

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

IN RE: :
Appeal of the Capital Academy Charter School :
from the Denial of its Charter School : Docket No. CAB 2007-02
Application by the Harrisburg School District :

I. INTRODUCTION

This matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter "CAB") on appeal by the Capital Academy Charter School (hereinafter "Capital Academy" or "Charter School") from the denial of its charter school application by the Harrisburg School District (hereinafter "Harrisburg" or "District").

II. FINDINGS OF FACT

1. The Founders of the Charter School submitted an application to establish a charter school to Harrisburg on November 15, 2005. (Cert. R. CACS 1388A¹)
2. The District's Board of Directors, pursuant to 24 P.S. §17-1717-A(d) of the Charter School Law, held public hearings concerning the Charter School's application on December 20, 2005 and January 13, 2006. (Cert R. TR 12/20/05 and TR 1/13/06)
3. Public comments were received by the District at both public hearings. (Id.)

¹ Cert.R. refers to documents in the certified record, which are either Bates stamped and referred to by their Bates number as CACS ___ or one of the transcripts of the two hearings before Harrisburg's Board of School Directors, which are referred to respectively as TR 12/20/05 and TR 1/13/06.

4. At a subsequent public meeting on February 21, 2006, Harrisburg's Board of Directors voted to deny the Charter School's application and adopted an adjudication in support of that decision.
5. On February 24, 2006, the adjudication was sent to counsel for the Charter School.
6. Specifically, the District's adjudication set forth the following as the grounds upon which the District found the Charter School's application deficient:
 - the Charter School failed to demonstrate sustainable support as required by Section 17-1717-A(e)(2)(i) of the Charter School Law;
 - the Charter School failed to show that it was capable of providing comprehensive learning experiences to students pursuant to the charter as required by Section 17-1717-A(e)(2)(ii);
 - in particular, the application failed to establish that the Charter School had carefully designed and coordinated a quality curriculum that related to the specified mission and goals of the school;
 - the Charter School application failed to demonstrate a financial plan and did not contain a budget that would support or sustain the school and that was consistent with the program proposed to be offered by the Charter School in violation of Section 1719-A(9);
 - the application failed to comply with the Legislative intent of the Charter School Law as set forth in Section 1702-A;
 - The information presented in the application and at the hearings before the Board of School Directors was insufficient to show that the Charter

School had met the application requirement to describe an adequate facility for its proposed location, or to establish that it had priority lease arrangements for the facility.

- The Charter School failed to demonstrate how it would serve as a model for other public schools as required by Section 1717-A(e)(2)(iv) of the Charter School Law.
7. On May 10, 2006, the Charter School filed a Petition to Appeal with the Court of Common Pleas of Dauphin County under Sections 1717-A(i).
 8. The Charter School's petition requested that the Court issue a Decree establishing the sufficiency of the Petition to Appeal, which petition contained signatures of residents of the District.
 9. By Order dated December 28, 2006 Judge Bratton of the Court of Common Pleas found the Charter School's petition to be sufficient.
 10. On January 4, 2007, the Charter School filed a Petition with CAB which was docketed at CAB 2007-2.
 11. By letter dated January 22, 2007, the District asked that CAB suspend the Charter School's appeal because Harrisburg had appealed Judge Bratton's Order to the Commonwealth Court.
 12. The matter was suspended pending disposition of the School District's appeal to Commonwealth Court.
 13. Commonwealth Court found for Capital Academy and then in May of 2008 the litigation ended when the Supreme Court refused to hear the District's appeal from that decision.

14. On June 19, 2008 the School District filed an answer to the appeal to CAB and subsequently certified to record of its proceedings to CAB.

III.

CONCLUSIONS OF LAW

1. The Charter School Law, (Charter School Law) Act of June 19, 1997, P.L. 225, No. 22, 24 P.S. § 17-1701-A, et seq., governs the application and approval process for Charter Schools in Pennsylvania.
2. 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 17-1719-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 has not demonstrated sustainable support for the Charter School program by teachers, parents, other community members and students as mandated by Section 17-1717-A(e)(2)(i).
4. The Charter School has failed to demonstrate its ability to provide comprehensive learning experiences to all students, especially in terms of the lack of alignment of its curriculum to its mission and goals.

5. The proposed financial plan and budget of the Charter School also failed to establish the school's capability, in terms of financial support, to provide comprehensive learning experiences.
6. The legislative intent of the Charter School Law has not been satisfied in this application, and, in particular, the Charter School has not shown that its programs are innovative and will be models for other public schools.
7. The facility information provided to the District by the Charter School is sufficient to satisfy the application component requirements of the Charter School Law.

IV.

DISCUSSION

Harrisburg based its decision to deny Capital Academy a charter on four main grounds. These grounds were the failure: (1) to demonstrate sustainable support for the school; (2) to describe a quality curriculum that was consistent with the school's goals and mission; (3) to show that the school had adequate lease arrangements for a facility and that the facility would meet the school's projected needs; and (4) produce a financial plan and budget that was adequate for the proposed school.² Nonetheless, we have conducted a *de novo* review of the entire record and of all of the findings of the District, in adherence to the guidance of the Supreme Court of Pennsylvania. See, *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172 (Pa. 2002). We have also given due consideration to the findings of Harrisburg's Board of

² Although other reasons to deny the Charter School application were discussed in the District's adjudication and in its brief to CAB, those issues were not addressed in the Charter School's brief and will not be discussed in this opinion. Moreover, we find that they are fairly subsumed within the main grounds supporting denial of the charter.

School Directors as required by the Charter School Law. 24 P.S. §17-1717-A(i)(6). As a result, as will be discussed hereinafter, we deny Capital Academy's appeal.

First, we will consider the issue of sustainable support. Both parties have relied upon upon the significant body of decisions in charter school appeals since 1999 which have addressed this issue, including the means by which support may be demonstrated and even the extent of support that CAB has found sufficient to meet the legal standard. CAB's determinations in this regard have largely been adopted by the Commonwealth Court of Pennsylvania in the body of charter school jurisprudence represented by their decisions. *See, eg. Brackbill v. Ron Brown Charter School*, 777 A.2d 131 (Pa. Cmwlth. Ct. 2001), *McKeesport Area School Dist. v. Propel Charter School McKeesport*, 888 A.2d 912 (Pa. Cmwlth. Ct. 2005). In short, we have defined sustainable support as "support sufficient to sustain and maintain a proposed charter school as an ongoing entity." *In re: Bear Creek Community Charter School*, CAB No. 2003-3.

Capital Academy plans to open in its initial year with 154 students and contends that the level of support demonstrated in the application and during the District's hearings was more than sufficient. It cites to several letters of support from college and university professors, the signatures of 600 community members on a petition of support and the testimony of 14 individuals at the hearings. The Charter School then contends that these numbers, on their face, compare favorably to the amounts and types of community support that CAB has found sufficient in prior appeals. Furthermore, Capital Academy then argues that the support demonstrates through its application materials far exceeds the amount of support necessary for a charter applicant because of the many pledges of financial support for the school from local businesses and from the founders themselves. (Cert.R. CACS 317-322, 1497-1510).

Considering only the numbers, CAB might agree, but establishing a charter school is not simply a matter of numbers. The District first points out that none of the founders of Capital Academy, or any of the proposed members for the Board of Trustees, is a resident of the District. Similarly, in considering the higher education support garnered by the Charter School, the District notes that none of the institutions is within the District and that most of the professors were merely expressing their individual support for the Charter School. (Cert. R. CACS 183-186). In those cases where institutional support was expressed, it was not specifically supporting the formation of a new charter school, but rather offering services or students as tutors if the school opened. (Cert.R. CACS 423A, CACS 170). Regarding community support, none of the businesses that had offered support was within Harrisburg (N.T.³ at 77), and there was no evidence of any support from District teachers, community groups, community organizations or elected officials. Although CAB has held that support from each designated group is not necessary,⁴ support from such groups has been a component of the overall support in other cases. Moreover, the proper community within which support is to be measured is the school district within which the Charter School will operate and from which it seeks approval. *In re Legacy Charter School*, CAB No. 2000-14. Thus, we concur with the District that the evidence on which the Charter School relies is not the kind of evidence of support required by the Charter School Law.

Next, we must consider the signature petitions. The caption states that the proposed charter will be for “high school students” and that its goal is providing opportunities, courses and services to enable the school’s students to succeed in top-quality colleges. However, the Charter School is actually proposed to include grades 6th through 12th (Cert.R. 6A) and to begin with

³ N.T. refers to the Notes of Testimony of the February 24, 2009 hearing before CAB.

⁴ See, *Brackbill v. Ron Brown Charter School*, 777 A.2d 131 (Pa. Cmwlth. 2001) *appeal denied*, 573 Pa. 674, 821 A.2d 588(2003).

grades 7, 8 and 9 and then to expand over the next several years (Cert.R. 44A). This brings into question whether the signatories to the petition clearly knew what they were agreeing to support. The District indicates that 39 of the signatures are accompanied by incomplete addresses and that the signers did not aver that they were parents, had children or intended to enroll their children in the school. We concur that information of this nature certainly would help to establish whether the signatures provided by the school were demonstrative evidence of substantial support for the school and for the school as actually planned. In the absence of this information, and based upon our prior decisions, we cannot conclude that the signature petitions constitute substantial support.

Based upon our analysis of the evidence, we adopt findings #37-52 of the School District's adjudication, which findings support the conclusion that Capital Academy has failed to demonstrate substantial community support for its charter school plan as required by the Charter School Law.

The second issue to address in this appeal is whether the Charter School application has described the school's curricular planning and whether that planning and the proposed curriculum will enable the school to provide comprehensive learning experiences to students. *See* 24 P.S. §17-1717-A(e)(2)(ii). Capital Academy's application was to include information on "[t]he mission and education goals of the charter school, the curriculum to be offered and the methods of assessing whether students are meeting education goals." 24 P.S. §17-1719-A(5). Moreover, since charter schools must participate in the Pennsylvania System of State Assessment, the planned instruction or curriculum must also align with Pennsylvania standards in 22 Pa. Code Chapter 4 so that its students may make adequate yearly progress. *See In re Bear Creek Community Charter School*, CAB No. 2003-3, 24 P.S. §17-1715-A(8). CAB has also held that a school's curriculum is "essentially a roadmap to the school's operation, goals,

teaching strategies and learning methodology.” *In re Thurgood Marshall Academy Charter School*, CAB No. 2001-5, at p. 11. It is against this backdrop that we consider this issue in this case.

There is no question that Capital Academy, through its application and in its brief, provided significant information describing its curriculum, its plans for the implementation of the curriculum and indicating that it was aligned to the Commonwealth’s standards. (CACs Brief at pp18-22 and Cert.R. CACS 13-47, 109-156, 541-1387). The District did not find fault with the Capital Academy on any of these grounds. The District found that the curriculum was not consistent with the school’s mission, that staffing the school would be difficult and that the textbooks mentioned in the application were out of date. In response, Capital Academy argues that the District’s objections, regarding whether it will be able to find sufficient certified teachers for all of its proposed offerings, are speculative. We agree. In addition, Capital Academy contests the District’s finding that many of the textbooks mentioned in the application are seriously outdated. In response, it asserts that other resources will be utilized and that all schools go through the process of updating textbooks. Capital Academy concludes that its curriculum is innovative and that it satisfies the Charter School Law.

Initially, we note that the District does not dispute the amount of curricular material supplied by Capital Academy. (N.T. at p. 69.) The District’s issue, in short, is that in the professional opinion of the staff who reviewed the materials, the plan for providing the curriculum proposed to be used by Capital Academy is inadequate to enable students from Harrisburg, a district with a significant number of very low-performing students, to attain the goals of Capital Academy – “to provide educational opportunities for students who do not have sufficient options and guidance to succeed in top-quality colleges and the competitive world

beyond. (Cert.R. CACS 6). Clearly, the entire focus of the application and the testimony of the founders at the District's hearings is to provide a program to prepare students for college and the demands thereof. However, for students who are struggling in an urban environment, more than a demanding curriculum is required. The curriculum must allow for flexibility and although there is reference to a flexible "constructivist approach to instruction" (Cert.R. CACS 13) the curriculum that is presented uses planned courses and planned instruction (Cert R. CACS 541-1387). These are inconsistent approaches. In addition, Capital Academy will not have even one guidance counselor until its 3rd year of operation, when its oldest entering class will already be in 11th grade, and when the total school population is anticipated to be over 240 students. This seems like woefully inadequate planning to provide the "guidance" the Charter School touts in its mission statement.

This issue of the outdated textbooks is of concern to CAB as well. We understand that this Charter School has been in the developmental process for some time and that it made an unsuccessful application to form a regional charter in 2004 as well. Thus, we could understand if some items in the application were retained for this 2005 effort. However, the problem is more dramatic. Finding of fact 21.g. of Harrisburg's adjudication notes four textbooks - in physics, Health, chemistry and computer applications - with 1997 copyrights, an honors biology text copyrighted 1996 and a 1993 social studies textbook. The Charter School's response before the Board of School Directors was as follows:

[a]s for the age of the textbooks, really the age of the textbooks is not always relevant. Greek History has not changed that much. Ancient Greek History and Alexander have not changed, and I could be using a book from the 50's. It hasn't changed. Where things need updating, especially in the sciences, which things do move quickly, there's an unbelievable amount of resources on the Internet.

(Cert.R. TR 1/13/2006 at 238. In addition, in its brief the Charter School suggests that the District's finding, and thus our concern as well, "ignores the process of updating textbooks that all schools go through." Capital Academy Brief at 23. However, CAB is very cognizant of that process, as we assume was the District and that is the very problem. Why would a charter applicant propose using any textbook in the sciences or in technology that was eight years-old at the time the application was submitted? Charter Schools are required to be innovative and to serve as models for other public schools. That is not occurring here.

Because we find, as discussed above, that the curriculum plan is inadequate to achieve the stated goals of the Charter School and that there is a significant deficiency in the Charter School's plan for providing textbooks and materials for its students, we conclude that Capital Academy has not shown the capability, in terms of planning, to provide comprehensive learning experiences to students. We adopt findings #20 through 25 of School District's adjudication.

The third issue concerning Capital Academy's application is whether the financial planning, as evidenced by the school's entire proposed budget, supports the proposition that the school will be capable of providing comprehensive learning experiences to its students. *See Central Dauphin Sch. Dist. v. Founding Coalition*, 847 A.2d 195 (Pa.Cmwlth. 2004). Pursuant to Section 1719-A(9) each charter application must include a financial plan. That financial plan must show that the applicant has considered all fundamental budgeting issues and that the school will have the necessary funds to operate. Although the financial plan need not be detailed, the overall budget must enable the school to provide comprehensive learning experiences. *Id.*

Capital Academy provided a financial plan with its application (Cert.R. CACS 324-30) and then revised and resubmitted that plan based upon District comments at the first public hearing. (Cert.R. CACS 1491-1496). The Charter School asserts that its budget is conservative

because it does not even rely upon the large amounts of private contributions allegedly promised to the Founders. In addition, The Charter School contends that the District's objections to the budget are largely speculative and should thus be rejected. It bases this position on its reading of the *Central Dauphin* decision contending that similar speculation was rejected in that case. *Id.*

As in *Central Dauphin*, we have conducted a *de novo* review regarding this issue and conclude that the District's concerns regarding Capital Academy's financial plan are not purely speculative and must be credited. The District addresses five specific budget issues in its brief on appeal. The first allegation is that the Charter School budget fails to show the same number of teachers as the school asserts will be employed in year one. This allegation is not speculative. The charter application specifies that the school planned to employ fourteen teachers in the first year of operation. (Cert.R. CACS102). The revised budget, however, only shows a total of 12 full-time equivalent teaching staff. (Cert.R. CACS1493). Plus, even the amount budgeted for this reduced number of teachers may be inaccurate.⁵

Second, the District asserts that the Charter School's estimated special education expenses are unrealistic. Capital Academy itself projects having the same percentage of students with disabilities as the district has, which is 19% or about 29 of the 154 estimated students in the first year. It has budgeted for only 2 teachers and an additional amount of approximately \$12,000 or \$400 per child for special education services. These services would include but not be limited to psychological evaluations, occupational therapy, physical therapy, speech and language therapy, counseling support services. (Cert.R. CACS 1493). It does not require much speculation and is, in CAB's view, reasonable to assert that a school cannot provide the services

⁵ In fact, the budget itself is internally confusing and inconsistent. In the teacher salary line a total cost of 350,000 is shown but the comments specify 9 FTE @ \$42K/each, which would be a total of \$378,000. Plus, the total cost in the special education teacher line is \$100,000, but the comment states 1 FTE @ \$50,000.

and programs required by 29 students with disabilities, even if the disabilities are mild, with such a limited budget.

Next, Capital Academy has included a Charter School Implementation Grant as revenue. CAB agrees with the District's contention that this is speculative, since the amount of awards to eligible schools each year depends upon the funds available and the number of eligible schools. Including the full amount in the budget is not a sound financial practice. Equally speculative from a budgeting perspective is the issue of summer school. Capital Academy's application lists summer school as a requirement, yet the school anticipates that there will be no costs for this because the District will allegedly fund Capital Academy's summer program. This is clearly not the case, as asserted in the District's brief. Thus, a mandated component of the Charter School's program is without funds in the budget to pay for the program.

The final objection of the District is to software line in the budget. This line allots a projected \$300 per student to purchase state of the art technology, including artificial intelligence and tutoring systems. The District's brief states that the Board of Directors did not "believe" this funding was sufficient. CAB finds this to be pure speculation without any support on the record and thus rejects findings of fact #90-92.

Based upon the above, CAB concludes that Capital Academy has failed to present in its application a financial plan, which viewed as a whole, will enable the school to have sufficient funds to operate and meet all of its obligations to students and thus to be able to provide comprehensive learning opportunities to those students. As a result, and consistent with our discussion above, we adopt findings #78 through 89 and 93 of the District's adjudication.

The final basis for the District's denial of Capital Academy's application concerned the issue of the proposed facility for the school. The law simply requires "[a] description of and

address of the physical facility in which the charter will be located and the ownership thereof and any lease arrangements. 24 P.S. §17-1719-A (11). The Charter School described the facility as an empty office building at 100 N. Cameron Street in Harrisburg. (Cert.R. CACS 93). The District had been concerned because another charter school applicant had also listed this site as its facility and was concerned whether Capital Academy had priority over that competitor. That issue has been resolved, since the other applicant was also denied and has not appealed or refilled. The District's other concerns were over appropriate renovations to the building. We find that the application contained adequate information about the Charter School's building plan and describing necessary renovations. (Cert.R. CACS 370-76). Furthermore, the putative landlord agrees that "[s]pace will be delivered to Tenant with reasonable Tenant improvements completed by Landlord." Charter School Brief, Exhibit D.

Thus, we find that the Charter School has met the facility requirements of the Charter School Law and that its application was not deficient in that regard. CAB specifically rejects any of the District's factual findings to the contrary.

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ORDER

AND NOW, this 14th day of April, 2009, based upon the foregoing and the vote of this Board, the Appeal of the Capital Academy Charter School is **DENIED** and the Charter School Application Denials of the Harrisburg School District is hereby **AFFIRMED**.⁶

For the State Charter School Appeal Board,

Gerald L. Zahorchak, Chairperson

⁶ At the State Charter School Appeal Board's March 31, 2009 meeting, the appeal was denied by a vote of 0-5 with members Akers, Barker, Green, Shipula, and Zahorchak voting to deny the appeal.