

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

STATE CHARTER SCHOOL APPEAL BOARD

In Re: Lincoln Charter Middle School :
: Docket No. CAB 2008-01
Appeal from the denial of a petition to :
create a charter middle school by :
the School District of the City of York :

OPINION

I. INTRODUCTION

This matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on Appeal by the Lincoln Charter Middle School (“Lincoln”) from the denial of Lincoln’s charter school application by the School District of the City of York (“District”). The District denied Lincoln’s application to create a charter middle school (“Application”) on March 17, 2008 and this Appeal was filed on April 22, 2008.

II. FINDINGS OF FACT

1. The District received Lincoln’s Application on October 19, 2007.
2. Public hearings on the Application were held on December 6, 2007 and January 23, 2008.
3. On February 13, 2008, the District voted to deny Lincoln’s Application.
4. On March 17, 2008, the District transmitted its written Adjudication on the matter, including Findings of Fact and Conclusions of Law, to Lincoln.
5. The District provided five grounds for denying the Application: (1) Lincoln failed to demonstrate sustainable support for the charter; (2) Lincoln is not capable of providing comprehensive learning experiences for special education students and/or

ESL/ELL students; (3) the Application fails to consider and meet the requirements of section 1719-A of the Charter School Law (“CSL”), especially subsection (6) relating to enrollment/admissions, subsection (9) relating to financial planning and subsection (11) relating to ownership/leasing of the facility; (4) the Application does not conform to the legislative intent of the CSL; and (5) the proposed facility for Lincoln’s middle school is not a suitable location.

6. Pursuant to section 1717-A(i) of the CSL, 24 P.S. § 17-1717-A(i), Lincoln obtained signatures in support of the charter middle school and filed a Petition for Determination of the Sufficiency of a Petition on March 26, 2008 in the Court of Common Pleas of York County.
7. On April 17, 2008, Judge John W. Thompson granted Lincoln’s Petition for Determination of the Sufficiency of a Petition, holding that Lincoln had met the requirements set forth in section 1717-A(i) of the CSL, 24 P.S. § 17-1717-A(i).
8. Lincoln filed this Appeal on April 22, 2008.
9. On June 10, 2008, CAB heard argument from Lincoln and the District regarding the Appeal.

III. CONCLUSIONS OF LAW

1. CAB has jurisdiction in this matter.
2. The CSL, Act of June 19, 1997, P.L. 225, No. 22, 24 PS § 17-1701-A *et. seq.*, governs the application process, the approval process, the revocation/renewal of charters and the operation of charter schools in Pennsylvania.

3. Section 1717-A(e)(2) of the CSL, 24 P.S. § 17-1717-A(e)(2), sets forth the factors to be used by the local board of school directors in the evaluation of a proposed charter school application:
 - (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the required public hearings;
 - (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 of the CSL; and
 - (iv) The extent to which the charter school may serve as a model for other public schools.

4. Section 1702-A of the CSL, 24 P.S. § 17-1702-A, sets forth the intent of the General Assembly in enacting the CSL:
 - (i) Improved pupil learning;
 - (ii) Increased learning opportunities for all pupils;
 - (iii) Encouraging the use of different and innovative teaching methods;
 - (iv) Creating new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;
 - (v) Providing parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system;and

- (vi) Holding the schools established under the CSL accountable for meeting measurable academic standards and providing the school with a method to establish accountability systems.
5. Lincoln has demonstrated sustainable support for its charter middle school by teachers, parents, other community members and students.
6. Lincoln has demonstrated its ability to provide comprehensive learning experiences to all students, including special education and ESL/ELL students.
7. Lincoln has not satisfied the legislative intent of the CSL.
8. Lincoln has failed to provide adequate information regarding the required application components under the CSL.

IV. DISCUSSION

Standard of Review

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

In any appeal, the decision made by the local board of directors shall be reviewed by [CAB] on the record as certified by the local board of directors. [CAB] shall give due consideration to the findings of the local board of directors and specifically articulate its reasons for agreeing or disagreeing with those findings in its written decision.

24 P.S. 17-1717-A(i)(6). In *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 571 Pa. 503 (2002), the Pennsylvania Supreme Court elaborated upon the proper standard to be applied by CAB when reviewing a district's denial of a charter school application; in that case, the Court held that CAB must apply a *de novo* standard of review and that such a standard "requires CAB to give 'appropriate consideration' to the findings of the District Board, while making an

independent determination as to the merits of the charter school application.” *Id.* at 516-17.

Therefore, CAB shall make a *de novo* review; while giving “due consideration” to the findings of the District, CAB will independently review each of the bases cited by the District for its denial of Lincoln’s charter application.

Lincoln Has Demonstrated Sustainable Support for Its Charter Middle School by Teachers, Parents, Other Community Members and Students

Section 1717-A(e) of the CSL requires that the local school board consider whether demonstrated, sustainable support for the proposed charter school exists among teachers, parents, other community members and students. 24 P.S. § 17-1717-A(e)(2)(i). Here, the District found that Lincoln failed to demonstrate sustainable support because: (1) the parental and community support which Lincoln gathered was exclusively, or almost exclusively, from different neighborhoods than the neighborhood in which the Lincoln Charter Elementary School is located¹; and (2) the parental support which Lincoln gathered for the charter was, to a large extent, parents of kindergartners and first-graders who would not be attending the charter middle school for another four or five years. *See* School District of the City of York Adjudication, Certified Record, pg. 1646.²

CAB has defined sustainable support as the support sufficient to sustain and maintain the proposed charter school as an on-going entity. *Voyager Charter School of Pennsylvania*, Docket No. CAB 2005-09. Based upon the evidence presented, it is clear that Lincoln has shown such sustainable support in the form of petitions, letters of support and information about financial

¹ More specifically, the District found that Lincoln has not demonstrated sustainable support for its charter middle school because the parental and community support which Lincoln gathered was exclusively from the neighborhood around Lincoln Elementary School, which is located in the southwest quadrant of the City of York, while the proposed facility for the charter middle school, the Manito building, would be in the northeast quadrant of the City of York.

² Hereinafter, citations to any document contained in the Certified Record, provided to CAB on May 6, 2008 will be referenced as “Cert. R., pg. ____.”

backing from the community. Lincoln presented evidence that demonstrated support from a financial backer; Joel Sharfer, chief operating officer of Charter Schools Development Corporation³, testified that Lincoln, because of its professional management, good test results and community support, is a good candidate to receive financial support from his corporation. *See* Cert. R., pgs. 876-883. Furthermore, to demonstrate community support, Lincoln attached hundreds of letters evidencing parental support to its Application. Cert. R., pgs. 554-824.

Although the District has argued that Lincoln cannot demonstrate sustainable support because: (1) the Manito building is located in a different neighborhood of the city than of the Lincoln Charter Elementary School; and (2) the parental support which Lincoln gathered for the charter was, to a large extent, parents of kindergartners and first-graders who would not be attending the charter middle school for another four or five years, CAB finds these arguments unpersuasive. Lincoln has collected 950 signatures on a Petition in support of its charter middle school; all of the 950 signatures obtained in support of Lincoln's Appeal are signatures of residents of the District. CAB has never before, in deciding the issue of sustainable support, divided a school district into neighborhoods to determine whether there is ample support for the proposed charter school within the neighborhood in which the school will be located. Nor has CAB considered demographics, other than residency, of those who have signed the Petition in support of the charter school. Instead, CAB has always looked to the community at-large to determine whether the entire community has demonstrated sustainable support for the proposed charter school. The CSL requires no more, and CAB's interpretation has been upheld and adopted upon judicial review. *See McKeesport Area Sch. Dist. v. Propel Charter Sch.*, 888 A.2d 912 (Pa. Commw. 2005) (citing *Carbondale Area Sch. Dist. v. Fell Charter Sch.*, 829 A.2d 400

³ Charter Schools Development Corporation is a non-profit corporation whose mission is to support charter schools in gaining financial support. Cert. R., pg. 875.

(Pa. Commw. 2005). Because Lincoln has presented evidence of an abundance of community support for its charter middle school, CAB specifically rejects the district's conclusion and now finds that Lincoln's petition to create a charter middle school cannot be denied on this ground.

Lincoln Has Demonstrated the Capability to Provide Comprehensive Learning Experiences to All Students.

Section 1717-A(e) of the CSL further requires that the local school board consider whether the charter school applicant, in terms of support and planning, has the capability to provide comprehensive learning experiences to all students. 24 P.S. § 17-1717-A(e)(2)(ii). In the present case, the District concluded that Lincoln has no realistic or feasible plan for adequate special education instruction. We find this argument to be unpersuasive, as proposed special education services include: (1) where appropriate under an IEP, Special Education Support (SES) staff will work with special needs students for intensive, short-term "pull-asides," returning students to classroom activities with support materials, plans and follow-up; and (2) SES staff will regularly review each student's progress and adjust support accordingly. Cert. R., pgs. 20-21. Moreover, when Lincoln is unable to provide an appropriate education for students with special needs, Lincoln plans to outsource for the appropriate services through the Intermediate Unit or through the District. Cert. R., pg. 22.

The District also concluded that Lincoln failed to establish its ability to provide a comprehensive learning experience for ESL and ELL students. Again, we find this argument to be unpersuasive. Lincoln's Application proposes that Lincoln will follow NCLB and Pennsylvania time guidelines for identification, language assessment and beginning the provision of services for ESL students. Furthermore, Lincoln will assess any potential ELL student and parents of students identified as requiring ESL services will be notified immediately after language assessment has been administered. Cert. R., pgs. 23-25. Therefore, CAB now finds

that Lincoln has demonstrated its ability to provide a comprehensive learning experience too all students, including special education students, ESL students and ELL students.

Lincoln Has Not Satisfied the Legislative Intent of the Charter School Law

In enacting the CSL, it was the intent of the General Assembly to provide opportunities for teachers, parents, pupils and community members to establish and maintain schools to, among other things, increase learning opportunities for all pupils, encourage the use of different and innovative teaching methods and provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system. 24 P.S. § 17-1702-A. Consequently, a charter school must provide unique learning opportunities to its students in order to satisfy the intent of the CSL.

Lincoln has failed to demonstrate that it will provide parents and pupils with expanded choices in the types of educational opportunities that are available within the District. The CSL requires that a charter school applicant demonstrate the extent to which the charter school may serve as a role model for other public schools. 24 P.S. § 17-1717-A(e)(2)(iv). CAB has previously held that, to serve as a model to other schools, a charter school must in some way expand the curricular choices for students and encourage innovative and unique teaching methods. *City College Prep Charter School*, Docket No., 2006-01. CAB has further held that the CSL requires that a charter school propose using more than one innovative teaching method in order to be considered a model for other schools. *Id.*

With the exception of a longer school day and longer school year, Lincoln has failed to establish that it will provide its students with unique and innovative learning opportunities. In fact, the opportunities offered by Lincoln are exactly those types of services which the District currently offers, and practices in which the District engages. We find that both the charter school

and the district will provide differentiated instruction, cooperative learning and data-based decision making. Simply stated, Lincoln has not proven that it can provide increased learning opportunities for its students. A longer school day and school year are not sufficient to establish that Lincoln will increase learning opportunities for its students, encourage innovative teaching methods and serve as a model for other public schools. Therefore, CAB concurs with the District and finds that Lincoln has not satisfied the legislative intent of the CSL.

Lincoln Has Failed to Provide Satisfactory Information Regarding the Required Application Components Under the Charter School Law.

The Commonwealth Court has held that when an identified site for a proposed charter school becomes unavailable, the Charter School must inform the School District. Further, the Charter School must submit a new application to the School District in order to afford the School District an opportunity to consider whether the newly proposed facility is appropriate under the CSL. *Montour Sch. Dist. v. Propel Charter Sch.*, 889 A.2d 682 (Pa. Commw. 2006) (citing *Souderton Area Sch. Dist. v. Souderton Charter Sch. Collaborative*, 764 A.2d 688 (Pa. Commw. 2000)). In its Application, Lincoln identified four potential locations for its charter middle school. Cert. R., pgs. 50-51. Currently, Lincoln has no permanent site for its charter middle school and the location that Lincoln is considering as a temporary site, the Manito building, was not identified as a potential location in Lincoln's Application.

Lincoln has submitted a lease for the Manito building into the record; the lease would allow Lincoln to lease the Manito Building for up to five years. *See* Cert. R., pgs. 1757-1768. This is troublesome not only because, if a charter were to be granted, the term of the charter would be five years, but for multiple other reasons as well. The District's contention, with which we agree, is that Lincoln, by submitting the proposed lease to the Manito building, has attempted to circumvent the requirements set forth in *Mountor* and *Souderton*. This is unacceptable, as a

School District must know where a charter school is going to be located during the length of the charter. Moreover, this information must be formally presented to a School District so that an inquiry into the suitability of the location can be made. Because Lincoln has neither informed the District of a site it is considering as a permanent location nor submitted a revised charter application with new information, CAB finds that Lincoln has failed to provide a required application component under the CSL.

Additionally, multiple problems arise from Lincoln's proposed use of the Manito building, even if only for a temporary time. Lincoln attempts to justify the use of the Manito building by asserting that the Manito building will be only a temporary location. *See Cert. R.*, pg. 1089. Lincoln, however, has submitted a lease to the Manito site which would allow Lincoln to lease the Manito property for up to five years. Thus, were CAB to grant Lincoln's appeal, the charter middle school could operate in a "temporary" location for the initial five years of its term. Moreover, of concern to CAB is that the Manito building may not be large enough to house the number of students that Lincoln expects to become enrolled in the charter middle school. Lincoln has projected a proposed enrollment of 450 students in its first year.⁴ Lincoln has further projected an enrollment of 540 students in the second year, 570 in the third year, 640 in the fourth year and 690 students in the fifth year of its charter. *Cert. R.*, pg. 6. Based upon these numbers, the Manito building will not be feasible beyond the first year of the charter because it cannot accommodate more students. Furthermore, the Manito facility has neither a kitchen nor a gymnasium. Consequently, lunches would have to be catered and a remote location must be found and utilized for recreational purposes. Again, CAB agrees with the District that catered lunches and/or a remote location for physical education classes might be

⁴ Lincoln has admitted that placing 450 students in the Manito building would be a "tight fit". *Cert. R.*, pg. 1088.

feasible for a very short period of time; however, the situation is not feasible for an extended period of time. Thus CAB concurs with the District and finds that the Manito Building is not a suitable site for the proposed charter middle school.

V. CONCLUSION

Because Lincoln has not demonstrated that its charter middle school will satisfy the legislative intent of the CSL and because Lincoln has failed to provide adequate information regarding required application components under the CSL, CAB finds that the School District of the City of York had sufficient legal grounds, pursuant to the Charter School Law, to deny Lincoln's petition to create a charter middle school and upholds that denial and makes the following:

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ORDER

AND NOW, this 17th day of October, 2008, based upon the foregoing and the vote of this Board⁵, the appeal of the Lincoln Charter Middle is **DENIED**.

For the State Charter School Appeal Board

/s/
Gerald L. Zahorchak, D.Ed.
Chairman

Date Mailed: October 17, 2008

⁵ At the Board's August 26, 2008 meeting, the appeal was denied by a vote of 0-6 with members Akers, Barker, Reeves, Shipula, and Zahorchak voting to deny the appeal.