

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

<b>NEW CASTLE ARTS ACADEMY</b>	:	
<b>CHARTER SCHOOL</b>	:	
	:	
<b>v.</b>	:	<b>CAB No. 2014-04</b>
	:	
<b>NEW CASTLE AREA SCHOOL DISTRICT</b>	:	

**OPINION**

In accordance with the Charter School Law, 24 P.S. §17-1701-A *et seq.* (CSL), this matter comes before the Pennsylvania State Charter School Appeal Board (CAB) on appeal by the New Castle Arts Academy Charter School (Charter School) from the denial of its application by the New Castle Area School District (School District).

**PROCEDURAL HISTORY**

On November 12, 2012, the Charter School submitted its initial application (Initial Application) to establish and operate a charter school within the School District. The School District conducted public hearings on January 9 and February 6, 2013 to consider the application. By resolution dated March 14, 2013, the School District denied the Charter School's Initial Application.

The Charter School submitted a revised application (Revised Application) on November 15, 2013. A hearing on December 30, 2013 resulted in the School District's denial of the Charter School's Revised Application by public resolution dated January 13, 2014. The stated grounds for the School District's denial were: failure to identify the physical facility in which the Charter School would be located; failure to provide the mission and educational goals of the Charter School, the curriculum to be offered, and the method of assessing whether students are meeting

educational goals; failure to serve as a model for other schools; failure to provide a financial plan and provisions for properly auditing the Charter School; and failure to include a thorough professional development plan. (District's Resolution Denying Revised Application, pp. 2-6).

The Charter School initiated this appeal on August 6, 2014 (HO-1). A Hearing Officer was appointed and issued a November 14, 2014 Order setting a briefing schedule. (HO-8). After the grant of various extensions, briefing was concluded on May 22, 2015. The Hearing Officer certified the record to CAB on June 1, 2015 and CAB heard argument on June 9, 2015.

### **FINDINGS OF FACT**

1. New Castle Arts Academy Charter School submitted its initial proposal to establish a charter school in the New Castle Area School District on November 12, 2012. (Initial Application).

2. The Charter School submitted a revised application for a K-8 school on November 15, 2013. (Revised Application).

3. The Revised Application erroneously identifies the proposed site for the school as 304 East North St., New Castle, PA<sup>1</sup> and specifically references Appendix 19. Appendix 19 lists the actual address of the proposed facility as 40 East Street with two areas, one of which contains 15,000 rentable square feet and another totaling 45,000 square feet. (Revised Application, p. 69; Appendix 19, pp. 2-4).

4. The Charter School did not include any drawings or a sketch of the area that it intends to renovate into classroom space.

5. The Revised Application states that the Charter School intends to use the "Renaissance Curriculum." (Revised Application, pp. 13-15).

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<sup>1</sup> This address is clearly an error, since it is the address of the realty company not the proposed school site.

6. The Charter School's reliance upon an art-infused curriculum is sufficiently innovative.

7. The Charter School's Revised Application contains curriculum maps which refer to the use of technology throughout each grade level. (Revised Application, Appendix 1, pp. 456-582).

8. The Charter School's Revised Application contains a proposed contract with the National Network of Digital Schools ("NNDS") which will be required to provide the following services:

- General Consulting and Strategic Planning Services
- Disaster Recovery Planning and Implementation Services
- Project Management Services
- Custom Software Development Services
- Desktop/End-User Support Services
- Systems Engineering Services
- Application Management Services
- Security Management Services
- Network Engineering Services
- Change Management Services
- Device Configuration Services
- NOC Design, Management and Hosting Services
- IP Telephony Support Services
- Develop/Update/Manage Website Services
- Install/Manage/Troubleshoot connections with Video Distance Learning Equipment (Polycom) Services

(Revised Application, Appendix 11).

9. The Revised Application is specific in describing an educational opportunity which will serve as a model for other public schools.

10. The Revised Application is unclear as to the number of teachers and staffing which will be provided by the Charter School. The number is somewhere between 8 and 10

teachers. (*Compare* December 30, 2013 N.T. pp. 55-58, 70-75 with Staffing Budget at Appendix 18, p. 13 and Revised Application, p. 78).

11. The Revised Application contains no balance sheet allowing for the determination of start-up expenses.

12. When questioned as to how the Charter School plans to fund the costs of the initial expenses, the response by the Charter School was donations and grants as well as “a line of credit,” but without specificity. (December 30, 2013 N.T. 98-99).

13. The budget provides for no expenses for food service. (December 30, 2013 N.T. 105-106).

14. The Revised Application does not provide for contingency funding for educating special needs students or providing for psychological services. (December 30, 2013 N.T. 93-94).

15. The Revised Application includes topics, projects/outcomes, responsible parties and standards tied to the National Staff Development Council’s standards for staff development for all five years of the school’s charter. (Revised Charter Application, Appendix 6, pp. 1-2).

### CONCLUSIONS OF LAW

1. CAB has jurisdiction in this matter. 24 P.S. § 17-1717-A(i)(1).
2. The CSL governs the application process, the approval process, and the operation of charter schools in Pennsylvania. 24 P.S. §17-1701-A *et seq.*
3. The School District complied with all procedural requirements of the CSL in denying the Application.
4. CAB has the authority under the CSL to agree or disagree with the findings of the School District based upon its “de novo” review of the certified record. 24 P.S. § 17-1717-

A(i)(6); *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 461 (Pa. Cmwlth. 2000).

5. The Charter School has the burden of proving that all of the enumerated requirements for the contents of a charter school application were satisfied, including:

- (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 1719-A and conforms to the legislative intent outlined in Section 1720-A.
- (iv) The extent to which the charter school may serve as a model for other public schools.

24 P.S. § 17-1717-A(e)(2). (Footnotes omitted).

6. The Charter School's Revised Application did not comply with the CSL which requires "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).

7. The Charter School has not demonstrated that it has secured a suitable physical facility in which the charter school will be located, as required by the CSL. 24 P.S. §17-1719-A(11).

8. The budget that is included with an application must demonstrate that the charter applicant has considered fundamental budgeting issues and that it will have the necessary funds to operate. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195, 201-2 (Pa. Cmwlth. 2004); *In re: Lincoln-Edison Charter School Appeal*

*from Denial of Charter by the School District of the City of York*, Docket No. CAB 2000-11 at 17.

9. The Charter School, through the Revised Application and the record established at hearing, did not demonstrate an adequate financial plan as required by 24 P.S. §17-1719-A(e)(2)(ii) and 24 P.S. §17-1719-A(9).

10. The Charter School has not demonstrated that it is financially capable of providing a comprehensive learning opportunity to its students as required by the CSL. 24 P.S. §17-1719-A(9).

11. The Charter School has demonstrated that it will provide a professional development plan for teachers as required by the CSL. 24 P.S. §17-1719-A(13).

12. The Charter School failed to meet all requirements of the CSL.

## **DISCUSSION**

### **I. Standard of Review**

In an appeal before CAB, the decision made by the local Board of School Directors shall be reviewed on the record as certified. 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.” 24 P.S. §17-1717-A-(i)(6).

The Commonwealth Court has held in the case of the denial of a charter school application that “[t]he General Assembly has unquestionably granted the CAB the authority to substitute its own findings and independent judgment for that of the local board.” *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 461 (Pa. Cmwlth. 2000).

While giving due consideration to the vote of the School Board, CAB must independently review the record in accordance with the requirements of the CSL.

Section 1717-A(e)(2) of CSL provides that a charter school application is to be evaluated based on the following criteria:

- (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 held 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 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.

24 P.S. §17-1717-A(e)(2). (Footnotes omitted).

## **II. Facility requirements**

The Charter School Law requires that “an application to establish a charter school shall include . . . [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).

The Revised Application appears to mistakenly identify the proposed site for the school as 304 E. North St., New Castle, PA and specifically references an Appendix 19. Appendix 19 lists a property with a different address, which is 40 East Street and it also describes two parcels totaling 45,000 square feet. The description of the 40 East Street property from the landlord is that it includes 15,000 rentable square feet. (Revised Application, p. 69; Appendix 19, pp. 2-4). The School District focuses on the fact that the Charter School did not include drawings or any

sketch of the area that it intends to renovate into classroom space. The School District identifies the space as a former Days Inn with two floors and a large ballroom area. (Denial Resolution, p. 2). The School District contends that because the Charter School seeks approval for grades K through 8, it needs a configuration of the large ballroom which the Charter School intends to use for classrooms, a cafeteria, and a gymnasium. It denied the Revised Application, in part, because this application contained no specifics regarding the facility.<sup>2</sup> It also states that the Applicant submitted insufficient evidence regarding the health and safety of the students in the proposed facility.

The Charter School states that its proposal is sufficient to meet the limited statutory requirement of “[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). After close examination of the entire record and most particularly the Revised Application itself, the CAB finds that this Revised Application did not contain all of the elements required by the CSL with respect to facility. While completed drawings or a comprehensive sketch of the area to be developed are not required, the application should be sufficiently detailed to establish that a proper facility has been located, that it will be suitable for a school housing grades K through 8, and that the charter school has a reasonable likelihood of leasing the intended facility. Like the School District, based entirely upon the limited information (at times contradictory) contained in the Revised Application and presented during the hearing before the School District, this Board finds it impossible to determine if a proper facility has been proposed. Even the size of the proposed facility is unclear because the information given is internally inconsistent.

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<sup>2</sup> The CAB notes that these deficiencies with respect to facility are particularly troublesome inasmuch as the Initial Application was denied, in part, based upon a failure to provide an “outline or simple sketch” of the proposed site. (March 14, 2013 Denial, p. 3). Thus, the Charter School knew what was anticipated of it in this regard and it failed to comply.



The Charter School's failure to meet the statutory requirements with respect to facility is an indication of its failure to establish, through proper planning, its capability to provide comprehensive learning experiences to its intended students.

### **III. Curriculum to be offered**

The CSL states that a charter school application must include a description of the curriculum to be provided by the school. 24 P.S. §17-1719-A(5). This Board has described curriculum as "essentially a roadmap to the school's operation, goals, teaching strategies and learning methodology." *Thurgood Marshall Academy Charter School v. Wilkinsburg School District*, CAB No. 2001-5, at 11.

In the Revised Application, at pp. 13-15, the Charter School states that it will offer the "Renaissance Curriculum." The School District, however, argues that there has been no research to support the Charter School's extensive curriculum, there is no data to support the effectiveness of its proposed instruction, and there is a lack of specific detail for instructional strategies. The School District also complains that information on the curriculum is only provided through Grade 3, whereas the Applicant proposes a charter school for grades K-8. The School District also points out that while the Revised Application quotes excerpts from mandated charter school curricula and references regulations for mathematics, reading, writing, speaking and listening beginning in grade 3, the Charter School was less than forthright at the hearing as to how it intends to meet these mandates. For example, when asked how the Charter School will determine a student's reading level, the answer was vague and represented a lack of understanding of what is required. *See* December 30, 2013 Transcript, pp. 50-53. Apparently, the Charter School intends to use "reading blocks" so that first graders may be in the same block with third graders. The Charter School, in contrast, contends that it has provided sufficient

information to satisfy the CSL and that it is not necessary to describe completely the content of its curriculum.

This Board has previously considered *Baden Academy Charter School*, CAB No. 2011-3, in which the Charter School also sought to utilize the Renaissance Curriculum, the same curriculum to be used in this case. The Ambridge Area School District had denied Baden's application citing, in part, its alleged failure to comply with the CSL requirements. In that case, the district's contention was that the curriculum was not supported by research. This Board disagreed with the district and voted unanimously to grant Baden its charter. In its Opinion and Order, this Board stated:

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.

*Baden at 9.*

Similarly, the CAB finds the art-infused curriculum proposed here complies with the CSL as there is no requirement of research to support the value of this curriculum. Thus CAB disagrees with the School District's finding the Renaissance curriculum to be insufficient under the CSL.

The School District next criticizes the Charter School's 194-196 days of instruction and daily schedule which starts at 8:00 a.m. with dismissal at 3:30 p.m. daily. (Revised Charter Application, p. 33). Further, the School District found deficient the Charter School's plan for

technology. Yet, the Charter School points to its extensive set of curriculum maps which refer to the use of technology throughout each grade level. (Revised Charter Application, Appendix 1, pp. 456-582). The Charter School argues that it has provided far more than is required by the Charter School Law and that it will continue to develop curriculum to serve additional grades beyond grade 3 in future years.

Based upon the above, CAB is satisfied that the curriculum as proposed satisfies the CSL requirements and rejects the School District's findings to the contrary.

#### **IV. Model for other public schools**

The CSL requires a chartering district to consider the "extent to which the charter school may serve as a model for other public schools." 24 P.S. §17-1717-A(e)(2)(iv). As this Board has held, the "purpose of the [Charter School Law] is to *encourage* the use of innovative methods, not to exclude charter applicants whose proposed methods may not be as innovative or as different as the school district believes they should be." *In Re: Appeal of Denial of Charter for City College Prep Charter School*, CAB No. 2006-1 at 7 (quoting *Sugar Valley Rural Charter School*, CAB No.1999-4)(emphasis in original).

The Commonwealth Court has upheld the standards adopted by this Board for determining if an applicant can serve as a model. *Montour School District v. Propel Charter School – Montour*, 889 A.2d 682, 688 (Pa. Cmwlth. 2006). In response to a school district's argument on appeal that the curriculum proposed by an applicant was not innovative and that the school therefore could not serve as a model, the Commonwealth Court held in *Montour*, "Propel offers a learning environment that is unique and different from that in the District's public schools." *Id.* The court highlighted the differences between the education plan of the applicant and that of the school district, including the number of days of instruction and the hours of

instruction. *Id.* The court went on to say that "[w]hile there may be similarities between Propel and the existing public schools, similarities, alone, are insufficient to support a finding of non-compliance with the CSL when there is substantial evidence of uniqueness." *Id.*

The School District alleges that the Charter School will not serve as a model of instruction or provide "increased learning opportunities" for students who would enroll. (Denial of Revised Application, p. 4). The School District argues that it already provides what the Charter School proposes to provide to students in the district. The Charter School contends that it will provide unique instructional opportunities modeled on an arts-infused curriculum and a longer school year, both of which have already been accepted by this Board in other charter school applications. It points out that there is no requirement that a charter school demonstrate radical differences between its plan and the educational program of its chartering district.

The CAB again disagrees with the School District on the issue of serving as a model and finds that the Revised Application sets forth sufficiently detailed explanations about the proposed curriculum to meet the requirements of the CSL. Like those proposed curricula previously approved by the Commonwealth Court in other cases and numerous times by CAB, the record here establishes that the Charter School will offer an art-infused learning environment that will be unique and different from that of the public schools in this School District. *See, e.g., McKeesport Area School District v. Propel Charter School McKeesport*, 888 A.2d 912 (Pa. Cmwlth. 2005); *Propel Charter School-Hazelwood v. Pittsburgh School District*, Docket No. CAB 2013-02.

## **V. Financial Plan**

Section 1719-A(9) of the CSL provides that: "An application to establish a charter school shall include all of the following information: (9) The financial plan for the charter

school and the provisions which will be made for auditing the school under section 437.” This legal issue requires an examination of the submitted financial information juxtaposed against the CSL requirements.

The budget that is included with an application need only demonstrate that the charter applicant has considered fundamental budgeting issues and that it will have the necessary funds to operate. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195, 201-2 (Pa. Cmwlth. 2004); *In re: Lincoln-Edison Charter School Appeal from Denial of Charter by the School District of the City of York*, Docket No. CAB 2000-11 at 17. Extensive detail is not required, but it must be shown that the applicant is financially capable of providing the intended learning experience.

While conceding that the CSL requires only a minimal budgeting analysis, the School District maintains that this Revised Application is deficient because it is uncertain with respect to the number of teachers and staffing which will be provided. There is no balance sheet and, therefore, the School District argues that it could not determine start-up expenses. When questioned as to how the Charter School plans to fund the costs of the initial expenses, the response by the Charter School was donations and grants as well as “a line of credit,” but without any further specificity. (December 30, 2013 N.T. 98-99). The budget provides for no expenses for food service. (December 30, 2013 N.T. 105-106).

The School District also criticizes the lack of contingency funding. The Revised Application does not provide for contingency funding for educating special needs students or for providing psychological services. (December 30, 2013 N.T. 93-94). The Applicant seems to suggest that these needs will be met by employing paraprofessionals or contracting out for related services, but does not budget anything for these items.

The Charter School relies upon the qualifications of the person who has developed the financial plan and denies that the kind of detail the School District wants is required by the CSL. The CAB must disagree. The CSL does require that the Charter School have a viable financial plan. Here, the budget is incomplete and the non-specific suggestion of donations, grants, or a "line of credit," to fund the cost of start-up or contracts for services to special needs students, is not acceptable.

CAB agrees with the School District and concludes that the Charter School's failure to meet the statutory requirements with respect to a financial plan is yet another indication of a lack of proper planning to show that it can provide a comprehensive learning experience to its intended students.

#### **VI. Professional development plan**

The CSL does not require that the professional development plan for teachers describe plans for each and every teacher in minute detail, but description of a more general program of training satisfies the statutory requirement. *See, In re: Howard Gardner Multiple Intelligence Charter School*, CAB 2011-4 at 9-10; *see also, In re: Appeal of Phoenix Academy Charter School*, CAB 1999-10 at 22-3; *In re: Propel Charter School McKeesport*, CAB 2004-1 at 13-14.

Here, the Charter School points out that it has provided a comprehensive development plan for its professional staff which states topics, projects/outcomes, responsible parties and standards tied to the National Staff Development Council's standards for staff development. It has done so, it contends, not only for the first year of operation but for all five years of the school's charter. (Revised Charter Application, Appendix 6, pp. 1-2). The School District counters that professional development should be a cornerstone and that the National Staff Development Council's professional development plan was last revised in 2001. According to

the School District, the Charter School's plan lacks specificity and does not explain how it will be delivered.

CAB finds no fault with the general professional development plan contained in this Revised Application. It is sufficiently specific to meet the CSL requirements.

### **CONCLUSION**

In summary, the CAB denies the Charter School's appeal because it has not demonstrated that it has secured a suitable facility or that it has an adequate financial plan. Thus, the CAB makes the following Order:

COMMONWEALTH OF PENNSYLVANIA  
STATE CHARTER SCHOOL APPEAL BOARD

NEW CASTLE ARTS ACADEMY :  
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NEW CASTLE AREA SCHOOL DISTRICT :

ORDER

AND NOW this 5<sup>th</sup> day of ~~September~~ <sup>October</sup>, 2015, based upon the foregoing and the vote of this Board<sup>3</sup>, the Appeal of New Castle Arts Academy Charter School is **DENIED**.

FOR THE STATE CHARTER SCHOOL  
APPEAL BOARD

  
Pedro A. Rivera, Chair

Date Mailed: Oct. 6, 2015

<sup>3</sup> At the Board's meeting of July 15, 2015, the appeal was granted by a vote of 5 to 1. Board Member Dr. Jamie Bracey was absent.