

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

In Re: Elan Charter School :
 :
 : **Docket No. CAB 2001-3**
 Appeal from Denial of Charter :
 School Application by Pennsbury :
 School District :

OPINION AND ORDER

I. Background

Elan Charter School (Elan) submitted a charter school application (“Application”) to the Board of Directors of the Pennsbury School District (“School District”) on November 15, 2000. This application was submitted pursuant to the Charter School Law (Act of June 19, 1997, P.L. 225, No. 22, 24 P.S. §17-1701 to 1732) (Act). A public hearing regarding the application was held by the School District on December 21, 2000. The School District issued their decision on February 16, 2001, with findings of fact and their conclusions and reasons for denying the application.

Subsequently, Elan obtained the requisite signatures on petitions to appeal pursuant to §1717-A (i) (2) and presented the petitions to the Court of Common Pleas of Bucks County on April 16, 2001. The Court held a hearing on May 11, 2001 and thereafter issued a Decree establishing the sufficiency of the petitions.

Elan then filed its appeal with the Charter School Appeal Board (Board) on June 8, 2001. The Board accepted the appeal on June 18, 2001 and informed the School District that it had twenty days to file an Answer to the Petition. Additionally Spencer A. Manthorpe, Esquire was appointed Hearing Officer for the appeal. The Hearing Officer

issued a Pre-Hearing Order on June 28, 2001. In accordance with that order, a telephone conference was held and the Hearing Officer circulated minutes of the conference on July 6, 2001. No additional hearing was requested or held, nor was any supplemental evidence submitted.

II. Findings of Fact

1. Elan is a Pennsylvania not-for-profit corporation, which applied to the School District to operate a charter school in accordance with the Act.
2. The record does not include any listing of members or potential members of the board of directors of the proposed corporation. However, a list of the founding coalition members was sent to the School District in a letter from the applicant, dated December 29, 2000. (Ex-3)
3. The list contained in the letter differs from the list of founding coalition members that was included in the Application.
4. One of the individuals listed in the Application as a founding coalition member was Joseph L. Montisanto, Superintendent of Hackensack, New Jersey Public Schools.
5. Mrs. Seidman, founding coalition member and initiating force behind Elan Charter School, testified at the School District's public hearing that Doctor Montisanto was an advisor and that he had, within the past year, supplied information to her during a visit she had made to his district, as well as additional information by telephone.
6. After the School District attempted to follow up on his involvement with the applicant, Doctor Montisanto wrote the School District a letter (Ex.-4) explaining his only involvement with Elan was several contacts with Mrs. Seidman several years before

the application was filed. He also told the School District that he was not a founding member of Elan and was surprised to have been listed as one.

7. Elan has entered into a management agreement with Mosaica Education, Inc. (Mosaica) to provide educational and administrative services for the school.

8. The agreement is in the record (Ex. 18), is undated and is signed by one Arthur J. Lewis as Board Chairman of Elan. Mr. Lewis is one of the founding coalition members.

9. Mosaica is a for-profit corporation operating schools elsewhere in Pennsylvania and the country.

10. Elan intends to lease the former Pathmark Store located at Arleans Avenue and Old Lincoln Highway, Fairless Hills, Pennsylvania as the site for its school.

11. Elan will use a curriculum program developed by Andrea Seidman.

12. Approximately 500 preprinted letters of support for Elan Charter School accompanied the Application.

13. The forms said “I have reviewed the program offered by Elan Charter School and find it is worthy of my support and yours”, and “I am also impressed by the leadership of the candidates for the charter school’s board of trustees. They are well qualified professional leaders who have made a strong commitment to a firm foundation of the charter school”.

14. At the time of circulation of these preprinted letters of support, the only document available for review by potential signatories was the program description contained in Elan’s Application.

15. No list or testimonial evidence exists in this matter regarding those individuals who will be members of a board of trustees of the school.

16. Of the approximately 500 preprinted letters submitted to the School District, the School District found that only 116 of the signatories were School District residents.
17. Of those 116 School District residents, the School District further found that only 12 had school-age children.
18. Another Mosaica managed charter school is in operation in the neighboring Bensalem School District, and that charter school is also within the 10-mile transportation limit from School District.
19. Only one School District student has attended that school during its existence, but that student has since returned to the School District.
20. Subsequent to the public hearing Elan submitted petitions containing 44 signatures in support of the charter school to the School District on January 18, 2001.
21. Those submissions represented 34 households, however, the number of children in those households was not indicated.
22. In its application, Elan planned for the operation of a school that would serve 504 students.
23. At the hearing before the Board, Elan's counsel represented that of the 500 signatories of the preprinted letter, 142 of the signatories were residents of the School District and of those 58 were parents of school-age children. Elan's counsel did not provide the number of children potentially represented by these parents.
24. Elan also proposed, as part of its program, to provide the capability for hospitalized children to receive instruction by videoconference through an Elan classroom.

25. Elan representative Mrs. Seidman testified that arrangements for this aspect of Elan's programming were being made with Children's Hospital of Philadelphia (CHOP).
26. School District representatives, however, testified that their contacts in CHOP management were not aware of any such arrangements with Elan.
27. The CHOP representative with whom Mrs. Seidman spoke was a social worker in one of CHOP's units.
28. The School District usually has only one or two students a year who need home bound instruction due to hospitalization, and who could potentially benefit from this program.
29. CHOP has made arrangements with the Philadelphia School District for schooling of hospitalized children.
30. One teacher spoke in support of Elan at the public hearing in the School District.
31. Nothing in the record shows student support for Elan.
32. At the public hearing regarding the charter school application, a total of 23 people provided testimony; of those only 8 spoke in support of Elan.
33. Of the 8 speakers supporting the granting of Elan's charter, 4 were resident parents of children in the School District, 3 were taxpayer/residents and one was the teacher.
34. Only one member of the public spoke in favor of Elan from a community point of view.
35. He was in favor of Elan because it would build a stage in its proposed school, which his theater group could use.
36. Elan's leadership is not credible.

III. Conclusions of Law

1. Elan has not demonstrated sustainable support from parents, community members and students.
2. Elan has not shown the support and planning necessary to provide a comprehensive learning experience to students.
3. The appeal of Elan Charter School should be denied under the Act.

IV. Discussion

Directors' Findings

Elan Charter School filed an Application for a charter from the School District. Under the Act, the School District is to hold at least one public hearing before granting or denying the application. The Application is to be evaluated based on criteria including, but not limited to those set forth in §1717-A (e)(2) of the Act. Of those four criteria, the School District denied the Application on the basis of lack of community support. The Act requires that there be “demonstrated sustainable support for the charter school by teachers, parents, other community members and students...”. 24 P.S. §17-1717-A(e)(2)(i).

A. Demonstrate Sustainable Support

The first criteria listed in the Act is for the applicant to show demonstrated sustainable support for the planned school by teachers, parents, community members and students including comments made at the public hearing. The record contains several attempts by Elan to meet this criterion.

First, along with its Application, Elan submitted approximately 500 pre-printed letters signed by individuals allegedly supporting the granting of its charter. The letters stated as follows: “I have reviewed the program offered by Elan Charter School and find it is worthy of my support and yours”, and “I am also impressed by the leadership of the candidates for the charter school’s board of trustees. They are well qualified professional leaders who have made a strong commitment to a firm foundation of the charter school”. At the time when the letters were being circulated, the Application would appear to have been available for review, although there is nothing in the record to indicate that it was distributed with the preprinted letters. At that time, Elan did not have a board of trustees and nothing has subsequently been submitted to the School District or to CAB to show that a board of trustees has been appointed. The only relevant documentary evidence is the list of the founding coalition, from which Mrs. Seidman testified the board of trustees would ultimately be drawn. Thus, the letter signatories may have been familiar with Elan’s proposed program; however, it is doubtful that they were familiar with candidates for Elan’s board of trustees. These findings lead this Board to conclude, as did the School District, that these letters of support are of limited value.

The weight of this evidence is further diminished when one analyzes the numbers. The School District initially believed that the 500 signatories of the preprinted letters were from within the School District. However, on review, it found that only 116 signatories were identifiable as individuals living in the School District. From those 116 signatures, only 12 households with children were identified. Although Elan tried to counter the School District’s numbers at the hearing before this Board, the questionable

value of these letters significantly reduces the importance of the actual number of residents or residents with school children.

Second, 23 individuals testified at the public hearing held by the School District. Eight of the speakers appeared to support the granting of the charter. Some were clear in their support of Elan, while others were not so clear and simply testified in support of charter schools in general. Those who testified in support consisted of two parents who had a child or children, one teacher with a child, three taxpayer/residents and two parents who already had their children in Mrs. Seidman's existing preschool. Another speaker from outside the School District supported the granting of Elan's charter because the proposed school would have an auditorium and stage, which could be used by his theater company.

Lastly, on January 18th, 2001, Elan forwarded to the School District petitions with 44 signatories from 34 households. It is not clear from the record whether any of these are duplicative of either of the above groups of supporters. Likewise, the record does not establish which category of parent, teacher, student, or community member they represent. Some of the signatories are members of the founding coalition listed on Exhibit-3.

B. Credibility

Credibility becomes important in this case, as alluded to above, because of the contrasting sets of numbers used by the parties to come to their respective conclusions. Elan believes its figures show sustainable support from the community. In contrast, the School District argues that Elan's numbers are not credible for various reasons, and more so, that Elan's representatives cannot be trusted. The actions of Elan and its

representatives in producing its numbers to show community support undermine its position as already discussed. The actions of Elan and its representatives in other areas concerning the Application and evidence supporting it demonstrate their lack of credibility.

For example, Elan's Application describes a school designed to hold 504 students. However, from the record it is remarkably unclear how many families with children support the granting of the charter. Interestingly, Elan has offered no evidence that any families intend to enroll their children in the school if a charter is granted. This distinguishes this case from others that have come before this Board and buttresses the School District's conclusion that insufficient support for Elan has been shown. A proposition with which CAB agrees.

In addition, the Application listed three individuals as members of Elan's founding coalition. One of these members was the Superintendent of Schools in Hackensack, New Jersey, a Dr. Joseph Montisanto. At the public hearing, Mrs. Seidman was queried about Dr. Montisanto's involvement with the charter school. Her answers implied an ongoing relationship, especially insofar as Dr. Montisanto was listed as one of the three founding coalition members from whom the Board of Trustees was to be drawn. Actually, however, Dr. Montisanto did not know he was listed as a founder, denied being a founding coalition member and asserted that he had not been in contact with Mrs. Seidman for about two years.

One of the unique aspects of the Elan Charter School was to be the offering of video conferencing between the classroom and hospitalized children. Mrs. Seidman testified that "We have many children presently waiting to be video conferenced into

their (CHOP's) classroom," and that hospitals were calling with interest. In reality, there was no formal connection with CHOP or any other hospital. In fact, CHOP management informed the School District they had never heard from Elan or the Seidmans. Mrs. Seidman had merely discussed her charter school concept with a social worker at a unit of CHOP. Only after the public hearing in the School District did the Seidmans contact CHOP to set up a meeting with appropriate officials.

Elan did not provide any evidence about children who needed the service and Mrs. Seidman could not estimate how many there could be. School District administrators estimate only two students a year are hospitalized for a sufficient length of time to require such home-bound services and that appropriate and adequate services are provided by the School District or at CHOP by the Philadelphia School District.

Elan's credibility was damaged by the above-discussed misrepresentations. On the one hand, these matters may appear to be simple exaggerations, however, they undermine Elan's credibility and reflect directly upon the issue of sustainable community support. Elan's community support evidence is rather weak in the first place. There are no identified students who expressed support in the school and only one teacher spoke in support. The preprinted letter was signed by 116 members of the school district community, not 500 members of the community. Of the 116, only 12 were parents. One member of another community spoke in support because he wanted a theater stage. Only 4 parents testified at the public hearing. It is not known if any of these parents are duplicates from other lists, as the list from the preprinted letter is not in the record.

The support shown on the record is even less than the numbers illustrate with consideration given to the issue of credibility. All of the preprinted letters are questionable because the signatories, based upon other evidence, are unlikely to have been impressed by the candidates for the board of trustees and their leadership and qualifications. One of the purported candidates at the time has disavowed his candidacy. Also, it is reasonable to assume that the signatories had not reviewed the program proposed to be offered by the school because, at that time, it could only be found in the Application. If the signatories did not know the program or the trustees, then how can there be any credibility to their purported support of Elan's charter application. Based upon this analysis, we have no students, one teacher, 4 parents, three taxpayer/residents and one member of a neighboring community who support the school. By no measure is this sufficient to meet the law's requirement of sustainable support for a school that anticipates and budgets for 504 students. The credibility issue concerning the preprinted letters is not alleviated by the statements of counsel before this Board. He asserted that out of the 500 preprinted letters Elan now admitted that only 142 were School District residents and further that 58 of those resident were parents. This assertion is somewhat late, is unsubstantiated and is not in evidence in this matter because it was not included in testimony from witnesses.

The cases indicate that lack of support in one category is not fatal to a finding of community support. Joyce Brackbill and Mary Fuhrman v. Ron Brown Charter School, NO. 3220 C.D. 1999 (Commonwealth Court May 23, 2001) Harrisburg School District v. Ronald H. Brown Charter School, No. 3281 C.D. 1999 (Commonwealth Court May 23, 2001) However, we find, as did the School District, that Elan Charter School lacks

sustainable support in all categories. Even in the aggregate, there is insufficient support to meet the legal standard.

We also note the following outstanding matters regarding this Application. No board of trustees exists, such as is necessary for the operation of the school. No arrangements have been discussed or entered into with hospitals to provide videoconference capabilities to students who may be in need of the services proposed by Elan. Elan had not signed a final management agreement to operate the school with Mosaica until after the decision of the School District. The lack of a board of trustees, the lack of sustainable support, the lack of firm commitments from hospitals and the late signing of a management agreement with Mosaica all show a lack of support and planning necessary to provide a comprehensive learning experience to students.

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ORDER

AND NOW, this _____ day of October, 2001, based upon the foregoing and the vote of this Board,¹ the appeal of Elan Charter School is DENIED and the February 16, 2001 decision of the Pennsbury School District is AFFIRMED.

FOR THE STATE CHARTER SCHOOL
APPEAL BOARD

Charles B. Zogby
Chairman

¹ At the Board's October 16, 2001 meeting, the appeal was denied by a vote of 6-0 with members Aliota, Bunn, Melnick, Reeves, Shipula and Zogby all voting to deny the appeal.