest in leasing space to Propel Charter School East and letters of intent from the owners – from representatives of the owners of those two facilities are in the binders. And we will provide you with drawings and additional information as soon as it's available.

There was again, no information provided to Woodland Hills that fulfilled the requirements of section 1719-A(11).

There were further discussions of the facility during a question period. Christopher Baker, facilities coordinator for Woodland Hills, asked whether Propel wanted to purchase or rent its facility (R-123). Mary Jo Needham, Operations Director for Propel, answered that Propel would not buy any facility. Rather, an independent third-party non-profit (not named) would buy the property and lease it to Propel.

³ East Park Office, 701 Rodi Road, Wilkins Township (R-187) and the AWK School House Building (R-188).

⁴ Mr. Reznick introduced the subject by mentioning that he conveyed to Dr. Wilson, Propel's interest in "purchasing the Eastmont School . . . , receiving a letter of intent and having additional due diligence done" Dr. Wilson is the superintendent. There is nothing memorializing an inquiry to him.

Succeeding questions posed by Mr. Baker are recorded in the transcript at R-213 to R-219. The exchange, still with Ms. Needham, concentrates on certain details requested on the Woodland Hills Application Form discussed above (R-97) but fell short of securing the descriptions, ownership information, and lease arrangements required by section 1719-A(11).

Perhaps because the required information about the facility was still lacking after the oral presentation and two written submissions, Woodland Hills requested by letter dated September 8, 2004 (R0292) that Propel provide the following information, inter alia:

1. Facility – Please identify each facility presently being considered as a possible location for the proposed Charter School East. For each facility so identified, describe the facility, including its size, condition, age, etc., explain whether significant renovations will be needed and, if so, to the extent possible, provide a summary of renovation costs. Further, for each potential facility, explain the extent to which you have reached or negotiated, an arrangement with the facility's owner to purchase, lease or otherwise occupy the facility.

Propel's response, dated September 21, 2004 (R-294 to R-326) provides "proposals for occupancy" for two sites: size, owners, amenities such as parking and elevators, ADA and HVAC conditions, environmental conditions, and security. The proposals set forth the terms of a lease that might be entered into.⁵ As Propel stated, however, the regional school was planned to open in the fall of 2005 (R-202, R-217) and both proposals expired October 1, 2004 (R-300 , R-304). Therefore, when the proposals expired October 1, 2004, there was no facility for the opening of a school in the fall of 2005.

However, at the oral argument before CAB, Propel provided documents evidencing that the options on the AWK site had been extended until July 1, 2005. A proposed lease was also provided. In addition, at the CAB argument, counsel for Woodland Hills stated that at the time Woodland Hills voted on Propel's application there was no site because the options had expired.

⁵ 24 P.S. §17-1719-A(11) does not require that a lease be executed, but only that lease arrangements for the proposed facility be submitted. Brackbill v. Ron Brown Charter School, 777 A.2d 31 (Pa . Cmwlth. 2001), app. den., 573 Pa. 673, 821 A.2d 588.

Counsel then, however, conceded that because of the extension of the option on the one site “to some degree that has been cured.”

With this concession of counsel and the fact that the option was extended for one of the sites previously listed by Propel, CAB finds that Propel has met the requirements of section 1719-A(11). Thus, Woodland Hills’ denial of the application based on the failure to meet the requirements of section 1719-A(11) is not sustained.

Community Support

Woodland Hills’ second reason for denying the charter was its view that Propel lacked sustainable support (Board Adjudication, pp. 4-5). The CSL directs Woodland Hills to evaluate an application on, inter alia:

The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing . . .

24 P.S. §17-1717-A(e)(2)(i).

The Commonwealth Court has accepted signatures, letters, and e-mails as evidence of support. Carbondale Area School District v. Fell Charter School, 829 A.2d 400 (Pa. Cmwlth. 2003). The Court has also accepted hearing testimony. Ron Brown Charter School, 777 A.2d 131.

There is no minimum number of signatures or speakers called for in the CSL. There are also no magic words. It is clear that each situation must be examined if the school district is to reach reasonable conclusions about community support.

In the case of a regional charter school application, the “community” includes the areas encompassed by the school districts to which the application was submitted. The original application included a statement of support as evidenced by petitions and pre-enrollment

statistics. Addresses from the municipalities within Woodland Hills were not included.

Additional information supplied with the Woodland Hills' application included actual petitions, with addresses, and other information regarding supporters' residences. The petitions submitted to the hearing officer as part of the record are largely signed by persons with addresses within the municipalities. Another petition, on pages R-345 and R-346, does not appear to have been signed by any Woodland Hills' residents. Form letters make up pages R-347 to R-381. Twenty-eight are signed by Woodland Hills' residents, five by non-residents. There are also individual letters at R-382 to R-389. None are from Woodland Hills' residents.

However, since this is a regional application, Propel could also use addresses from the municipalities within Penn Hills to show sustainable support. In addition, the record also includes an affidavit from Mr. Reznick that indicates that 55 children from Woodland Hills have applied to Propel for 2005 (R-39). There was also some support voiced at the hearing on August 16 when seven Woodland Hills' residents spoke in favor of Propel East.

At the CAB oral argument, Propel noted that many of the petitions presented by Propel at the August 16 hearing were not reproduced and included in the record submitted to CAB. These petitions contained in excess of 500 signatures of support. Counsel for Woodland Hills agreed that the petitions had not been copied for CAB and agreed that there were approximately 543 signatures, although there were some duplicates.

Counsel for Woodland Hills stated at the CAB hearing that Woodland Hills' problem with support was that most of it came from Penn Hills, not Woodland Hills. However, as stated above, since this is a regional charter school application, support can be demonstrated from either or both school districts to which the application was submitted.

Thus, Propel has met the requirement that it demonstrate evidence of sustainable support.

Financial Support

Woodland Hills' third reason for denying the Propel application was the application's "lack of evidence of financial support." There is no statutory justification for this basis for denial, although it is a detail in Woodland Hills' Application. The CSL merely requires a financial plan. Thus, the denial on this basis is not sustained.

Management

Woodland Hills' fourth reason for denial is its view that Propel's management is not capable of opening the regional charter school at the same time it is managing the Propel Homestead Charter School. At the CAB hearing, counsel for Woodland Hills raised this issue stating that Woodland Hills was concerned that opening Propel East might be a little over-ambitious with the concern of whether all of this could be done at one time by all of the same individuals using all the same sources of funding. At the CAB hearing, Mr. Reznick testified that Propel has received additional financial gifts from at least three sources that total approximately \$730,000. He further testified that Propel has adequate staff to provide leadership to each of its schools, including a Superintendent, a Director of Special Education, a Business Manager and clerical support. There is no statutory basis to deny a charter because the founders of Propel East may be the same as the founders of other charter schools that have opened. Thus, the denial on this basis is not sustained.

Meal Plan

Woodland Hills' fifth reason for denial is its view that Propel's student meal plan is inadequately addressed. There is no statutory justification for this basis of denial. Thus, the denial on this basis is not sustained.

Conclusion

Propel has fulfilled the requirements of the CSL, and therefore, Woodland Hills' denial is reversed. As a result, the Boards of Directors of both the Woodland Hills School District and the Penn Hills School District are directed to issue a regional charter to Propel Charter School – East.

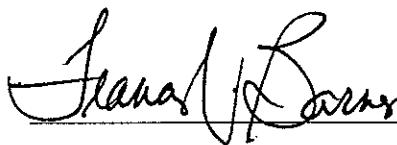
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ORDER

AND NOW, this 7th day of July, 2005, based upon the foregoing and the vote of the Charter School Appeal Board,⁶ it is ORDERED that the appeal of the Propel Charter School - East is **GRANTED**, the Woodland Hills School District and the Penn Hills School District are directed to grant the charter application and sign a charter for Propel Charter School -- East pursuant to 24 P.S. § 17-1720-A.

For the State Charter School Appeal Board:



Date Mailed: 7/7/05

⁶ At the Board's June 15, 2005 meeting the appeal, was granted by a vote of 4-0, with members Barnes, Bunn, Reeves and Shipula voting to grant the appeal.