

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION

STATE CHARTER SCHOOL APPEAL BOARD

In re: Gillingham Charter School :  
 : Docket No. CAB 2010-7  
 :  
Appeal from the Denial of Charter :  
by Pottsville Area School District :

OPINION AND ORDER

**I. Introduction**

This matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on Appeal by the Gillingham Charter School (“Gillingham”) from the denial of its Charter School Application by the Pottsville Area School District (“Pottsville”).

**II. Findings of Fact**

1. Gillingham submitted a charter application to Pottsville on November 13, 2009. (Exhibit 1).<sup>1</sup>
2. Pottsville held a public hearing regarding the charter application on December 18, 2009. (Exhibit 2).
3. On February 24, 2010, at a public meeting, the Pottsville Board of School Directors voted to deny the charter application.
4. Gillingham submitted a revised charter application to Pottsville in June 2010. (Exhibit 9).

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<sup>1</sup> Exhibits are those included in the Revised Record submitted to CAB.

5. On July 21, 2010, at a public meeting, the Pottsville Board of School Directors voted to deny the revised charter application. (Exhibit 11). Pottsville noted the following deficiencies in the revised charter application:

- a. Lack of demonstrated sustainable support for Gillingham because of weak turnout at the June board meeting, the lack of interest in student matriculation, and the few letters of endorsement from the community;
- b. A questionable plan to provide a comprehensive learning experience because there is no centralized school library, Gillingham has not determined the number of special education students who pre-enrolled, and Gillingham was providing students only a bagged lunch;
- c. There was no evidence Gillingham would serve as a model for Pottsville;
- d. The only uniqueness or distinction in the revised charter application was the desire to exclude the use of textbooks in grades K-6;
- e. Gillingham did not provide a well-developed curriculum and instructional program;
- f. Gillingham did not identify teachers who are interested in teaching at Gillingham;
- g. Gillingham did not provide an itemized budget and financial plan showing the ability to be sustainable because its budget was based on 180 students;
- h. Gillingham's professional development budget was inadequate;
- i. With only two teachers indicating their desire to work at Gillingham it is impossible to determine if Gillingham will have 75% of its staff certified and if non-certified staff will meet the qualifications of the law;
- j. The budget's lack of sustainability makes it questionable whether Gillingham will be able to contribute to the Public Employees Retirement System and pay social security benefits;
- k. The cost of health care is grossly underestimated; and
- l. The budget for technology is grossly insufficient.

(Exhibit 12).

7. On October 25, 2010, Gillingham filed with the Court of Common Pleas of Schuylkill County, a petition to appeal the July 21, 2010 denial by Pottsville. (Exhibit 13).

8. The Court of Common Pleas of Schuylkill County issued a Decree dated November 29, 2010, stating that Gillingham's petition to appeal Pottsville's denial of the revised charter application was sufficient to allow the appeal to proceed. (Exhibit 13).

9. Gillingham filed its Petition for Appeal with the Secretary of Education on December 20, 2010.

10. As agreed to by counsel for Gillingham and Pottsville, a certified Revised Record was submitted to CAB. (Bate stamped record, pgs. 0001 – 2345).

11. On March 30, 2011, Gillingham and Pottsville presented arguments to CAB supporting their respective positions regarding Gillingham's Petition for Appeal.

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

1. Gillingham's Petition for Appeal is properly before CAB, pursuant to the Charter School Law ("CSL"). 24 P.S. §§ 17-1701-A *et seq.*

2. In reviewing Pottsville's decision to deny Gillingham's revised charter application, CAB is to give due consideration to Pottsville's findings and is to specifically articulate its reasons for agreeing or disagreeing with those findings. 24 P.S. § 17-1717-A(i)(6).

3. The Pennsylvania Supreme Court has found that *de novo* review is the proper standard of review to be applied when CAB is reviewing a charter school's appeal from the denial of its charter application by a school district. *See, West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002).

4. The criteria that CAB must evaluate in making a decision in a charter school appeal are set forth in 24 P.S. § 1717-A(e)(2), as follows:

- a. The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d).
- b. The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.
- c. The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.
- d. The extent to which the charter school may serve as a model for other public schools.

5. Gillingham's revised application provides sufficient information and documentation to meet the requirements of the CSL.

#### **IV. Discussion**

##### **A. Demonstrated Sustainable Support**

A charter school applicant is required to demonstrate in its application "sustainable support for the charter school plan by teachers, parents, other community members and students." 24 P.S. § 17-1717-A(e)(2)(i). Support under this criterion may be determined in the aggregate. *Brackbill v. Ron Brown Charter School*, 777 A.2d 131, 137-38 (Pa. Cmwlth. Ct. 2001). CAB has previously indicated that sustainable support is measured against the initial opening and operation plan of the Charter School. *Bear Creek Community Charter School*, CAB 2004-2, pgs. 6- 7.

Gillingham states in its revised application that it projects 180 students for its first year of operation. Gillingham provided: (1) letters of intent that represent approximately 151 students;

(2) approximately 80 letters of support from community members in Pottsville; (3) approximately 17 letters of support from businesses and community organizations; (4) a letter of support from a state Senator; and (5) 5 residents speaking in support at a public meeting.

Pottsville found that Gillingham had not demonstrated sustainable support because of the “weak turnout at the board meeting in June, the lack of interest in student matriculation, and the few letters of endorsement from the community.” (Exhibit 12). Pottsville acknowledged that there were 2 teachers identified as showing interest in teaching at Gillingham, 5 people who spoke in favor of Gillingham at the June 16, 2010 board meeting, 71 form letters in support from Pottsville residents, 17 form letters of support from Pottsville’s business community, a letter of support from a state Senator, and pre-enrollment forms for approximately 151 students.

Pottsville states that it contacted parents of 92 students who had signed pre-enrollment forms and allegedly found that the parents of 67 students said they would not enroll in Gillingham. Pottsville did not provide any evidence to support its statements that parents of 67 students said they would not enroll in Gillingham. In addition, Gillingham states that this was a “campaign of confusion and intimidation.” After learning that Pottsville had called parents who had signed letters of intent, Gillingham contacted parents and was able to receive approximately 54 letters and statements reaffirming the letters of intent from 54 parents. Some of the parents who had been contacted by Pottsville stated that they had been told by Pottsville that they had to disenroll their children from Pottsville and some felt that the caller was unprofessional and that this was a scare tactic. (Exhibit 8 – Statement Reaffirming Letter of Intent).

We find the support reflected in the pre-enrollment forms, together with the other letters and evidence of support, to be adequate to demonstrate sustainable support for a school of this size. As stated previously, support can be demonstrated without parents attending a hearing to

support the applicant, and a lack of support from teachers is not an obstacle to finding demonstrated, sustainable support. *Renaissance Academy of Pittsburgh, Alternative of Hope Edison Charter, School*, CAB 2001-02, pgs. 8-9; *Propel Charter School-Montour*, CAB 2004-3, p. 10.

For these reasons, this rationale for Pottsville's denial of the revised application is rejected.

#### **B. Comprehensive Learning Experience**

Pottsville states that Gillingham has presented a questionable plan to provide a comprehensive learning experience because it: (1) will not have a centralized school library; (2) has not determined the number of special education students who pre-enrolled; and (3) has not budgeted money for free or reduced breakfast and lunch for qualified students.

Gillingham's educational strategy does not include a centralized library. Rather, Gillingham will have classroom libraries and will have regular times for visiting the classroom libraries as well as having students take books home to read as part of student homework. (R. 1051-52). There is no requirement in the Charter School Law that charter schools have a centralized library. In addition, CAB has previously rejected the lack of a centralized library as a basis for denying a charter application. *Fell Charter School*, CAB 2007-4.

Pottsville also states that Gillingham failed to determine the number of special education students who pre-enrolled and, therefore, inadequately planned to offer the appropriate services. The pre-enrollment forms are used to demonstrate sustainable support for the charter plan. Gillingham cannot know, at this time, the number of special education students who will enroll in Gillingham and cannot know, at this time, the exact nature of each special education student's disability. However, Gillingham has provided a special education plan in its revised application,

and Pottsville has not stated any problems with the special education plan. Gillingham has also provided proposals from some related service providers, which shows that Gillingham has made initial contact with possible providers of services for its special education students. Thus, it is evident that Gillingham understands what it needs to do to provide appropriate services for any special education student who enrolls in Gillingham.

Pottsville also states that Gillingham must provide a free or reduced breakfast and lunch to every student enrolled in Gillingham who qualifies. However, the Charter School Law does not require charter schools to participate in the free/reduced breakfast or lunch program. If Gillingham chooses to participate in the program, it must meet the requirements of the program. Simply because Pottsville participates in the program and provides both breakfast and lunch to its eligible students does not require that Gillingham do the same.

For the above reasons, each rationale stated above for Pottsville's denial of the revised application is rejected.

### **C. Curriculum and Uniqueness**

Pottsville does not believe that the curriculum used in the Relational Education program that Gillingham proposes to use provides the correct allocation of instructional time. For example, Pottsville is concerned that the curriculum for 5<sup>th</sup> graders only allocates 30 minutes per week for reading, 30 minutes twice a week for literature, 25 minutes three times a week for general science, and no allocation of time for composition and writing. Pottsville has not stated that Gillingham failed to adequately describe its curriculum; rather, Pottsville objects to specific aspects of the curriculum as noted in the prior example.

Gillingham's curriculum, which is Relational Education, does not focus on traditional textbooks but on whole books and attaching facts to their informing ideas. Gillingham uses

blocks of time for its instruction that are smaller than blocks of time usually devoted to single subjects by school districts; however, reading and writing are not taught just in discrete classes but are taught across the entire curriculum and used in all subject areas. Gillingham also uses classes that are multi-aged; and, even though Gillingham will have high expectations for each student, each student will have an individualized learning plan geared to their skills and needs. So even though Gillingham will use different instructional methods than Pottsville does, it does not mean that Gillingham's curriculum is deficient. Gillingham has provided extensive information about the curriculum, including scopes and sequences for each content area and the correlations between Pennsylvania's academic standards and Gillingham's curricular program.

Pottsville also states that Gillingham will not serve as a model for Pottsville and that the only sign of uniqueness is the desire to exclude textbooks in grades K-6. However, Gillingham has provided a list of twenty-five strategies that are unique to Relational Education, and Pottsville has not provided any evidence that these are not unique strategies. For example, as stated above, one of the strategies is short class periods. Pottsville says that there is nothing unique about the length of class periods. But when Gillingham states that research shows that the human brain can concentrate for no longer than 30 minutes, Pottsville asks why the 500 school districts in the Commonwealth use class lengths longer than 30 minutes if they are a waste of time. If all school districts in the Commonwealth have class periods longer than 30 minutes, then Gillingham's use of short class periods is unique.

For these reasons, each rationale stated above for Pottsville's denial of the revised application is rejected.



**D. Adequate Process for Assuring Student Performance and Accountability**

CAB is not sure what Pottsville's criticism is under this heading. Pottsville states that Gillingham only identified 2 teachers who had applied to teach at the charter school but that Gillingham had indicated that 16 teachers were interested in teaching at Gillingham. Pottsville questioned why applications had not been completed or why the identity of the interested teachers had not been made known to Pottsville. Pottsville then states that without this information it cannot determine if Gillingham will be in compliance with the law. Related to this is Pottsville's statement that it is impossible to determine whether Gillingham will be in compliance with the provision of the Charter School Law that requires at least 75% of the professional staff to hold appropriate State certification.

More often than not, charter school applicants do not have teachers at the time the application is submitted to a school district, or at the time of the public hearing regarding the application. In addition, it is not clear how knowing the names of teachers who expressed an interest in teaching at a charter school would allow a school district to determine if the charter school applicant would have an adequate process for assuring student performance and accountability. Also, even though teachers might have expressed an interest in teaching at Gillingham, it does not mean that those teachers would be hired. Determining whether a charter school's professional staff meets the "75% appropriately certified" requirement cannot occur until after professional staff has actually been hired.

For these reasons, each rationale stated above for Pottsville's denial of the revised application is rejected.

## **E. Budget**

Much of Pottsville's issue regarding the budget is the number of students who will enroll in Gillingham in the first year. Gillingham has projected 180 students and has based its budget on that projection. Because Pottsville did not believe that Gillingham would enroll that many students, it analyzed a budget based on an enrollment of 73 students. Pottsville used 73 students based on the phone calls it had made to parents who had signed pre-enrollment forms and the alleged 67 who said they would not enroll in Gillingham. CAB has already decided that Gillingham provided sufficient evidence of demonstrated, sustainable support and finds that the projection of 180 students is not unrealistic. Thus, CAB does not accept Pottsville's analysis of the budget based on Pottsville's projection regarding Gillingham's enrollment.

Pottsville also says that \$25,000 for Gillingham's professional development plan is inadequate. Pottsville states that enrolling even one employee in one course at the Pennsylvania State University would cost \$43,368. However, Gillingham never stated that its professional development plan would include payment of tuition costs for courses at Penn State. Gillingham has explained the professional development opportunities that will be available to teachers and staff and a breakdown of the costs, which totals \$25,000.

Pottsville states that Gillingham has underestimated the cost of medical insurance for its employees. Gillingham has to provide the same coverage for its employees that they would receive if employed by Pottsville, and Pottsville believes that Gillingham did not determine what it would cost Pottsville to provide its employees health care. However, Gillingham states that BMC Benefit Services, which specializes in charter schools, used the costs and figures from Pottsville's medication coverage plan to estimate the medical insurance coverage for Gillingham's employees. CAB has stated previously that a charter application cannot be denied

“based upon a financial analysis comparing the various costs of a charter school’s budgetary items to the cost of the same budgetary items of a school district.” *Arts & R’s, Inc. d/b/a Helen Murray Charter School for the Arts*, CAB 2005-5, pgs. 12-13; *Bear Creek Community Charter School*, CAB 2004-2, p. 14.

Pottsville believes that Gillingham’s budget for technology is inadequate. This is based on Pottsville maintaining a 2:1 student to computer ratio. However, Gillingham is not required to match Pottsville’s student to computer ratio. Gillingham has budgeted for the technology equipment it will use based on an estimate received from a local provider.

Pottsville also believes it is questionable whether Gillingham will be able to contribute to the Public School Employees Retirement System and pay social security benefits. Pottsville makes this assumption based on what it believes to be the budget’s lack of sustainability. CAB assumes that Pottsville’s belief that the budget lacks sustainability is based on Pottsville’s assumption that only 73 students will enroll in Gillingham. CAB has already addressed this issue and found that Pottsville’s assumption is not supported.

For these reasons, each rationale stated above for Pottsville’s denial of the revised application is rejected.

#### **F. Facility**

Pottsville states that the proposed facility to be used by Gillingham does not meet most current building, fire and life safety, ADA and electrical codes and standards for building ventilation. It appears, however, that Pottsville is simply stating that Gillingham must provide Pottsville with documentation that the building is in compliance with all existing laws and codes once the building is renovated.

Gillingham has provided the information about the building that is required by the Charter School Law. In addition, Gillingham provided a feasibility study that specified the alterations that would be needed and the probable costs. The architect also provided information addressing the accessibility, fireproofing and ventilation issues raised by Pottsville.

For these reasons, this rationale for Pottsville's denial of the revised application is rejected as well.

**V. Conclusion**

For all the above-stated reasons, the decision of the Pottsville Area School District to deny the Gillingham Charter School Application is reversed and the charter is granted.

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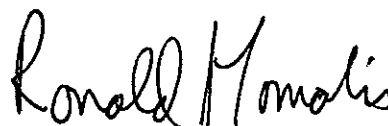
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By Pottsville Area School District :

ORDER

AND NOW, this 15<sup>th</sup> day of June, 2011, based upon the foregoing and the vote of this Board,<sup>2</sup> the Appeal of the Gillingham Charter School is **GRANTED** and the Pottsville Area School District is directed to issue a charter to Gillingham Charter School pursuant to section 1720 of the Charter School Law. 24 P.S. §17-1720-A.

For the State Charter School Appeal Board,



Ronald J. Tomalis  
Chairperson

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<sup>2</sup> At the Board's June 7, 2011 meeting, the appeal was granted by a vote of 5 to 0 with members Chairman Ronald J. Tomalis, Mr. Michael G. Akers, Ms. Marcia R. Reeves, Mr. David A. Shipula and Dr. James E. Barker voting to grant the appeal.