

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION

STATE CHARTER SCHOOL APPEAL BOARD

In Re: Arts and 3 R's Inc :  
d/b/a Helen Murray :  
Charter School for the Arts :  
: :  
Appeal from Denial of Charter : Docket No. CAB 2005-5  
by the Wyoming Valley :  
School District :

OPINION AND ORDER

I. SYNOPSIS

This matter comes before the State Charter School Appeal Board (hereinafter "CAB") on appeal filed by the Arts and 3R's, Inc. d/b/a Helen Murray Charter School for the Arts (hereinafter "Helen Murray") pursuant to section 17-1717-A(g) of the Charter School Law, Act of June 19, 1997, P.S. 225, No. 22 (24 P.S. §17-1717-A(g)), due to the denial of Helen Murray's Charter School Application by the Wyoming Valley West School District (hereinafter "School District"). On January 5, 2005, the School District denied Helen Murray's application for a charter. In its correspondence of January 5, 2005 the School District articulated several areas of concern as its basis for denying the charter application. Helen Murray timely appealed the denial to the Court of Common Pleas of Luzerne County, which determined that the signature petitions appealing the denial of the charter application by the School District were in accordance with section 1717-A(e)(5) of the Charter School Law (hereinafter "CSL"). This instant appeal was then filed on May 3, 2005.

## II. FINDINGS OF FACT

1. Petitioner is the Arts and 3R's, Inc. d/b/a Helen Murray Charter School for the Arts, a non-profit corporation.

2. Respondent is Wyoming Valley West School District, a Public School District organized and existing under the public School Code of the Commonwealth of Pennsylvania, 24 P.S. §§1-101 et seq., having its principal address at 450 North Maple Avenue, Kingston, Luzerne County, PA 18704-3683.

3. On September 15, 2004 Helen Murray submitted its timely Application for Grant of Charter to the School District.

4. Pursuant to 24 P.S. §17-1717-A(d), Wyoming Valley West School Board held a public hearing on October 25, 2004 on Helen Murray's application.

5. Wyoming Valley West School Board denied the charter application on January 5, 2005.

6. In its decision, the School District enumerated the following reasons in support of its denial of the charter application:

- a. lack of demonstrated sustainable support;
- b. failure to provide an adequate facility;
- c. lack of a reasonable financial plan;
- d. deficiencies and duplication of existing services in the proposed curriculum and lack of evidence that the school would serve as a model for other public schools and a failure to conform to legislative intent to provide a comprehensive learning experience.

7. Pursuant to section 1717-A(h)(2) of the CSL, Helen Murray obtained signed petitions and filed the same with the Court of Common Pleas of Luzerne County, Pennsylvania.

8. On March 29, 2005, the parties reached a stipulation that the signature petitions complied with the CSL.

9. On April 8, 2005, the Luzerne County Court of Common Pleas determined that the petitions were valid and otherwise satisfied the requirements of the CSL.

10. Helen Murray properly filed a Petition to Appeal with the CAB on May 3, 2005.

11. Subsequently, the hearing officer received: (1) copies of additional Charter School Student Enrollment Notification Forms; and (2) a School Year 2005-2006 Revised Budget.

12. The hearing officer has determined that these documents should be made part of the certified record.

13. At its July 26, 2005 meeting, the CAB heard oral arguments regarding Helen Murray's appeal.

14. The respective parties submitted briefs on the issues.

15. Helen Murray has submitted 98 Charter School Student Enrollment Notification Forms for prospective students of its proposed charter school

16. Helen Murray has identified 15 parents to serve on various Parent Volunteer Action Committees.

17. Five parents spoke in support of the proposed charter school at the public hearing on Helen Murray's application on October 25, 2004. Approximately thirty individuals were in the audience at that same hearing.

18. Helen Murray has received written support from the Pastor of St. Hedwig's parish concerning its use and occupancy of the parish's school building by the proposed charter school.

19. Helen Murray's proposed curriculum includes art periods that are two twenty-minute periods per day.

20. Helen Murray's proposed arts curriculum includes focus on period music, clothing, food, dance, reenactment, painting, and fine arts and crafts.

### **III. CONCLUSIONS OF LAW**

1. The CSL governs the denial of a charter application by a school district in the Commonwealth of Pennsylvania. 24 P.S. §§17-1701 *et seq.*

2. The Pennsylvania General Assembly enacted the CSL to provide school children with additional opportunities to attend public schools that offer diverse and innovative educational techniques, operating independently of the traditional state public school system. 24 P.S. §17-1702-A.

3. Section 1717(e)(2) of the CLS sets forth the criteria under which a school district is to evaluate an application for a charter. 24 P.S. §17-1717-A(e)(2).

4. The CAB must give "due consideration" to the findings of the local school board, but the CAB is also free to agree or disagree with those findings. 24 P.S. §17-1729(d).

5. The Commonwealth Court has found that the proper standard of review that is to be applied by the CAB in charter denial cases is to be “*de novo*.” *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (Pa.Cmwlth. 2000).

6. A school district must evaluate a charter application in order to ensure that there is demonstrated, sustainable support for the charter school by teachers, parents, other community members and students. 24 P.S. §17-1717-A(e)(2)(i).

7. A 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.” (24 P.S. §17-1717-A(e)(2)(i).

8. Any issues that are not raised by the school district are deemed satisfied.

9. Evidence of support is to be measured in the aggregate. *In re: Ronald Brown Charter School*, Docket No. CAB 1999-1 at p. 18; *In re: Souderton Charter School Collaborative*, Docket No. CAB 1999-2 at p. 12; *In re: Leadership Learning Partners Charter School*, Docket No. CAB 2000-8 at p. 9.

10. In considering a charter application, a school district must evaluate whether the charter school will be capable of providing the comprehensive learning experience that it proposes in the application. 24 P.S. §17-1717-A(e)(2)(ii).

11. The CSL requires that a charter school submit a financial plan as part of its application. 24 P.S. §17-1719-A(9).

12. The CAB has held that Section 1719-A(5) of the CSL requires that a charter school applicant “describe a curriculum of some substance. Goals and guidelines

as to what the curriculum may be in the future are insufficient.” *In re: Environmental Charter School*, CAB Docket No. 1999-4 at p. 14.

#### **IV. DISCUSSION**

##### **A. Standard of Review**

Section 17-1717-A(i)(6) of the CSL provides that: “In any appeal, the decision made by the local board of directors shall be reviewed by the appeal board on the record as certified by the local board of directors. The appeal board shall give due consideration to the findings of the local board of directors and specifically articulate its reasons for agreeing or disagreeing with those findings in its written decision.” 24 P.S. §17-1717-A(i)(6). The Supreme Court stated, in *West Chester Area School District v. Collegium Charter School*, 571 Pa. 503, 812 A.2d 452, 1172 (2002), that the CAB must apply a *de novo* standard of review when entertaining appeals from a school district board’s denial of a charter school application. The CAB defined “due consideration” in the *In re: Hills Academy Charter School* (Docket No. CAB 1999-12). The CAB stated in *Hills* that “since it has to agree or disagree with the findings of the Directors, it can of necessity, determine the weight of the evidence behind each finding and draw its own conclusions.” *Id.* at 15. Based upon this standard, while giving due consideration to the findings of the School District, the CAB will make an independent review on each of the reasons for denial of the charter application.

##### **B. Evaluation Criteria**

The Pennsylvania General Assembly enacted the CSL to provide school children with additional opportunities to attend public schools that offer diverse and innovative educational techniques, operating independently of the traditional state public school

system. *See*, 24 P.S. §17-1702-A. Specifically, section 1717-A(e)(2) of the CSL sets forth the criteria under which a school district is to evaluate an application for a charter. Those criteria include, but are not limited to:

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

(ii) The capability of a charter school applicant, in term of support and planning, to provide comprehensive learning experiences to students pursuant to the charter.

(iii) The extent to which the application considers the information requested in Section 1719 of the CSL and conforms to the legislative intent outlined in Section 1702 of the CSL.

(iv) The extent to which the charter school may serve as a model for other public schools.

24 P.S. §17-1717-A(e)(2).

In order to have proper legal authority to deny a charter school application, the school district must demonstrate that the application and other information submitted by the charter school applicant is deficient under at least one of the criteria enumerated above. *In Re: Bear Creek Community Charter School*, (Docket No. CAB-2003-3).

In its decision denying Helen Murray's application, the School District enumerated various reasons for its denial of the charter application. Giving due consideration to the findings of the School District, the CAB will conduct a *de novo* review of each of these purported deficiencies.

## 1. Sustainable Community Support

The first reason given by the School District for denial of the charter application was lack of sustainable support for the charter school plan. According to section 1717-A (e)(2)(i), a charter school applicant must show "demonstrated, sustainable support for the charter school plan by teachers, parents, or other community members and students."

Community support must be shown in the application document or by comments received at the public hearing. The CAB has interpreted section 1717-A (e)(2)(i) to mean that the indicia of support are to be measured in the aggregate and not by individual categories of support. The applicant's failure to show strong support in any one category is not necessarily fatal to the application. *Brackbill v. Ron Brown Charter School*, 777 A 2d 131 (Pa. Cmwlth. Ct. 2001); *Carbondale Area v. Fell Charter School*, 829 A 2d 400 (Pa. Cmwlth, Ct. 2003); *In it: Bear Creek Community Charter School*. CAB 2004-2.

Helen Murray, presumably relying on decisions of the CAB, which have held that some evidence of the intent of parents to enroll their children or of students enrolled in the charter school is a necessary element of a finding of sustainable support, relies heavily in its appeal on its projected enrollment. *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). At the time the instant appeal was filed Helen Murray had 82 of a projected 100 students enrolled in its program. The said figure included 23 additional pre-enrollments attached to the Petition. Since that time, Helen Murray has submitted 16 additional enrollments so that total enrollments now number 98 out of 100.

The School District, in oral argument before the CAB, countered that there was



no true intent on the forms to enroll students and that the enrollments included forms submitted in prior years with prior charter school applications. The School District argues that there is no evidence that these individuals are still considering enrollment under the current charter school plan. There is merit to the School District's argument. The enrollment notification forms by themselves provide limited evidence of intent particularly where a parent or guardian has signed that portion containing a statement that the parent has decided to enroll the child. Helen Murray's count includes several forms where parents have not signed indicating this decision. Helen Murray's case might have been better served had it developed on the record more evidence of the commitment it argues is demonstrated by the forms. Thus, although there is some support shown by these enrollment forms, there is no evidence that these forms evidence the current intent of parents because some were signed in prior years for previous applications.

The School District asserts that only 6 individuals spoke in support of Helen Murray at the public hearing held October 25, 2004. Helen Murray asserts that the School District did not give the individuals attending the October 25, 2004 meeting a proper opportunity to comment on their support for Helen Murray and contends the 30 individuals appeared at the hearing in support of Helen Murray. Unfortunately since these individuals did not voice their support, the record is silent as to their support for the charter school plan. Helen Murray did not seek to supplement the record with any additional evidence that those individuals were present to show their support or the nature of that support.

Helen Murray also notes that it has obtained 15 parents to serve on various 'Parent Volunteer Action Committees, and promises to continue its recruiting process to

obtain additional parents for the said committees. Additional recruitments are expected to come from the parents of the children who do enroll in the school. But the level of support represented by the 15 parents who have volunteered is overshadowed by Helen Murray's failure to develop the extent of the support in the record.

Helen Murray cites the support provided by the Pastor of St. Hedwig's parish and notes that that support includes the willingness to provide the physical facility for the proposed charter school. The School District asserts that the support given by St. Hedwig's Parish should not be considered as part of the sustainable community support for Helen Murray as St. Hedwig's Parish has a financial interest in leasing its school building to Helen Murray after a charter is granted. The CSL is silent on the issue of whether the support of St. Hedwig's Parish should be considered as a part of the sustainable community support for Helen Murray because St. Hedwig's has a financial interest in Helen Murray leasing its facility. The CAB has interpreted section 1717-A(e)(2)(i) as requiring demonstrated support from the community in which the school is to be located, and requires support for the actual plan being proposed. General support for the charter school concept is not sufficient under section 1717-A(e)(2)(i), and voicing general support for the charter school concept at a public hearing also does not satisfy section 1717-A(e)(2)(i). The support represented by St. Hedwig's appears to be in the nature of support for a charter school using its facilities rather than support expressed for the particular plan proposed by Helen Murray.

In any event, even taking the support of St. Hedwig's in a most favorable light to Helen Murray, it is insufficient to overcome the lack of demonstrated support in the record from the community as a whole.

On balance, the CAB finds the evidence insufficient to demonstrate sustainable support from parents, students, faculty and the community to establish Helen Murray as an ongoing entity. While this finding alone is sufficient to deny Helen Murray's appeal, we nonetheless will examine the other reasons cited by the School District.

## 2. Adequate Facility

The School District has objected because there is currently no lease between Helen Murray and the owner at the facility. The Commonwealth Court has held that "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. Ronald Brown Charter School*, supra at 139; *In re: Fell Charter School*, CAB 2001-9.

The School District further argues that the proposed facility: requires ADA Renovations; requires other necessary repairs, including roof patching and radiator covers; possibly may need a new heating plant; possibly may need to upgrade the fire protection system; has inadequate parking; and, is located in a flood plain.

None of these concerns cited by the School District are appropriate grounds for consideration in the granting or denial of a charter. The CSL does not require this type of extensive facility and facility related information.

The CSL requires that a charter school applicant provide the school district with a description and address of the facility for the physical location of the charter school, as well as a description of the ownership and any lease arrangements. 24 P.S. § 17-1719-A(11). Issues relating to physical facility are not new to the CAB. The CAB has held that the CSL does not require that a charter applicant actually secure the proposed property or

provide the district with a lease or sales arrangement, site development plan or a list of alternative sites. See *In re: Environmental Charter School*, CAB 1999-14; see also *In re: Leadership Partners Charter School*, CAB 2000-8. Likewise, the CAB has found that a nonbinding letter of intent to lease a property is sufficient to satisfy the requirements of the CSL. See *In re: Infinity Charter School*, CAB 2002-4. Also, the CAB has even approved a charter where all that was available was a street address and drawing of the proposed facility. *In re: Legacy Charter School*, CAB 2000-14. The Commonwealth Court has also indicated its agreement with the CAB's findings in *Infinity Charter School*, 847 A.2d 195 (Pa. Cmwith. 2004), and found that a school district can require no more information relating to a school facility than that which is identified in the CSL.

Thus, while the School District's concerns may be well founded, the CAB disagrees with the School District that the charter application should have been denied on the basis of its physical facility.

### **3. Financial Plan**

The School District raises concerns that the financial plan submitted by Helen Murray indicates that expenditures would exceed revenues. Helen Murray has submitted a re-draft of its financial plan indicating a \$70,000 plus unreserved fluid balance at the end of its first year of operation. In redrafting its financial plan, Helen Murray has taken into account the concerns raised by the School District in its January 5, 2005 letter concerning per pupil cost, employee health care plans, and retirement benefit costs.

Further, in reviewing Helen Murray's budget, in many instances the School District compares Helen Murray's proposed budget to its own budgetary items. The CAB has found that there is no basis in law for a school district to deny a charter school

application based upon a financial analysis comparing the various costs of a charter school's budgetary items to the cost of the same budgetary items of a school district. *In re: Bear Creek Community Charter School*, CAB 2004-2. The same may be said for comparing the School District per pupil cost to Helen Murray's estimated per pupil cost when reviewing Helen Murray's proposed financial plan.

#### **4. Curriculum**

The School District has raised several objections to Helen Murray's proposed curriculum. Among the concerns raised by the School District is that the curriculum is duplicative, non-innovative, will not serve as a potential model for public school districts, and does not indicate how it will comply with all state mandated services, policies and laws.

In its appeal, Helen Murray contends that in making these assertions, the School District makes blanket statements and does not detail its concerns in its denial letter. Helen Murray contends that without this detail it cannot address the School District's concerns and cannot revise and correct its plan to meet deficiencies.

To an extent, the CAB can appreciate Helen Murray's arguments regarding the lack of detail in the School District's explanation of its denial base upon the proposed curriculum. The CAB is not impressed with the effort made by the District in explaining its concerns. However, there appear to be legitimate issues as to whether the proposed curriculum will provide comprehensive learning to its students. It is Helen Murray's burden to establish that its charter school plan will satisfy the requirements of the law in this regard. A review of the record leaves serious questions in the CAB's mind as to whether the curriculum, with its emphasis on the arts, can still provide adequate

comprehensive learning experiences in the other core subject areas. The record in this matter fails to satisfactorily address this concern.

Insufficient effort was made to establish in the record, either in the written documentation, through the public hearing, or through the appeals process, the ability of the proposed curriculum to satisfy the requirement of the CSL. The CAB concludes that Helen Murray failed to establish that it has the capability, in terms of support and planning, to provide comprehensive learning experiences to students as required by section 1717-A(e)(2)(ii) of the CSL. 24 P.S. §17-1717A(e)(2)(ii).

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ORDER

AND NOW, this 30th day of September, 2005, based on the foregoing and the vote of the Board<sup>1</sup>, the appeal of the Arts and 3R's, Inc. d/b/a/ Helen Murray Charter School for the Arts is **DENIED**.

For the State Charter School Appeal Board

  
Gerald L. Zahorchak, D.Ed.  
Acting Secretary of Education

Date Mailed: September 30, 2005

<sup>1</sup> At the Board's September 6, 2005 meeting, the appeal was denied by a vote of 4-0 with members Bunn, Reeves, Shipula, and Zahorchak voting to deny the appeal.