

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION**

STATE CHARTER SCHOOL APPEAL BOARD

In Re: Penn Johns Charter School :
: **Appeal from the denial of charter by** : **Docket No. CAB 2008-05**
the Conestoga Valley School District :

OPINION

I. INTRODUCTION

This matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter “CAB”) on Appeal by the Penn Johns Charter School (hereinafter “Penn Johns” or “Charter School”) from the denial of Penn John’s second revised charter school application by the Conestoga Valley School District (hereinafter “District”).

II. FINDINGS OF FACT

Prior Charter School Applications

1. The Charter School filed with the District an application to establish a charter school on April 23, 2007. *See* Certified Record at 1-144.¹
2. The District’s Board of School Directors (hereinafter “Board”), after public hearing and deliberation, voted to deny the Charter School’s application and, by letter dated August 13, 2007, the Charter School was informed of the Board’s decision. *See* Cert. R. at 145, 168-186.
3. On October 8, 2007, the Charter School submitted to the District a revised charter school application. *See* Cert. R. at 187-330.

¹ Hereinafter, citations to any document contained in the Certified Record, received by CAB on September 26, 2008, will be referenced as “Cert. R., at ____.”

4. Public deliberation related to the revised charter school application was held at the Board's December 3, 2007 public meeting. *See* Cert. R. at 354, 358-359.
5. At its December 3, 2007 meeting, the Board voted to deny the Charter School's revised application, and by letter dated December 17, 2007, the Charter School was informed of this decision. *See* Cert. R. at 363-378.

The Second Revised Charter School Application

6. On February 25, 2008, the Charter School submitted to the District a second revised charter school application (hereinafter "Application"). *See* Cert. R. at 379-664.
7. Public deliberation regarding the Application was held at the Board's April 14, 2008 meeting. *See* Cert. R. at 725, 729-731.
8. At the Board's April 14, 2008 meeting, the Board voted to deny the Charter School's Application and, by letter dated April 21, 2008, the Charter School was informed of this decision. *See* Cert. R. at 741-754.
9. Pursuant to section 1717-A(i) of the Charter School Law, 24 P.S. § 17-1717-A(i), the Charter School filed a petition with the Court of Common Pleas of Lancaster County seeking an order establishing the sufficiency of the Charter School's Petition to Appeal the District's denial of the Charter School's Application. *See* Cert. R. at 755.
10. The Charter School and the District entered into a stipulation, thereby agreeing that the Charter School's Petition to Appeal was sufficient. *See* Cert. R. at 757-758.

11. On June 24, 2008, the Charter School filed an Appeal with CAB. *See Cert. R. at 774.*
12. Sometime after filing the instant Appeal, the Charter School informed the District and CAB that it planned to operate the charter school in a different facility than that described in its Application. *See Cert. R. at 774.*
13. During two conference calls participated in by the Charter School, the District and Counsel to CAB, it was determined that:
 - i. the Charter School would provide information regarding the facility in which it is now planning to operate and would cooperate with providing the District access to that facility; and
 - ii. the Board would hear testimony and public comment on the proposed facility and would vote upon a supplement to its decision to deny the Charter School's Application. *See Cert. R. at 774-775.*
14. On September 17, 2008, the Charter School provided the District with some information regarding the facility in which it is proposing to operate.
15. At its October 13, 2008 meeting, the District's Board discussed the Charter School's proposed facility and, by letter dated October 17, 2008, the District informed the Charter School that it was reaffirming its denial of the Charter School's Application.
16. On November 21, 2008, the District filed a Memorandum of Law in support of its denial of the Charter School's Application with CAB.²

² Although provided the opportunity, the Charter School did not file a Brief in Support of its Appeal.

17. On November 25, 2008, CAB heard argument from the Charter School and the District regarding the Appeal. *See generally*, Notes of Testimony.³

III. CONCLUSIONS OF LAW

1. CAB has jurisdiction in this matter.
2. The Charter School Law (hereinafter “CSL”), Act of June 19, 1997, P.L. 225, No. 22, 24 PS § 17-1701-A *et seq.*, governs the application process, the approval process, the revocation/renewal of charters and the operation of charter schools in Pennsylvania.
3. Section 1717-A(e)(2) of the CSL, 24 P.S. § 17-1717-A(e)(2), sets forth the factors to be used by a local board of school directors in the evaluation of a 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 required public hearings;
 - (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 of the CSL and conforms to the legislative intent of the CSL; and
 - (iv) The extent to which the charter school may serve as a model for other public schools.

³ The term “Notes of Testimony,” abbreviated, hereinafter as “N.T. at ___” refers to the transcript of the November 25, 2008 hearing in this matter.

4. Section 1702-A of the CSL, 24 P.S. § 17-1702-A, sets forth the intent of the General Assembly in enacting the CSL:
 - (i) Improved pupil learning;
 - (ii) Increased learning opportunities for all pupils;
 - (iii) Encouraging the use of different and innovative teaching methods;
 - (iv) Creating new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;
 - (v) Providing parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system; and
 - (vi) Holding the schools established under the CSL accountable for meeting measurable academic standards and providing the school with a method to establish accountability systems.
5. Penn Johns has failed to demonstrate sustainable support for its Charter School by teachers, parents, other community members and students.
6. Penn Johns has failed to demonstrate the capability, in terms of support and planning, to provide comprehensive learning experiences to all students.
7. Penn Johns has failed to provide adequate information regarding the required application components under the CSL.
8. Penn Johns has not satisfied the legislative intent of the CSL.
9. Penn Johns has failed to demonstrate how it will serve as a model for other charter schools.

IV. DISCUSSION

Before addressing the merits of the Appeal, it is necessary to dispose of one outstanding matter. At the November 25, 2008 hearing before CAB, the Charter School sought to admit into the record a revised budget related to the latest facility in which the Charter School is proposing to operate. Although the District had requested information related to the implications of the proposed facility on the Charter School's previously submitted budget, the District objected to the admission of the document because it did not have the opportunity to consider the information contained therein at its October 13, 2008 meeting. CAB recognizes that the Charter School failed to present its revised budget to the District prior to the District's October 13, 2008 Board meeting. Because the District requested the information regarding the proposed facility, however, CAB is overruling the District's objection and admitting the revised budget into the record.⁴

Penn Johns Has Not Demonstrated Sustainable Support For Its Charter School

Section 1717-A(e) of the CSL requires that local school boards consider whether demonstrated, sustainable support for a proposed charter school exists among teachers, parents, other community members and students. 24 P.S. § 17-1717-A(e)(2)(i). CAB has defined sustainable support as the support sufficient to sustain and maintain the proposed charter school as an on-going entity. *Voyager Charter School of Pennsylvania*, Docket No. CAB 2005-09. Based upon this definition, Penn Johns has failed to demonstrate sufficient sustainable support for its Charter School.

⁴ The usual standard regarding the admission of supplemental information in these proceedings is whether the information was previously unavailable. 24 P.S. § 17-1717-A(i)(6). Here the parties dispute that issue but, we need not resolve the question because we conclude that the District's previous request for this very information renders hollow its procedural objection and does not require us to create an exception to the usual rule.

The Charter School's second revised Application characterizes the education it seeks to provide as a "multi-grade classroom...in a rural environment." Certified Record at 389. During the pendency of this Appeal, the Charter School altered its Application by proposing that the Charter School operate out of a facility significantly different than that identified in its Application. Of concern to CAB is the location of the proposed facility, which is within a commercial office park and in close proximity to a busy state highway. Not only is this location seemingly inapposite to the "rural environment" proposed in the Charter School's Application, but in addition, the Charter School has failed to demonstrate that those individuals who supported the Charter School when it planned to operate in a rural location, continue to support the Charter School now that a less rural facility is proposed.⁵

At the November 25, 2008 CAB hearing, a representative from the Charter School explained that seventy-five percent of the families who were supporters of the Charter School had viewed the facility and had liked it. N.T. at 14. This is not enough; the Charter School failed to provide direct evidence, in the form signatures on petitions, letters of support and pre-enrollment commitments for the newly proposed facility. Because the Charter School cannot demonstrate that the previously expressed support still exists, we find that the District properly denied the Charter School's Application for lack of support.

⁵ In its Application, the Charter School provided petitions containing signatures, letters and e-mails and fairly substantial pre-enrollment figures to demonstrate support for the Charter School. Had the Charter School not proposed a different location for its operation, this evidence would have most likely been sufficient to demonstrate sustainable support for the Charter School. The Charter School did, however, propose a different facility and, as noted above, has failed to demonstrate support for that facility or that the support originally garnered approves of this change.

Penn Johns Has Failed To Demonstrate The Capability To Provide Comprehensive Learning Experiences To All Students

Section 1717-A(e) of the CSL further requires that local school boards consider whether a charter school applicant, in terms of support and planning, has the capability to provide comprehensive learning experiences to all students. 24 P.S. § 17-1717-A(e)(2)(ii). In the present case, the District concluded that the Charter School failed to demonstrate this capability, as the Charter School lacked sufficient planning regarding its proposed curriculum, budget and facilities.

Section 1719 of the CSL, 24 PS § 17-1719-A(5), provides that an application to establish a charter school shall include information regarding “[t]he mission and education goals of the charter school, the curriculum to be offered and the methods of assessing whether students are meeting educational goals.” CAB has previously held that applications are required to “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. CAB agrees with the District that the Charter School’s proposed curriculum falls short of this standard. Although the Charter School provided a general overview of its proposed curriculum, a general outline was all that was provided; the Charter School’s Application contains no substantive detail of the proposed curriculum.

Additionally, the District raised concerns related to the proper certification of the School’s professional staff. Because the Charter School’s proposal includes a unique educational environment, *i.e.*, multi-grade classrooms, the District’s concerns are legitimate and were not fully and properly addressed by the Charter School. Clearly, it is not necessary for a charter school, before its charter is granted, to identify the specific individuals it plans to hire. It is necessary, however, that an applicant be able to illustrate how it plans to comply with State

and Federal requirements relating to the qualifications of its educators. The Charter School has failed to do so; therefore, we adopt the District's conclusion that this is a basis for concluding that the CSL's requirements have not been met.

In regard to the Charter School's proposed facility, the District concluded that there were significant safety issues with the proposed facility, including concerns regarding a proper location for the Charter School's playground, concerns regarding the very close proximity of the Charter School to a busy state highway, and concerns related to proximity of the Charter School to other commercial entities. The District properly concluded that the Charter School has failed to demonstrate that it has undertaken sufficient planning regarding the proposed facility so that it can provide a comprehensive learning experience for its students.

First, the Charter School failed to respond to the District's concerns regarding the School's playground, as the location of the playground is not finalized and the locations being considered are near major power lines or would require students to walk through an area used by motor vehicles. Additionally, the Charter School failed to sufficiently demonstrate its plan for keeping students safe, especially because the proposed location for the Charter School is adjacent to a commercial distribution facility. Moreover, the District expressed concern because Board members observed storage racks for propane tanks at a facility in very close proximity to the proposed Charter School location. The Charter School did nothing to alleviate this concern. Of utmost concern, however, is the fact that the School has presented no evidence to demonstrate that employees of the neighboring commercial entities will not, at any time, have access to the Charter School students. The Charter School's failure to respond to the District's several valid

concerns related to the proposed facility demonstrates a lack of planning and, consequently, the inability to provide a comprehensive learning experience for its students.⁶

Penn Johns Has Failed To Provide Adequate Information Regarding The Required Application Components Under The Charter School Law

Section 1719-A of the CSL requires that an application to establish a charter school contain seventeen (17) elements, including: (1) a proposed faculty and professional development plan for the faculty of a charter school; and (2) a description of how the charter school will provide adequate liability and other appropriate insurance for the charter school, its employees and the board of trustees of the charter school. 24 P.S. §§ 17-1719-A(13),(15). Although the Charter School did include a professional development plan for its faculty within its Application, as explained above, the Charter School failed to provide a plan demonstrating how the composition of its faculty will comply with both State and Federal regulations.

Additionally, while the Charter School's Application contains some information related to insurance coverage, the Application contains only a very general description of the coverage the Charter School plans to obtain. It is not enough for an applicant to say they will obtain insurance coverage; instead, applicants should provide detail regarding the types and estimated amount of insurance it plans to obtain. The Charter School failed to do that; therefore, CAB

⁶ In relation to the Charter School's proposed budget, the District concluded that the amount budgeted for salaries, professional development, custodial services, building repair and special education services was too low and the Charter School's projected revenue was too high. CAB agrees with the Charter School that the law "does not require specifics in the budget as long as the school board or upon appeal the Board can determine that the applicant is capable of providing a comprehensive learning experience for students." *McKeesport Area Sch. Dist. v. Propel Charter Sch.*, 888 A.2d 912, 918 (Pa. Cmwlth. 2005). This argument is irrelevant, however, when an applicant, such as the Penn Johns Charter School, has failed, in other ways, to demonstrate that it is capable of providing a comprehensive learning experience for its students.

agrees with the District's conclusion that the Charter School has failed to provide the required application information pursuant to section 1719-A of the CSL, 24 P.S. § 17-1719-A.

Penn Johns Has Failed To Satisfy The Legislative Intent Of The Charter School Law

In establishing the CSL, it was the intent of the General Assembly to provide opportunities for teachers, parents, pupils and community members to establish and maintain schools to, among other things, increase learning opportunities for all pupils, encourage the use of different and innovative teaching methods and provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system. 24 P.S. § 17-1702-A. Consequently, a charter school must provide unique learning opportunities to its students in order to satisfy the intent of the CSL.

The Charter School has failed to demonstrate that it will provide parents and pupils with expanded choices in the types of educational opportunities that are available within the District. With the exception of the multi-grade classroom educational environment, the Charter School has failed to establish that it will provide its students with any unique and innovative learning opportunities. CAB agrees with the District's conclusion that the opportunities the Charter School is proposing to offer are the types of opportunities and services which the District currently offers. A multi-grade educational environment, by itself, is not sufficient to establish increased learning opportunities for students. Thus, CAB concurs with the District and finds that the Charter School has not satisfied the legislative intent of the CSL.

Penn Johns Has Failed to Demonstrate That It Will Serve As A Model for Other Charter Schools

The CSL requires that a charter school applicant demonstrate the extent to which the charter school may serve as a role model for other public schools. 24 P.S. § 17-1717-A(e)(2)(iv).

CAB has previously held that, to serve as a model to other schools, a charter school must in some way expand the curricular choices for students and encourage innovative and unique teaching methods. *City College Prep Charter School*, Docket No., 2006-01. CAB has further held that the CSL requires more than one innovative teaching method in order for a charter school to be considered a model for other schools. *Id.* As noted above, the Charter School has failed to demonstrate that it will expand the curricular choices for students. Additionally, with the exception of its proposed multi-grade educational environment, the Charter School has failed to establish that it will provide its students with unique and innovative learning opportunities. Therefore, the District's determination that the Charter School would not serve as a model was proper and we are now adopting that conclusion.

V. CONCLUSION

Because Penn Johns has failed to demonstrate sustainable support for its Charter School; has failed to demonstrate the capability to provide comprehensive learning experiences to all students; has failed to provide adequate information regarding the required application components under the CSL; has not demonstrated that its charter school satisfies the legislative intent of the CSL; has failed to provide adequate information regarding required application components under the CSL; and has failed to demonstrate that it will serve as a model for other charter schools, CAB finds that the Conestoga Valley School District had sufficient legal grounds, pursuant to the Charter School Law, to deny Penn John's Application to create a charter school and makes the following:

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the Conestoga Valley School District :

ORDER

AND NOW, this 17th day of March, 2009, based upon the foregoing and the vote of this Board⁷, the Appeal of the Penn Johns Charter School is **DENIED**.

For the State Charter School Appeal Board

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

Date Mailed: 03/17/2009

⁷ At the Board's February 24, 2009 meeting, the Appeal was denied by a vote of 0-6 with members Barker, Green, Reeves, Schweighofer, Shipula and Zahorchak voting to deny the appeal.