

COMMONWEALTH OF PENNSYLVANIA
STATE CHARTER SCHOOL APPEAL BOARD

IN RE:

The Eloise and Edith Academy, A Charter School : Docket No. CAB 1999-13

OPINION AND ORDER

INTRODUCTION

Pursuant to the Charter School Law, Eloise and Edith Christian Day School, Inc. (“Applicant”) filed applications with Steel Valley School District and the School District of Pittsburgh for a regional charter for Eloise and Edith Academy, A Charter School (“Charter School”). 24 P.S. §§17-1701-A et seq., as amended.

Each school district conducted a hearing and issued a decision denying the application. Applicant appealed both denials to the Charter School Appeal Board (“CAB”) for review under the Charter School Law. The two appeals are docketed together; however, this Opinion and Order addresses each application and each denial separately.

The CAB concludes that Applicant is not eligible for a charter under the Charter School Law because Applicant is a sectarian entity. The CAB also notes that although the proposed Charter School meets most of the requirements of the Charter School Law, it does not comply with the Charter Law regarding the requirements of non-sectarianism.

References in this Opinion to Appeal Record Exhibits (“App. Rec. Ex.”) are references to the record certified to the CAB at its meeting on November 8, 1999, by the hearing officer appointed by the CAB.

STANDARD OF REVIEW

The Charter School Law directs the CAB to “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. §1717-A(i)(6). It also gives the CAB the discretion to allow the parties to supplement the record with information that was previously unavailable. *Id.* Therefore, the applicable standard of review is not the standard used by appellate courts. The CAB must give “due consideration” to the findings below, but may agree or disagree with them.

STEEL VALLEY SCHOOL DISTRICT APPLICATION

Findings of Fact

1. Applicant submitted to the Steel Valley School District an application for the Charter School on November 12, 1998.
2. After a public hearing, which was transcribed (App. Ex. 1, pp. 3-105), and the submission of additional information to the District, the District on March 1, 1999, denied the application.
3. During the period March 2 through April 15, 1999, Applicant obtained the signatures of 616 residents of the District on a petition to appeal the denial of a charter.
4. On April 15, 1999, Applicant presented the petition to the Court of Common Pleas of Allegheny County.
5. On June 29, 1999, the Court issued a decree establishing the sufficiency of the petition.

6. On or about July 15, 1999, Applicant filed with the CAB, an appeal of the School District's decision, which appeal was accepted on September 3, 1999.

7. Applicant demonstrated support by parents and community members for the Charter School plan in the form of public testimony and written documents. App. Rec. Ex. 1, pp. 79-100, 228-231, 234-244.

8. The application to establish the Charter School included the following information:

- a. Identification of the applicant. App. Rec. Ex. 1, p. 108.
- b. Name of the school. App. Rec. Ex. 1, p. 108.
- c. Grades served by the school. App. Rec. Ex. 1, pp. 108, 117.
- d. Proposed governance structure. App. Rec. Ex. 1, pp. 123, 197-215.
- e. Mission and education goals, curriculum, and methods of assessing whether students are meeting educational goals. App. Rec. Ex. 1, pp. 124-129, 131-134, 151-182, 257-263, 287.
- f. Admission policy and criteria. App. Rec. Ex. 1, pp. 117, 216-217, 137.
- g. Procedures regarding suspension or expulsion of students. App. Rec. Ex. 1, pp. 220-226, 139.
- h. Manner in which community groups will be involved in the planning process. App. Rec. Ex. 1, pp. 113-114.
- i. Financial plan. App. Rec. Ex. 1, pp. 191, 265-281.
- j. Procedures to review complaints of parents regarding operation of the school. App. Rec. Ex. 1, pp. 218-219.

k. Description and address of the physical facility and the ownership and lease arrangements. App. Rec. Ex. 1, pp. 115, 193-196.

l. Proposed school calendar, including length of school day and school year. App. Rec. Ex. 1, pp. 136, 255.

m. Required credentials of faculty and a professional development plan. App. Rec. Ex. 1, p. 140.

n. Whether any agreements have been entered into or plans developed with Steel Valley School District regarding participation in extracurricular activities. App. Rec. Ex. 1, p. 135.

o. Commitment to obtain criminal history records for all individuals who will have direct contact with students. App. Rec. Ex. 1, p. 141.

p. Commitment to obtain background checks for all individuals who will have direct contact with students. App. Rec. Ex. 1, p. 141.

q. Commitment to obtain adequate liability and other appropriate insurance for the school, its employees and the board of trustees. App. Rec. Ex. 1, p. 147.

9. Applicant states that it has retained the services of a certified public accountant to help in meeting the requirements of the Charter School Law pertaining to accountability procedures. App. Rec. Ex. 1, p. 248. However, the retainer agreement refers only to the Christian School. App. Rec. Ex. 1, pp. 189-190.

10. The certified record demonstrates that the Charter School will provide small class size, extended hours, availability of schooling year-round, an emphasis on agricultural science, and an accelerated science curriculum. App. Rec. Ex. 1, pp. 14-15, 127-129, 136, 163-167, 287.

11. Applicant has demonstrated support and planning that will enable the Charter School to provide comprehensive learning experiences to students. App. Rec. Ex. 1.

12. The Charter School plan conforms to the legislative intent set forth in 24 P.S. §17-1702-A. App. Rec. Ex. 7, pp. 110, 124-129, 136, 138, 151-170, 257-263, 287.

13. The Charter School will employ a method to establish accountability for meeting measurable academic standards. App. Rec. Ex. 1, pp. 132.

14. The Charter School will be located in the church building of the Second Baptist Church (“Church”), an operating church in Homestead, Pennsylvania. App. Rec. Ex. 1, p. 115.

15. The Charter School will enter into a lease with the Church for use of the building. App. Rec. Ex. 1, p. 115.

16. The Church also houses the Eloise and Edith Christian Day School, a school that provides Christian religious instruction, in addition to secular instruction, for pre-school and kindergarten students. App. Rec. Ex. 1, pp. 18, 20-24, 106, 115.

17. Applicant, Eloise and Edith Christian Day School, Inc., is a non-profit sectarian corporation that owns and operates the Christian Day School. App. Rec. Ex. 1, pp. 17, 18, 108.

18. Included with the application are proposed articles of incorporation for the Charter School that name the Applicant as the incorporator of the Charter School. In a subsequent letter to the School District, the Applicant’s attorney stated that the draft articles would be amended to identify Sheila R. Daniels and Joyce Moorman Lee as the incorporators of the Charter School. App. Rec. Ex. 1, pp. 197-199, 288.

19. The proposed bylaws for the Charter School corporation state that the bylaws were “approved” by the Christian Day School. App. Rec. Ex. 1, p. 200.

20. Dr. Sheila R. Daniels is the chief executive officer of the Christian Day School. App. Rec. Ex. 1, p. 113.
21. Dr. Daniels is also the primary organizer of the Charter School. App. Rec. Ex. 1, pp. 54, 106, 108, 233, 247, 288.
22. If a charter is granted to the Charter School, Dr. Daniels would accept appointment or election as chief executive officer of the Charter School. App. Rec. Ex. 1, p. 26.
23. If Dr. Daniels is appointed or elected chief executive officer of the Charter School, she expects to also continue to be either chief executive officer or a member of the board of trustees of the Christian Day School. App. Rec. Ex. 1, p. 26.
24. An unspecified number of members of the board of directors of the Christian Day School and an unspecified number of representatives of the Church would also be members of the board of trustees of the Charter School. App. Rec. Ex. 1, pp. 81, 120.
25. Religious symbols are displayed in the main sanctuary of the Church. App. Rec. Ex. 1, pp. 27, 256.
26. Students in the Charter School would pass through the main sanctuary when the Charter School is in session. App. Rec. Ex. 1, p. 27.
27. Religious services would be conducted in the church while the Charter School is in session. App. Rec. Ex. 1, p. 28.
28. Both the Christian Day School and the Charter School would be in session during the day. App. Rec. Ex. 1, pp. 23, 249.

29. Students in the two schools would share facilities and rooms, such as a lunchroom, library, play area, computer room, and meeting rooms but the two groups would not physically share them at the same time. App. Rec. Ex. 1, pp. 23, 249.

30. The two schools would share some services, such as janitorial, bookkeeping, and food preparation, and would prorate the costs of these services. App. Rec. Ex. 1, p. 46.

31. The Christian Day School and the Church would provide financial and in-kind aid to the Charter School, including fund-raising, bus transportation for field trips, ADA compliance, administrative assistance. The Charter School would also be permitted to use a garden on property owned by the Christian Day School. App. Rec. Ex. 1, pp. 44-45, 143, 147, 191, 248, 256.

32. The Christian Day School conducted all the planning, including curriculum development, for the Charter School. App. Rec. Ex. 1, pp. 44-45, 54, 120, 228, 229, 233.

33. Many or all of the 20 openings for students at the Charter School will be filled by children of families who are or have been involved in the Christian Day School. App. Rec. Ex. 1, p. 126.

34. There is a public perception that the Charter School is an extension of the Christian Day School. App. Rec. Ex. 1, pp. 228, 230, 233, 249, 287.

35. A likely cumulative effect of the following is confusion concerning the separate identities of the Christian Day School and the Charter School: shared location of the Charter School and the Christian Day School, as well as their shared facilities; their overlapping make-up of administration, participating families, and community ties; their common source of planning

and development; and their similarity of name. See, for example, App. Rec. Ex. 1, pp. 189-190, 287.

Conclusions of Law

1. Applicant complied with the procedural requirements of the Charter School Law in its appeal of the Steel Valley School District's decision denying a charter.

2. Applicant has support for the Charter School plan which satisfies §17-1717-A of the Charter School Law.

3. The application contains the information required by §17-1719-A of the Charter School Law.

4. The application conforms to the legislative intent outlined in §17-1702-A of the Charter School Law.

5. The proposed Charter School could serve as a model for other public schools.

6. Because Applicant is a sectarian entity, a charter may not be granted to it, pursuant to §17-1718-A (a) of the Charter School Law.

7. Because the Charter School will receive financial and in-kind aid from a sectarian school and church, it does not meet the requirements of §17-1718-A (a) of the Charter School Law, which provides that no regional charter school shall be established or funded by a sectarian school, institution or other entity.

8. The proposed Charter School would not be nonsectarian in all operations, in violation of §17-1715-A (4) of the Charter School Law.

9. Religious objects and symbols would be displayed on the premises of the Charter School, in violation of §17-1715-A (5) of the Charter School Law.

Discussion

Date of Appeal

The Steel Valley School District requests dismissal of Applicant's appeal to the CAB for failure to comply with §17-1717-A(f) of the Charter School Law. Section 17-1717-A(f) states that "No appeal from a decision of a local school board may be taken until July 1, 1999." The District argues that the term "appeal" in the quoted provision of the Law refers to the petition presented to the Court of Common Pleas, and that since the petition in this case was presented to the Allegheny County Court of Common Pleas on April 22, rather on or after July 1, it must be dismissed.

The CAB rejects the District's argument. The Charter School Law prescribes what an applicant must do to be "eligible to appeal the denial of a charter." §17-1717-A(i)(2). To be "eligible to appeal," an applicant must obtain signatures on a petition and "present" the petition to the court of common pleas. §17-1717-A(i)(5). The court issues a decree establishing the sufficiency or insufficiency of the petition. Id. Only if the petition is sufficient is it transmitted to the CAB for review. Id. This Board has "exclusive review of an appeal." §17-1717-A(i)(1). The presentation of a petition to the court in order to establish eligibility to appeal to the CAB does not constitute an appeal. Rather, it is a step required in order to exercise the right to take an appeal.

Since Applicant filed its appeal with the CAB on or after July 1, 1999, it complied with §17-1717-A(f) of the Charter School Law.

Applicant a sectarian entity

As stated in Conclusion of Law # 7, a charter may not be granted to Applicant under

§17-1718-A(a) of the Charter School Law because Applicant, Eloise and Edith Christian Day School, Inc., is a sectarian entity.

Steel Valley School District's reasons for denial of charter

The Steel Valley School District listed six reasons for denying the Charter School application. App. Rec. Ex. 1, pp. 302-304. These reasons, in italics below, will be examined in seriatim:

1. *The applicant only partially shows a demonstrated, sustainable support for the Eloise and Edith Academy Charter School plan. While support was shown from parents, civil leaders and other community members and students, there was no support demonstrated from teachers within the District. Public testimony and written documents were presented in support.*

The demonstrated, sustainable support for the Charter School plan by teachers, parents, other community members and students is one of the factors to be evaluated by the School District under §17-1717-A(e)(2)(i) of the Charter School Law. There is no absolute measure of the degree of support or the source of support necessary to satisfy the Charter School Law. The Law merely requires that the school district consider the demonstrated, sustainable support in its evaluation of the charter application. The CAB concludes that the term "sustainable support" means support sufficient to sustain and maintain the proposed charter school as an on-going entity. Therefore, the size of the proposed Charter School may be taken into account when evaluating the support.

The second aspect of this requirement is that the indicia of support is to be measured in the aggregate rather than by individual categories. The listing of "teachers, parents, other community members and students" indicates the groups from which valid support can be

demonstrated. Certain percentages of support in each of the four categories are not required. Failure to demonstrate strong support in any one category is not necessarily fatal to an application. However, a reasonable amount of support in the aggregate must be demonstrated.

As the School District stated in its findings (App. Rec. Ex. 1, p. 296), a number of supporters attended the hearing and demonstrated support, several citizens spoke in support of the charter, and written statements by community members were provided. The fact the School District found no demonstrated support from teachers is not a sufficient reason for denying the charter. The CAB concludes that the support documented in the certified record is sufficient under the Charter School Law and the School District erred in concluding otherwise.

2. *The proposed curricular offerings, teaching strategies and expanded school day and year do appear to provide the community with an educational choice for parents and students. However, information relative to these matters is generalized and very broad. This does not permit the Steel Valley Board sufficient definition upon which to make decisions of support.*

The Applicant has provided information requested in the application on the proposed curriculum, teaching strategies, and the expanded school day and school calendar. The School District states that this information is too generalized, but it fails to provide specifics as to how it is deficient. On its face, the information provided by the applicant does not evidence deficiencies under the Charter School Law.

3. *The requirements for nonsectarian status mandated in Sections 17-1715-A (4) and (5) of the Charter School Law are not met in that the use of the church facilities involves the display of religious objects and symbols to students using those facilities. The facility itself must,*

by its very nature, be considered a religious symbol. In addition, a clear and distinct separation between the Eloise and Edith Academy and the Eloise and Edith Christian Day School does not exist.

This basis for denial is supported by the evidence. Even if Applicant were not a sectarian entity, the Charter School that Applicant proposes would not be eligible for a charter because it fails to meet the requirements of §§17-1715-A(4), 17-1715-A(5), and 17-1718-A(a) of the Charter School Law.

Section 17-1715-A(4) requires that a charter school be “nonsectarian in all operations.” In this case, the proposed Charter School would have such a strong entanglement with the existing Christian Day School as well as with the Church in which it would be housed that it cannot be considered to be “nonsectarian in all operations.”

The Charter School would be housed with the Christian Day School in an operating Christian Church, from which it would lease space. The Christian Day School, which has been operating for 17 years, consists of a preschool and kindergarten, and provides Christian religious instruction. The primary organizer of the Charter School is the chief executive officer of the Christian Day School. If the charter is granted, she would accept appointment as chief executive officer of the Charter School as well as remain as either the chief executive officer of the Christian Day School or serve on its board of directors. An unspecified number of members of the board of directors of the Christian Day School and an unspecified number of representatives

of the Church would also be members of the board of trustees of the Charter School.¹ The proposed bylaws of the Charter School state that the bylaws were “approved” by the Christian Day School. Both schools would operate in the Church during the day. Students at the two schools would share facilities and rooms, although not at the same time. The two schools would share certain services and would prorate the costs of these services. The process of sharing and prorating the costs of these services would necessarily involve administrative entanglement between the two entities. The Christian Day School and the Church would provide financial and in-kind aid to the Charter School. The Christian Day School conducted all the planning, including curriculum development, for the Charter School. Many or all of the openings at the Charter School would be filled by children of families who have been involved in the Christian Day School. Children who had been enrolled in preschool and kindergarten at the Christian Day School would move on to first and second grade at the Charter School.

These facts demonstrate a strong entanglement between the Christian Day School and the Charter School and between the Church and the Charter School. The relationship between the two schools is more than that of mere co-existence in the Church building. The relationship between the Church and the Charter School is more than that of mere landlord and tenant. These relationships preclude a conclusion that the Charter School would be “nonsectarian in all operations,” as required by §17-1715-A(4) of the Charter School Law.

¹ At the hearing before the School District, the pastor of the Second Baptist Church (App. Rec. Ex. 1, p. 228), which is the location of both the Charter School and the Christian School, testified to the close interconnectedness of the two schools and his Church: “So, yes, you’re going to run into the same people on the same boards for the programming that both of the groups handle. Me being one in the same.” App. Rec. Ex. 1, p. 81. He also acknowledged that “I don’t think we can exclude religion from the kids [in the Charter School] even though we’re not teaching religion.” *Id.*, p. 80.

Section 17-1715-A(5) of the Charter School Law requires that a charter school not “display religious objects and symbols on the premises of the charter school.” In this case, the Charter School would be housed in an operating Church. The Church displays religious symbols in the main sanctuary. The students of the Charter School would pass through the sanctuary while school is in session. Religious services would be conducted in the Church while the Charter School is in session. These facts demonstrate that religious objects and symbols would indeed be displayed on the premises of the Charter School in violation of §17-1715-A(5).

In its Appeal Petition filed with the CAB, Applicant stated:

As managers of The Eloise and Edith Academy, we will remove or cover specific religious icons, pictures and other symbols of religion during the hours school is in session. We will remove religious and church literature, documents, bulletins, pamphlets, books, hymnals, song books and other such material from the areas used by the Charter School while it is in session.

App. Rec. Ex. 2, p. 12. This is new information that was not in the record certified by the School District. This Board is authorized by the Charter School Law to base its review only on the record as certified by the School District, unless the additional information was previously unavailable. Applicant did not request that this new information be added to the record and provided no basis for the CAB to allow supplementation of the record with this information. Therefore, the CAB has excluded this information from its review.

Section 17-1718-A(a) of the Charter School Law states that no regional charter school shall be established or funded by any sectarian school, institution or other entity. The record shows that the Charter School would receive financial and in-kind aid from the Christian Day School as well as from the Church. The Christian Day School would raise funds for the Charter School, provide administrative assistance, and allow it the use of its property for a garden. The

Church would provide free use of its buses for field trips and assume the costs of compliance of the facilities with the Americans With Disabilities Act. This aid to the Charter School is not permitted by §17-1718-A(a).

4. *The budget, as presented, is incomplete and at times inaccurate. There are disagreements between items specified in the application and the budgeted figures. The budget shows a lack of sufficient planning so as to provide specific and defensible figures that will demonstrate the ability of the Eloise and Edith Academy Charter School to conduct business.*

The Charter School Law requires that the application include a financial plan. Applicant did submit a financial plan that contains an itemized projection of the income and expenses for the first five years of operation of the Charter School. The School District has not specified how the plan is insufficient. On its face, and based upon our review, this financial plan satisfies the requirements of the Charter School Law.

5. *The small number of students served (10-first grade, 10 second grade) when compared to the number of parents involved in the planning process, creates the strong probability that children of these parents, having a preferred admissions status, will fill all available openings and access will not be available to other students.*

It is true that many or all of the available openings at the Charter School would be filled by the children of parents involved in the planning process. However, the Charter School Law allows a charter school to give preference in enrollment to a child of a parent who has actively participated in the development of the charter school. §17-1723-A. The Charter School is not prohibited from filling all available openings with such children if there are enough of them to fill all openings.

On the other hand, as discussed above (#3), this objection by the District is valid in the context of the strong connections between the Charter School and the Christian Day School.

6. *Upon numerous occasions during the hearing, the Applicant was requested or offered to provide additional information needed to permit a fair and complete evaluation of the charter school's application. Although additional information was provided by cover letter dated February 15, 1999, many areas of concern were left unanswered as explained in the Findings herein above.*

In its Findings, the School District listed a number of areas of concern. App. Ex. 1, pp. 296-301. Some of these concerns are too general to allow for a meaningful response. See Finding #5, bullets 3, 5, 8; Finding #6; Finding #10, bullets 2-5, 7, 12. Some are misstatements of fact. See Findings #5, bullet 4; Finding # 10, bullet 9. Some request information that would be difficult or impossible to obtain until a charter is actually issued. See Finding #5, bullets 1, 6, 7, 9; Finding # 6; Finding # 10, bullets 10, 11. Others do not address deficiencies serious enough to justify denial of a charter. See Finding #5, bullets 2, 6, 7; Finding #10, bullets 1, 8. The only finding that the CAB concludes is a valid basis for denying a charter is Finding #4, which concerns the issue of sectarianism, which has been discussed above. (District's reason for denial #3).

Therefore, we find that the School District's denial of a charter, based on the Charter School's nonsectarian status, was correct. The School District's other bases for denying the charter, however, are not supported by the application and/or the evidence presented by the Charter School.

SCHOOL DISTRICT OF PITTSBURGH APPLICATION

Findings of Fact

1. Applicant submitted to the School District of Pittsburgh an application for the Charter School on November 12, 1998.
2. After a public hearing, which was not transcribed, and the submission of additional information to the District, the District on February 24, 1999, denied the application.
3. During the period March 2 through April 15, 1999, Applicant obtained the signatures of 1,726 residents of the District on a petition to appeal the denial of a charter.
4. On April 22, 1999, Applicant presented the petition to the Court of Common Pleas of Allegheny County.
5. On July 12, 1999, the Court issued a decree establishing the sufficiency of the petition.
6. On or about July 15, 1999, Applicant filed with the CAB an appeal of the School District's decision, which appeal was accepted on September 3, 1999.
7. Applicant demonstrated support by parents and community members for the Charter School plan in the form of public testimony and written documents. App. Rec. Ex. 1, pp. 5, 45, Ex. 10, Ex. 11, p. 38.
8. The application to establish the Charter School included the following information:
 - a. Identification of the applicant. App. Rec. Ex. 7, p. 36.
 - b. Name of the school. App. Rec. Ex. 7, p. 36.
 - c. Grades served by the school. App. Rec. Ex. 7, p. 41.

- d. Proposed governance structure. App. Rec. Ex. 7, pp. 42, 61, 108-127, Ex. 11, p. 17.
- e. Mission and education goals, curriculum, and methods of assessing whether students are meeting educational goals. App. Rec. Ex. 7, pp. 4-6, 17-18, 28-30, 36, 47-52, 54, 68-93, Ex. 11, pp. 18-23, 34, 37.
- f. Admission policy and criteria. App. Rec. Ex. 7, pp. 41, 128-129.
- g. Procedures regarding suspension or expulsion of students. App. Rec. Ex. 7, pp. 62, 133-136.
- h. Manner in which community groups will be involved in the planning process. App. Rec. Ex. 7, pp. 44-46.
- i. Financial plan. App. Rec. Ex. 7, pp. 55, 102.
- j. Procedures to review complaints of parents regarding operation of the school. App. Rec. Ex. 7, pp. 46, 130-131.
- k. Description and address of the physical facility and the ownership and lease arrangements. App. Rec. Ex. 7, pp. 56-57, 104-108.
- l. Proposed school calendar, including length of school day and school year. App. Rec. Ex. 7, pp. 52, Ex. 11, p. 24.
- m. Required credentials of faculty and a professional development plan. App. Rec. Ex. 7, pp. 53, 59.
- n. Whether any agreements have been entered into or plans developed with Steel Valley School District regarding participation in extracurricular activities. App. Rec. Ex. 7, p. 53.

o. Commitment to obtain criminal history records for all individuals who will have direct contact with students. App. Rec. Ex. 7, p. 60.

p. Commitment to obtain background checks for all individuals who will have direct contact with students. App. Rec. Ex. 7, p. 60.

q. Commitment to obtain adequate liability and other appropriate insurance for the school, its employees and the board of trustees. App. Rec. Ex. 7, p. 58.

9. The application includes a retainer agreement with a certified public accountant, but the agreement applies to auditing of the Christian Day School rather than the Charter School. App. Rec. Ex. 7, pp. 100-101.

10. The certified record demonstrates that the Charter School will provide small class size, extended hours, availability of schooling year-round, accelerated science curriculum and an emphasis on agricultural science. App. Rec. Ex. 7, pp. 17-18, 27-30, 80-84.

11. Applicant has demonstrated support and planning that could enable the Charter School to provide comprehensive learning experiences to students. App. Rec. Ex. 7, p. 11.

12. The Charter School plan, as described in the certified record, conforms to the legislative intent outline in Section 17-1702-A. App. Rec. Ex. 7, pp. 4-6, 17-18, 27, 29-30, 36-37, 49-52, 67-87, Ex. 11, pp. 21-23.

13. The Charter School plan, as described in the certified record, will employ a method to establish accountability for meeting measurable academic standards. App. Rec. Ex. 7, pp. 30, 54.

14. The Charter School will be located in the church building of the Second Baptist Church (“Church”), an operating church in Homestead, Pennsylvania. App. Rec. Ex. 7, p. 56.

15. The Charter School will enter into a lease with the Church for use of the building. App. Rec. Ex. 7, pp. 56-57.

16. The Church also houses the Eloise and Edith Christian Day School, a school that provides Christian religious instruction, in addition to secular instruction, for pre-school and kindergarten students. App. Rec. Ex. 7, p. 56.

17. Applicant, Eloise and Edith Christian Day School, Inc., is a non-profit sectarian corporation that owns and operates the Christian Day School. App. Rec. Ex. 7, pp. 36, 39.

18. Included with the application are proposed articles of incorporation for the Charter School that identify the Christian Day School as the incorporator of the Charter School. App. Rec. Ex. 7, p. 110.

19. The proposed bylaws for the Charter School corporation state that the bylaws were “approved” by the Christian Day School. App. Rec. Ex. 7, p. 127.

20. Dr. Sheila R. Daniels is the president and chief executive officer of the Christian Day School. App. Rec. Ex. 11, p. 12.

21. Dr. Daniels is also the primary organizer of the Charter School. App. Rec. Ex. 7, pp. 34, 144, Ex. 10, Ex. 11, p. 12, Ex. 13, p. 7.

22. Dr. Daniels has been designated to run the Charter School. App. Rec. Ex. 7, p. 61.

23. An unspecified number of members of the board of directors of the Christian Day School would also be members of the board of trustees of the Charter School. App. Rec. Ex. 7, pp. 19-20, 42. Applicant stated that the number would be “less than 70%.” App. Rec. Ex. 7, pp. 19-20.

24. The Christian Day School would raise funds for the Charter School. App. Rec. Ex. 7, pp. 56.

25. The Christian Day School conducted all the planning, including curriculum development, for the Charter School. App. Rec. Ex. 7, pp. 39-40.

26. Many or all of the 20 openings for students at the Charter School would be filled by children of families who are or have been involved in the Christian Day School. App. Rec. Ex. 7, pp. 20, 128.

27. There is a public perception that the Charter School is an extension of the Christian Day School. App. Rec. Ex. 7, pp. 139-141, 144, Ex. 11, cover page of Strategic Plan and pp. 12, 14.

28. A likely cumulative effect of the following is confusion concerning their separate identities: shared location of the Charter School and the Christian Day School, as well as their shared facilities; their overlapping make-up of administration, participating families, and community ties; their common source of planning and development; and their similarity of name. See, for example, App. Rec. Ex. 7, pp. 27, 99-101, Ex. 11, cover page of Strategic Plan.

Conclusions of Law

1. Applicant complied with the procedural requirements of the Charter School Law in its appeal of the decision of the School District of Pittsburgh to deny a charter.

2. Applicant has support for the Charter School plan which satisfies §17-1717-A(e)(2)(i) of the Charter School Law.

3. The application contains the information required by §17-1719-A of the Charter School Law.

4. The application conforms to the legislative intent outlined in §17-1702-A of the Charter School Law.

5. The proposed Charter School could serve as a model for other public schools.

6. Because Applicant is a sectarian entity, a charter may not be granted to it, pursuant to §17-1718-A (a) of the Charter School Law.

7. The proposed Charter School would not be nonsectarian in all operations, in violation of §17-1715-A (4) of the Charter School Law.

Discussion

Applicant a sectarian entity

As stated in Conclusion of Law # 7, a charter may not be granted to Applicant under §17-1718-A(a) of the Charter School Law because Applicant, Eloise and Edith Christian Day School, Inc., is a sectarian entity.

Requirement of nonsectarian operations

Even if Applicant were not a sectarian entity, the Charter School that Applicant proposes would not be eligible for a charter because it fails to meet the requirements of §17-1715-A(4) of the Charter School Law. Section 1715-A(4) requires that a charter school be “nonsectarian in all operations.” In this case, the proposed Charter School will have such a strong relationship with the existing Christian Day School that it cannot be considered to be “nonsectarian in all operations.”

The Charter School will be housed with the Christian Day School in an operating Christian Church, from which it will lease space. The Christian Day School, which has been operating for 17 years, consists of a preschool and kindergarten, and provides Christian religious

instruction. The primary organizer of the Charter School is the president and chief executive officer of the Christian Day School. If the charter is granted, she would run the Charter School. An unspecified number (less than 70% according to Applicant) of members of the board of directors of the Christian Day School would also be members of the board of trustees of the Charter School. The proposed articles of incorporation for the Charter School identify the Christian Day School as the incorporator. The proposed bylaws of the Charter School state that the bylaws were “approved” by the Christian Day School. Both schools would operate in the Church. The Christian Day School would raise funds for the Charter School. The Christian Day School conducted all the planning, including curriculum development, for the Charter School. Many or all of the openings at the Charter School would be filled by children of families who have been involved in the Christian Day School. Children who had been enrolled in preschool and kindergarten at the Christian Day School would move on to first and second grade at the Charter School.

The relationship between the Christian Day School and the Charter School is thus more than that of mere co-existence in the Church building. These facts demonstrate a strong entanglement between the two schools that would preclude a conclusion that the Charter School would be “nonsectarian in all operations,” as required by §17-1715-A(4) of the Charter School Law.

Reasons for Denial of Charter by School District of Pittsburgh

In its letter of March 1, 1999 (App. Rec. Ex. 7, p. 1), the School District of Pittsburgh gave two reasons for denying a charter:

1. “The proposed educational program would not lead to expanded choices in educational programs for students of the City of Pittsburgh.”
2. “The application did not show the ability of the proposed charter school to demonstrate accountability for meeting measurable academic standards.”

Section 17-1717-A(e)(5) of the Charter School Law requires that if a school district denies a charter, “the reasons for the denial, including a description of deficiencies in the application, shall be clearly stated in the notice” The first reason for denial does not comply with this requirement because it does not describe any deficiencies in the application. It merely draws a conclusion that is too broad to permit a response.

The second reason for denial, failure to demonstrate accountability, is not supported by the facts. The School District acknowledged that Applicant agreed to participate in all state-mandated assessments. App. Rec. Ex. 7, p. 13. See Finding of Fact # 13. It also acknowledged that since the application is for a regional charter, the accountability procedures of both the Pittsburgh and Steel Valley School Districts would have to be taken into account in adopting procedures for the Charter School. It appeared to accept Applicant’s stated intention to negotiate with the two school districts in adopting accountability procedures that would satisfy both districts. It acknowledged that Applicant agreed that the Charter School would submit an annual report to the District. Finally, it acknowledged that Applicant agreed to participate in the

STARS student information system of the District. App. Rec. Ex. 7, p. 14. Therefore, there is no factual basis for the second reason for denial.

The two bases set forth by the School District of Pittsburgh for denying a charter to the Charter School are not supported by the evidence. However, as stated above in the Steel Valley section, the Charter School failed to meet the requirements of Sections 17-1715-A(4), (5) and 17-1718-A(a) of the Charter School Law. Therefore, on that basis, the denial of a charter is sustained.²

² The Charter School Law provides that “[n]o regional charter school shall be established or funded by and no charter shall be granted to any sectarian school, institute or other entity.” 24 P.S. §17-1718-A (a). “A charter school shall be nonsectarian in all operations [and] . . . shall not display religious objects and symbols on the premises of the charter school.” 24 P.S. §§ 17-1715-A (4), (5). Notwithstanding our conclusion that the School District of Pittsburgh’s rejection of the charter application was erroneous based upon the reasons set forth by the District, we are constrained by the language of the statute, particularly in cases such as this, where the governing language is clear and unambiguous. Therefore, the CAB may raise this issue sua sponte and since we find the nonsectarian requirements of the Charter Law have not been met, the Charter School’s appeal must be dismissed.

ORDER

AND NOW, this ____ day of _____, 2000, based upon the foregoing and the vote of this Board, the March 1, 1999 decision of the Steel Valley School District, denying the regional Charter School Application of the Eloise and Edith Academy, A Charter School, and the February 24, 1999 decision of the School District of Pittsburgh, denying the regional Charter School Application of The Eloise and Edith Academy, A Charter School, is affirmed and the July 15, 1999 appeal of the Charter School is denied.³

For the Charter School Appeal Board,

Eugene W. Hickok, Jr.
Chairman

³ At the Board's January 12, 2000, meeting, the appeal was denied by a vote of 7-0, with members Aliota, Bunn, Melnick, Reeves, Shipula, Ford-Williams, and Hickok, voting to deny the appeal.