

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

**In re: Young Scholars of Western PA :  
Charter School :  
 : Docket No. CAB-2010- 03  
Appeal from the denial of charter :  
by Baldwin-Whitehall School District :**

**OPINION AND ORDER**

**I. Introduction**

This matter is before the Pennsylvania State Charter School Appeal Board (“CAB”) on Appeal by the Young Scholars of Western PA Charter School (“Young Scholars”) from the denial of its Charter School Application by the Baldwin-Whitehall School District (“Baldwin-Whitehall”).

**III. Findings of Fact**

1. On or about November 13, 2009, Young Scholars submitted a Charter Application to Baldwin-Whitehall.
2. On or about December 16, 2009 a public hearing was held regarding Young Scholars’ Application.
3. On or about February 10, 2010, Baldwin-Whitehall’s Board of School Directors voted to deny the Young Scholars’ Application during a business meeting.
4. Prior to the vote, Baldwin-Whitehall’s Superintendent recommended to the Board that the Application be approved.
5. Subsequent to the meeting, Baldwin-Whitehall never provided Young Scholars with written notice stating the reasons for its denial of the Application.
6. Young Scholars filed a petition of appeal with the Court of Common Pleas of Allegheny County.
7. On or about April 29, 2010, the Court of Common Pleas of Allegheny County entered a Consent Order authorizing Young Scholars to transfer its appeal to CAB.
8. On or about May 5, 2010, Young Scholars filed a Petition of Appeal with CAB.

9. On or about July 2, 2010, Baldwin-Whitehall responded with an Answer to the Petition of Appeal.
10. In its Answer to the Petition of Appeal, Baldwin-Whitehall claimed “the effect of granting the Young Scholars’ proposed Charter School Application will be to remove the School District’s large population of immigrant refugee ESL/ELL children from the Respondent’s schools and isolate and segregate these children in the proposed charter school.” (Answer to Petition for Appeal at 1, ¶ 6.)
11. A hearing was held before CAB on July 27, 2010.

### **III. Conclusions of Law**

1. CAB has jurisdiction in this matter.
2. The Charter School Law Act of June 19, 1997, 24 P.S. §17-1701-A, et. seq. (“CSL”), governs the application process, the approval process, the operation and the revocation/ renewal of charter schools in Pennsylvania.
3. Section 1717-A(e)(2) of the CSL sets forth the factors to be considered by the local board of school directors in the evaluation of a proposed charter school application:
  - a. Demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the required public hearings;
  - b. 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;
  - c. The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent of the CSL; and
  - d. The extent to which the charter school may serve as a model for other public schools.
4. Once the board makes a decision regarding a charter application, notice must be sent to the applicant. Section 1717-A(e)(5) requires that written notice of the board’s action be sent to the applicant, the department and the appeal board. If the application is denied, the reasons for the denial, including a description of deficiencies in the application, shall be clearly stated in the notice sent.

5. The diversity concerns raised by Baldwin-Whitehall in this matter are not a basis upon which a charter may be denied under the CSL.

#### **IV. Standard of Review**

Before addressing the merits of this appeal, it is necessary to set forth the proper standard of review to be applied by CAB in this matter. 24 P.S. §17-1717-A(i)(6) of the Charter School Law states:

In any appeal, the decision made by the local board of directors shall be reviewed by CAB on the record as certified by the local board of directors. CAB 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.

In West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa. Cmwlth. 2000), the Commonwealth Court addressed the proper standard to be applied CAB in its review of a school district's denial of a charter school application. The Court held that "the General Assembly has unquestionably granted the [CAB] the authority to substitute its own findings and independent judgment for that of the local school board." Id., at 461. Accordingly, 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*." Therefore, while giving due consideration to Baldwin-Whitehall's vote to deny the Application, CAB will independently review the record in light of the requirements set forth in the CSL.

#### **V. Discussion**

##### **A) Notice.**

The initial issue in this appeal is whether Baldwin-Whitehall provided proper notice of its denial to Young Scholars and, if not, the consequence of such failure.

The law provides that, upon reviewing a charter school application, the school board must notify the applicant that its application has been either denied or granted. Section 1717-A(e)(5) of the CSL explains:

Written notice of the board's actions shall be sent to the applicant, the department and the appeal board. If the application is denied, the reasons for the denial, including a *description of deficiencies* in the application, shall be *clearly stated* in the notice sent by the local board of school directors to the charter school applicant. (emphasis added)

24 P.S. §17-1717-A(e)(5). Where a denial notice does not specifically mention failure to satisfy a requirement of the CSL, CAB has consistently found that the district has agreed that the applicant has met that requirement. See In re: Wonderland Charter School, CAB 1999-3; Pocono Mountain Mathematics Science and Technology Charter School, CAB 2004-5 at 10. However, we want to clarify that, as stated above, CAB has *de novo* review of the appeal. Therefore, CAB may find deficiencies in a charter school's application even if the school district has not identified such deficiencies. Thus, CAB can deny the grant of a charter for reasons other than those specified by the school district or when a school district, as here, has not identified deficiencies.

In 2009, CAB was called upon to clarify what it meant to have the deficiencies listed "specifically and clearly" in the notice of denial. This is because Propel Charter School-Sunrise contended in its appeal that although it received a denial letter, that letter was insufficient because it did not provide details regarding the reasons for denial of the application. While the reasons for denial must be enumerated, CAB held that the law does not require a certain level of specificity regarding those reasons. A denial letter only needs to comprise of a few sentences, so long as the reasons for denial are delineated. See, Propel Charter School-Sunrise, CAB 2009-03 at 6.<sup>1</sup> Thus, a district's school board is given a significant amount of discretion in its formulation of a denial notice; but there must, nonetheless, be a written notice.

Since no notice was even sent prior to the filing of the appeal in this case, the statute was violated. Because the CSL clearly requires a written notice after the Board vote, Young Scholars correctly argues that it must be deemed that Baldwin-Whitehall found that Young Scholars met the requirements of the CSL. CAB has carefully reviewed Young Scholars' application and has concluded that it does indeed satisfy the requirements of the CSL.

---

<sup>1</sup> In the Propel case, the district's denial letter set forth in general terms the four reasons for denial of the charter application but provided no elucidation thereof. This was held to be sufficient, particularly since the charter school addressed those reasons in its brief to CAB.

## **B) Diversity Concerns**

In addition, we will consider whether the ground for denial set forth in Baldwin-Whitehall's answer would serve as a basis for its denial of the application.<sup>2</sup> Baldwin-Whitehall's concern is that insofar as the charter proposes, in part, to serve the children of immigrants and refugees who require English as a second language instruction, it would isolate and segregate these children. Although not stated, we assume that the district's argument would be that the charter school's proposal to target this population for service is somehow in violation of the CSL. However, we find and conclude that this is not the case.

There are two relevant provisions of the CSL. The first is the enrollment provision, which prohibits a charter school from discriminating against student applicants on the basis of intellectual ability, athletic ability, measure of achievement, disability or English proficiency. 24 P.S. §17-1723-A (b)(1). Young Scholar's application does not violate the CSL in this regard. Although the charter school is proposing to serve the children of immigrants and refugees who require English as a second language instruction; it is also designed to serve English speaking students whose families seek a total language immersion program. *Charter Application*, at 4. Thus, Young Scholars is not proposing to discriminate against student applicants on the basis of English proficiency.

The second relevant CSL provision would prohibit a school district from approving an application of a charter school that would place the district in violation of a court desegregation order. 24 P.S. §17-1730-A. Baldwin-Whitehall did not cite to this provision in its Answer. Moreover, it did not argue or establish that it was under such a desegregation order, nor that its approval of Young Scholars' application would have violated a court desegregation order. Thus, we find that this section 1730-A is inapposite and that the concern expressed about Young Scholar's attractiveness to students who require English as a second language is an insufficient ground for denial of the application.

On the basis of the above discussion, CAB makes the following Order:

---

<sup>2</sup> We note that this issue was also raised in the comments of one of the members of the school board before the vote on the charter application.

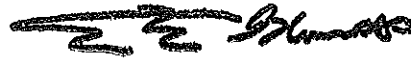
**COMMONWEALTH OF PENNSYLVANIA DEPARTMENT  
OF EDUCATION STATE CHARTER SCHOOL APPEAL  
BOARD**

**In re: Young Scholars of Western PA :  
Charter School :  
: Docket No. CAB-2010- 03  
Appeal from the denial of charter :  
by Baldwin-Whitehall School District :**

**ORDER**

**AND NOW**, this 1<sup>st</sup> day of October, 2010, based upon the foregoing and the vote<sup>3</sup> of this Board, the appeal of the Young Scholars of Western PA Charter School is **GRANTED**.

For the State Charter School Appeal Board



---

Thomas E. Gluck  
Chairman

---

<sup>3</sup> At its meeting of September 28, 2010 CAB voted to grant the appeal by a vote of 5-0 with members Akers, Barker, Reeves, Shipula and Chairman Gluck voting to grant the appeal. Member Green had recused himself and did not participate in this appeal.