

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

IN RE: :
Appeal of the Family Choice Charter School :
from the Denials of the Charter School : Docket No. CAB 2007-06
Application by the Towanda Area and the :
Northeast Bradford School Districts :

I. INTRODUCTION

This matter comes before the Pennsylvania State Charter School Appeal Board (CAB) on Appeal by the Family Choice Charter School, Inc. (Charter School) from the denials of its Charter School Application by the Towanda Area School District (Towanda) and the Northeast Bradford School District (Northeast Bradford). The Charter School applied to these two school districts to form a regional Charter School under 24 P.S. §17-1718-A. Both districts rejected the Charter School’s application on February 12, 2007 and this appeal was filed on August 27, 2007.

II. FINDINGS OF FACT

1. The Charter School submitted an Application for Charter Approval to Northeast Bradford on November 15, 2006. (Certified Record, Exh. #1)
2. Thereafter, pursuant to 24 P.S. §17-1717-A(d) of the Charter School Law (CSL), Northeast Bradford’s Board of Directors held a public hearing concerning the Charter School’s Application on December 4, 2006. (Certified Record, Exh. #9)
3. On February 12, 2007, Northeast Bradford’s Board of Directors adopted Resolution 3-2007, which denied the Charter School’s Application. (Certified Record, Exh.# 10)

4. The Superintendent of Northeast Bradford transmitted a letter listing the deficiencies of the charter application to the Charter School on February 20, 2007. (Certified Record Exh. #10)
5. Specifically, Northeast Bradford found seven specific deficiencies in the Charter School's Application, as follows:
 - failure to demonstrate sustainable community support as required by Section 17-1717-A(e)(2)(i);
 - failure to show the capacity to support, in terms of planning, a comprehensive learning experience under the proposed charter in violation of Sections 1719-A(5) and 1717-A(e)(2)(ii) and 17-1702-A(1), (2);
 - failure to demonstrate that the charter school would be able to accommodate students with special needs and meet their needs in violation of Section 17-1732-A;
 - failure to demonstrate a financial plan that would support or sustain comprehensive learning experiences contrary to the requirements of Section 1719-A(9);
 - failure to provide an address and describe the physical plant in which the school would operate;
 - failure to describe an accountability system for meeting measurable academic standards as required by Sections 17-1702-A(6) and 17-1719-A(5); and
 - failure to provide evidence that the charter school would serve as a model for other public schools in violation of 17-1717-A(e)(2)(iv).

(Certified Record Exh. #10)

6. The Charter School submitted an Application for Charter Approval to the Towanda Area School District on November 15, 2006. (Certified Record, Exh. #1)
7. Towanda's Board of Directors, pursuant to 24 P.S. §17-1717-A(d) of the CSL held a Public Hearing on December 11, 2006, concerning the Charter School's Application. (Exhibit 10 of the Certified Record.)
8. On February 12, 2008, Towanda's Board voted to deny the Charter School application, and this denial was communicated to the Charter School by the Superintendent on February 26, 2008. (Certified Record Exh. #6)
9. The Superintendent's letter set forth the specific deficiencies Towanda found in the Charter School's Application, which are:
 - lack of demonstrated sustainable support for the Charter School plan as required by Section 1717-A(e)(2)(i);
 - failure to demonstrate that the Charter School will provide comprehensive learning experiences to students as required by Section 1717-A(e)(2)(ii);
 - lack of provisions to comply with special education requirements as incorporated into the CSL;
 - a financial plan that was clearly insufficient to support the applicant's goals and mission;
 - inadequate information regarding the proposed physical facility of the Charter School;

- failure to demonstrate that its proposed purpose and mission comply with the Legislative intent of the Charter School Law; and
 - inadequate staffing and professional development plans. (Certified Record Exh. #6)
10. On June 15, 2007 the Charter School filed a pleading styled as a Motion for Hearing in the Court of Common Pleas of Bradford County against the Towanda and Northeast Bradford School Districts. (Certified Record Exh. #11)
 11. The Charter School's Motion asked that the Court issue a Decree establishing that the Charter School's Signature Petitions were legally sufficient for purposes of appealing to CAB. (Id.)
 12. By Order dated July 16, 2007 the Court decreed that the Charter School's Signature Petitions were sufficient for purposes of appeal. (Certified Record Exh. #13)
 13. On August 27, 2007 the Charter School filed a Petition of Appeal with CAB which was docketed at CAB 2007-6.
 14. By letter dated December 4, 2007 CAB acknowledged receipt of the Charter School's appeal, directed the School Districts to file the record of the application proceedings below and set a schedule for the filing of briefs. (Certified Record Exh. #13)
 15. The School Districts filed a joint Answer to the Petition of Appeal on December 14, 2007 and subsequently filed a Brief in Support of the Answer on February 18, 2007.

16. Although the parties were advised that CAB would entertain requests to supplement the record that had been filed by the school districts, no such requests were made before the CAB meeting and the Charter School also did not file a brief.
17. At its meeting on March 25, 2008 CAB heard presentations from both the Charter School and the school districts, accepted the Certified Record as presented and took the appeal under advisement.¹

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., 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.

¹ After the conclusion of the CAB meeting, the Charter School sought to supplement the record with a binder of documents, consisting of approximately 440 pages, that had allegedly been provided to both school districts on February 12, 2007, the date on which both Boards of School Directors were scheduled to and did vote on the charter application. Counsel for the school districts objected to the admission of these documents, which had not been included in the record filed with CAB. Although the parties were afforded the opportunity to attempt to reach agreement on the submission of additional documents subsequent to the meeting, no documents have been received.

- (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 1717-A(e)(2)(i).
4. The Charter School has not shown that it is capable of providing comprehensive learning experiences to students as required under Section 1717-A(e)(2)(ii).
5. The Charter School has failed to establish that it can serve as a model for other public schools, contrary to Section 171-A(e)(2)(iv).
6. The Charter School has met the minimum requirements for application content although the quality of some application components is weak.

IV. DISCUSSION

The Towanda Area School District and the Northeast Bradford School District (hereinafter collectively referred to as “School Districts”)² based their decisions to deny the Charter School’s Applications on several reasons, most of which were the same between the two districts.³ We have reviewed the entire record in light of the various asserted deficiencies and although we disagree with the School Districts in some respects, as will be discussed in more detail below, we agree in most instances. Thus, we will deny the appeal and uphold the decisions of the School Districts to reject the applications of the Charter School.

² The two school districts which denied the Charter School’s Applications for Appeal were and are in this appeal represented by the same attorney. As such, the pleadings as well as the arguments presented by the school districts’ solicitor were offered as collective arguments on behalf of both.

³ At the outset of the hearing the Charter School alleged that the School District decisions were procedurally defective because “comments are vastly different” in the denial letter as opposed to what was said at the School Board meetings. N.T. 7-9. The School District objected to this argument and this objection is now granted. The Towanda Resolution of the February 12, 2007 meeting compares very closely to the subsequent explanatory letter of Towanda’s superintendent. *Compare* Certified Record EXH. #5 and #6.

The initial issue raised in the rejection documents of the School Districts concerns an alleged lack of support for the Charter School. The CSL sets forth the requirements a charter applicant must meet and against which school districts are to measure the charter application. Four general criteria are listed in section 1717-A(e)(2) of the CSL and then seventeen specific components of the application are detailed in section 1719-A. 24 P.S. §§17-1717-A(e)(2), 17-1719-A. The first general criterion is that there must be “demonstrated sustainable support for the charter school plan for teachers, parents, other community members and students, including comments received at the public hearing.” 24 P.S. §17-1717-A(e)(2)(i). This support can be demonstrated in the aggregate and need not be established for each listed group. Montour School Dist. V. Propel Charter School-Montour, 889 A. 2d 682 (Pa. Cmwlth. Ct. 2006).

The School Districts, in denying the Charter School’s Applications, concluded that it failed to demonstrate that there is sustainable support for the Charter School by teachers, parents, other community members and students. In reaching this conclusion, the School Districts argue that the Certified Record contains little or no evidence of sustainable support for the Charter School.

At the hearing before CAB, the Charter School pointed to various portions of its application as demonstrative of the sustainable support the Charter School had secured. N.T. 9.⁴ The initial reference is to nine pages of signatures on pages headed “Petition to support the Family Choice Charter School in Bradford County.” (Certified Record Exh. 1, pp. 96-105). These pages contain approximately 160 signatures from individuals residing in the Towanda Area School District. There only appear to be two signatures from Northeast Bradford. (Certified Record Exh. #1, p. 102). These petitions contain no information regarding whether the signatories have children of school age. Nor do the signatories by signing attest that they would

⁴ N.T. refers to the Notes of Testimony of the March 25, 2008 CAB meeting at which this appeal was presented.

send children to the school – they are simply supporting the establishment of the school. The application also contains copies of the signature petitions necessary to appeal the applicants’ prior charter application. These petitions are not relevant to establishing community support under the CSL. Next, the Charter School references additional support that is outside the record in this appeal.⁵ In addition, it appears that no one appeared at the Northeast Bradford hearing. (Certified Record Exh. #9). At the Towanda hearing, only five people, other than the applicant and his wife, made comments. (Certified Record Exh. #3, p. 3). Two of them specifically indicated support for this application; the others generally spoke in support of the choice that having a charter school would offer. (Certified Record Exh. #3, pp. 120-128). The only teacher support was that of the applicant himself and his wife. Moreover, there is no evidence in the record of anyone who intends to enroll a child in the school nor does the record contain any pre-enrollment applications. The few differences were not sufficient to establish the proposed Charter School as being unique. Thus, viewed as a whole, this application does not include substantial support to sustain a school with a proposed maximum enrollment of 72. As a result, CAB concludes that the School Districts properly denied the Charter School’s Applications for lack of sustainable support.

In reaching this finding, CAB relies upon the significant body of its decisions in charter school appeals since 1999, many of which involve issues of support, 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*, 777A.2d 131 (Pa. Cmwlth.

⁵ The Charter School referenced pages after page 153, which is the final application page in the certified record.

Ct. 2001), McKeesport Area School Dist. v. Propel Charter School McKeesport, 888 A.2d 912 (Pa. Cmwlth. Ct. 2005).

Next, the School Districts determined that the application failed to demonstrate the capability of the Charter School, in terms of support and planning to provide comprehensive learning experiences to students. 24 P.S. §17-1717-A(e)(2)(ii). In analyzing this issue, the School Districts looked to various components of the charter application, such as curriculum, assessment, staffing, budgeting and the proposed charter facility. In each of these specific areas, the Charter School was found to be deficient, leading the School Districts to find that the Charter School had not met this prong of the application test. CAB has reviewed the entire record and agrees with and adopts these findings of the School Districts as well. First, CAB finds that the applications are deficient in their description of the curricula that will be implemented and that the assessments listed are general in nature and, with the exception of the “teacher created assessments” mentioned throughout are not designed to measure a student’s obtaining the necessary academic competencies. Although courses are listed in the application, both School Districts concluded that the Charter School does not propose to offer more than the opportunities available in the public schools. Certified Record, Exh. #6 and 10. This alleged uniqueness of the Charter School was pursued at the hearing before CAB. N.T. 17-24. In questioning by the members, the Charter School was able to point to very little that distinguished it from other public schools. Thus, CAB also adopts the finding that the Charter School has not met the legislative requirement to serve as a model for other public schools. *See*, 24 P.S. §17-1717-A(e)(2)(iv).

Regarding the potential accommodation of Charter School students who may require special education, the Charter School has not developed any procedures but, instead, has chosen

to rely solely upon the local intermediate unit and indicates that it will contract with the intermediate unit or a school district if necessary. N.T. 12. This, of course, leaves unanswered two issues. The initial issue is the budgeting for special education expenses, especially insofar as both School Districts have questioned the Charter School's financial plan. Secondly, the utilization of web site forms to describe the special education evaluation and reevaluation process, does not address the seminal question of how the Charter School will satisfy its responsibility to initially identify a child, known as "child find". *See* 20 U.S.C. §1412(a)(3). Because the application does not address this point, we find it to be deficient on this basis.

Finally, CAB finds that the minimum requirements of the CSL regarding the proposed facility of the Charter School have been met. The law requires that the application include "a description of the 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(11). The Charter School has satisfied this requirement by listing several potential sites and then including as well a memorandum of understanding from the owner of one of the sites regarding potential lease arrangements. (Certified Record Exh.#1, pp31-32, 134). Thus, CAB does not adopt the School Districts' findings on the facility question.

V. CONCLUSION.

Thus, for the reasons set forth above, CAB in most respects, adopts the findings of the School Districts regarding the deficiencies in the Charter School application and concludes that the decision to reject the application was proper and should be adopted.

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ORDER

AND NOW, this 10th day of June, 2008, based upon the foregoing and the vote of this Board⁹, the Appeal of the Family Choice Charter School, Inc. is **DENIED** and the Charter School Application Denials of the Towanda Area School District and the Northeast Bradford School District are hereby **AFFIRMED**.

For the State Charter School Appeal Board,

/s/
Gerald L. Zahorchak, D.Ed.
Chairman

⁹ At the May 6, 2008 meeting of the Board, the application was denied by a vote of 0-6 with members Zahorchak, Akers, Barker, Green, Schweighofer, and Shipula voting to deny the appeal.