

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION**

**STATE CHARTER SCHOOL APPEAL BOARD**

IN RE:	:	
BADEN ACADEMY CHARTER SCHOOL,	:	
	:	
Petitioner,	:	
	:	
vs.	:	CAB Docket No. 2011-03
	:	
AMBRIDGE AREA SCHOOL DISTRICT,	:	
	:	
Respondent.	:	

**OPINION AND ORDER**

**I. Introduction**

This matter is before the Pennsylvania State Charter School Appeal Board (CAB) on an appeal by the Baden Academy Charter School (Baden) from the denial of its charter school application (Application) by the Ambridge Area School District (District).

**II. Findings of Fact**

1. On November 13, 2009, Baden submitted an application to form a charter school to the District. The District denied the initial charter application.
2. On October 12, 2010, Baden submitted a revised application to the District.
3. The District denied the revised application on November 17, 2010.
4. Baden will be located at a facility at 1016 State Street, Baden, Pennsylvania. The facility was previously used as a private school from 1901-2009. It is now used as an education innovation and supplemental services facility by the National Network of Digital Schools.

5. Baden submitted a nonbinding letter of intent for its use of the facility. The letter of intent is between Baden and the owner of the facility, the Sisters of St. Joseph of Baden.
6. Baden described its proposed facility in its revised application.
7. Baden described the lease arrangements in the letter of intent submitted with the revised application.
8. All religious objects and symbols on Baden's premises will be covered or removed by the landlord.
9. There is no evidence of any connection between the Sisters of St. Joseph and Baden other than an arms-length landlord/tenant relationship.
10. Baden has retained the services of an architect to assess the facility and design any changes that need to be made to the facility in order to make sure that it complies with the Building Code. Baden's architect has already begun discussion with the Code Enforcement Officer of the Borough in which Baden is located.
11. Baden will provide an arts-infused curriculum to its students.
12. Baden will provide kindergarten for four-year-old students; the District does not.
13. Baden will provide 195 instructional days to its students versus the 180 instructional days that the District provides.
14. Baden will have a national advisory panel of artists who will assist it in maintaining its arts focus.
15. Baden will provide an individual health and wellness plan for each student.
16. Baden will establish a mentorship program for students.
17. Baden will instruct students in world languages.

18. Baden has set goals and objectives that are specific to its mission to provide an arts-infused education.
19. Baden has submitted a description of its education program, including a general description of its curriculum, supported by detailed scope and sequence guides for all major subject areas, as well as specific tables demonstrating how Baden's curriculum will meet the Commonwealth's academic standards.
20. B a d e n 's curriculum description included how the curriculum will satisfy the Pennsylvania State Academic Standards.

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

1. The present appeal is properly before CAB, pursuant to the Charter School Law, 24 P.S. §§ 1701-A, *et seq.*
2. The standard that CAB must apply in making a decision in this appeal is set forth in 24 P.S. § 1717-A (e)(2).
4. The criteria for evaluating a charter school application under Section 1717-A(e)(2) of the Charter School Law are:
  - a. The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under section (d);
  - 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 outlined in section 1702-A; and

- d. The extent to which the charter school may serve as a model for other public schools.
11. CAB must give due consideration to the findings of the District.
  12. A charter school has the burden of proving that all of the enumerated requirements for the contents of the charter school application were satisfied.
  13. The applicable standard of review is not the standard used by appellate courts because CAB has the authority, under the Charter Law, to agree or disagree with the findings of the school district, and to allow the charter school and/or the local board of directors to supplement the record if supplemental information was previously unavailable.
  14. The Application meets the requirements of 24 P.S. § 17-1715-A (4), in that the school is nonsectarian.
  15. Baden will not display religious objects or symbols on its premises; therefore, Baden will comply with section 17-1715-A of the Charter School Law. 24 P.S. § 17-1715-A(S).
  16. Baden has provided information regarding its facility in compliance with section 17-1719-A of the Charter School Law. 24 P.S. § 17-1719-A(II).
  17. Baden's arts-infused curriculum and longer school year demonstrate that it can be a model for other public schools. 24 P.S. § 17-1717-A(e)(2)(iv).
  18. Baden has demonstrated that it is capable, in terms of support and planning, of providing comprehensive learning experiences to students. 24 P.S. § 17-1717- A(e)(2)(ii).

19. Baden's revised application considers all of the information required by sections 17-1719-A and 17-1702-A of the Charter School Law. 24 P.S. § 17-1717-A(e)(iii).

20. The District erred when it denied Baden's revised application.

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

Before addressing the merits of this appeal, it is necessary to set out the proper standard of review to be applied by CAB in this matter: “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.” The Commonwealth Court, in West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa. Cmwlth. 2000), addressed the proper standard to be applied by CAB in its review of a school district's denial of a charter school application. In discussing this language, the Commonwealth Court said:

By giving the [CAB] the right to disagree with the local school board and requiring it to specifically articulate reasons for doing so, 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 CAB in charter denial cases is to be “*de novo*.” Based upon this standard, while giving due consideration to the findings of the District, CAB will make an independent review on each basis cited by the District for its denial of Baden's application for a charter.

#### **V. Discussion**

##### **A. Evidentiary Issues**

Next, a preliminary evidentiary matter must be addressed. The Charter School Law provides that CAB “may allow the department, the cyber charter school applicant or board of trustees of a cyber charter school to supplement the record if the supplemental information was previously unavailable.” 24 P.S. § 17-1746-A.

In the cover letter for its brief, the District requested that the record be supplemented by including excerpts from a hearing before the Beaver County Board of Assessment from 2011 which attached excerpts from a lease agreement between the Sisters of St. Joseph of Baden and the National Network of Digital Schools. The documents were offered to show that the facility included in the Application was no longer available for Baden's use. The actual lease agreement which was attached, however, was dated July 30, 2010 and therefore would have been available before the District's decision on the Application. Since it was available to the District when it made its decision, it is not appropriate to supplement the record with it at this time. Thus, this request to supplement the record is denied.

**B. Discussion of Application Denial**

In issuing its decision on the revised application, the District indicated that the revised application failed to meet certain requirements of the Charter School Law. Based on a reading of the denial letter, CAB has determined that the following reasons form the basis of the District's denial of the Charter School Application: (1) the Application fails to meet the requirements of 24 P.S. §§ 17-1715-A(4), that the school be nonsectarian; (2) the facility is not acceptable because it is not compliant with access requirements of the Americans with Disabilities Act; (3) contrary to 24 P.S. §§ 17-1715-A(5), religious objects and symbols will be displayed on Baden's premises; (4) the Application fails to meet the requirements of 24 P.S. § 17-1702-A in that it does not establish that Baden will improve pupil learning, increase learning opportunities, use different or innovative teaching methods or provide parents and students with expanded educational choices; and (5) the Application fails to meet the requirements of 24 P.S. § 17-1719-A(5) in that the curriculum is insufficient.

**1. The Application fails to meet the requirements of 24 P.S. §§ 17-1715-A(4), that the school be nonsectarian.**

The District has raised concerns related to the involvement of the Sisters of St. Joseph of Baden (the Church) with the Baden (the Charter School).

The concerns raised by the District, however, are legitimately part of a landlord/tenant relationship. Nothing on the face of the lease is inconsistent with an arms-length transaction between a landlord and a tenant. A landlord might well, as part of a lease, make renovations to a building to allow a tenant to occupy that building. A tenant may well pay for renovations or improvements to a building it is leasing. The lease indicates that Baden will have sole possession of the portion of the facility that it leases during the time that classes are being conducted. The fact that the remainder of the facility may be used for religious purposes is not sufficient to show an impermissible entanglement between the Church and Baden, especially since they are unrelated organizations. There is nothing in the Charter School Law which precludes leasing property from a church, so long as the charter school which is created is nonsectarian, as it appears this one will be.

Although the District raises the issue of impermissible entanglement, it does not address that issue in more than a cursory way in its brief. Based on the evidence in the record it appears that the school will be operated as a nonsectarian school. As a result, it does not violate the Charter School Law.

**2. The facility is not acceptable because it is not accessible as required by the Americans with Disabilities Act and because contrary to 24 P.S. §§ 17-1715-A(5) religious objects and symbols are displayed on Baden's premises.**

The District, in part, denied Baden's Application because it determined that the facility planned for the site of the school was inadequate. The objection related both to the existence of religious symbols on the site and the lack of compliance with the Americans with Disabilities Act (ADA). The Charter School Law requires that an applicant provides: "[A] description of and

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-A(11)

Baden identified a site in its application, as well as the ownership of the site and the arrangement that it would make related to using the site.

Presently, the site may not be ADA-compliant and it may have religious symbols throughout the facility. The evidence related to the existence of the religious symbols is, however, contradictory. The District supplied photos, which the District concedes are not recent, to show the existence of the symbols. Baden testified that the symbols had been removed. Moreover, the lessor, in the proposed lease document, agrees to remove or cover all religious symbols in that part of the facility leased by Baden.

In prior decisions CAB has held that a detailed facility plan which addresses all issues with the facility is not required under the Charter School Law. (*In Re: Environmental Charter School Appeal from Denial of Charter by Palisades School District*, CAB Docket No. 1999-14; *In Re: Leadership Learning Partners Charter School Appeal from Denial of Charter School Application by the School District of Philadelphia*, CAB Docket No. 2000-8; *Appeal of Voyager Charter School of Pennsylvania, Inc., t/a Voyager Charter School*, CAB Docket No. 2005-9). In *Leadership Learning Partners*, CAB concluded that: “for approval of a Charter School, the legislature intended this law to be liberally interpreted to encourage the development and growth of such schools.” Baden provided a street address for the proposed facility in its application. Baden described its site in general terms, and made clear that it knew there were issues to be addressed related to the site and, further, that it was taking steps to address those issues. This is all that the Charter School Law requires. CAB finds that Baden met its burden with regard to 24 P.S. § 17-1719-A(11). As CAB found in *Environmental Charter School*, it is not permitted to deny a charter based upon the charter school’s failure to have all necessary plans and/or approvals for the facility included in the application.



In regard to the other issue concerning display of religious symbols, this case is distinguishable from *Mt. Jewett Area Charter School for Excellence*, CAB Docket No. 2009-01. In that case Mt. Jewett did not indicate that the large cross at the front of the building would be removed. Instead, it indicated that the students would enter a different door; thus, the existence of the cross was irrelevant. Here, Baden has indicated that the religious symbols have been, or will be, removed. Removal of those symbols is akin to renovating the facility or making it ADA-compliant. Once the charter is approved and Baden executes the lease, it must address these issues in order to operate a charter school in the facility. The district thus erred in denying the Application on this basis.

3. **The Application fails to meet the requirements of 24 P.S. § 17-1702-A in that it does not establish that Baden will improve pupil learning, increase learning opportunities, use different or innovative teaching methods or provide parents and students with expanded educational choices.**

Next, the district found that Baden's application did not comply with the requirements of 24 P.S. § 17-1702-A. Based upon review of the record, as discussed below, CAB disagrees.

Baden has described art infusion as an essential element of its curriculum. The District contends that the inclusion of art-infused classes does not make Baden innovative. It does so by arguing that there is no research to support the value of an art-infused school. There is no requirement in the Charter School Law that such research be provided. The District appears to be arguing that the curriculum cannot be innovative if the Charter School does not provide this type of research. It does not point to a basis for such a requirement in the Charter School Law. Since it does not point to such a requirement, CAB finds that Baden's inclusion of an art-infused curriculum is sufficiently innovative to comply with the Charter School Law.

In addition, Baden will provide for a longer school year than is provided by the District. The District does not believe that a longer school year is comprehensive or innovative. It again points to the lack of research supporting the value of a longer school year. Charter school applications should not, however, be denied on the basis that the proposed charter school is not as

innovative or as different as the school district feels it should be. Sugar Valley Charter School, CAB Docket 1999-4. A longer school year is sufficiently innovative to support CAB's finding, as it does, that this satisfies the Charter School Law criteria in section 17-1702-A.

Based on the above, and CAB's review of the entire record, CAB concludes that Baden is sufficiently innovative to comply with the requirements of the Charter School Law.

**4. The Application fails to meet the requirements of 24 P.S. § 17-1719-A(5), in that the curriculum is insufficient.**

Lastly, the district contends that Baden's curriculum is insufficient to satisfy the Charter School Law. Section 1719-A of the Charter School Law requires that the curriculum be described. 24 P.S. § 17-1719-A (5) The application herein contains a detailed description of Baden's education plan. Guides and tables are included in the description which show how each instructional area is tied to the Pennsylvania State Academic Standards. They also detail how the arts will infuse the curriculum. In *Appeal of Denial of Charter for Career Connections Charter Middle School*, Docket No. 2006-03 at p. 15, CAB found that although a curriculum must be described in substance, "... charter school application is not required "to completely describe the content of its curriculum." Citing *In re: Pocono Mountain Mathematics and Technology Charter School*, CAB Docket No. 2004-5 at p. 14.

Here, CAB has determined that Baden has sufficiently met its burden of describing a curriculum of sufficient substance to comply with the Charter School Law.

**VI. Conclusion**

Baden has indicated that it will make required modifications to the school, including meeting ADA requirements and removing religious symbols. It has established that it will be operated as a nonsectarian school. It has included a description of its curriculum and shown how it will be innovative. As a result, the appeal of the Baden Academy Charter School is granted; and we order as follows:

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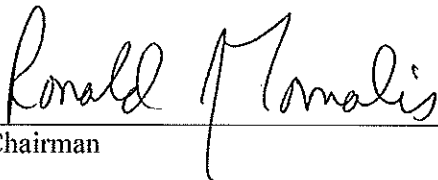
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**ORDER**

AND NOW, this 15<sup>th</sup> day of March, 2012, based upon the foregoing Opinion and the vote of this Board<sup>1</sup>, the appeal of the Baden Academy Charter School is GRANTED; the District's November 17, 2010 decision denying the charter is REVERSED; and Ambridge Area School District is DIRECTED TO GRANT THE APPLICATION AND TO SIGN the charter of the Baden Academy Charter School under Section 1720-A of the CSL, 24 P.S. §17-1720-A.

IT IS FURTHER ORDERED that prior to opening, Baden Academy Charter School shall provide the Ambridge Area School District with evidence showing that all religious symbols have been covered or removed from the building where the Charter School is to be located.

FOR THE STATE CHARTER SCHOOL  
APPEAL BOARD

  
Chairman

<sup>1</sup> At the Board's December 13, 2011 meeting, the Appeal of the Baden Academy Charter School was granted by a vote of 6 to 0, with Members Lawrence, Magnotto, Marks, Munger, Tomalis and Yanyanin voting to grant the Appeal. Board Member Barker recused himself from the vote.