

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

STATE CHARTER SCHOOL APPEAL BOARD

In re: Howard Gardner Multiple :
Intelligence Charter School :
 : Docket No. CAB 2011-4
Appeal from the Denial of Charter :
By Scranton School District and :
Abington Heights School District :

OPINION AND ORDER

I. INTRODUCTION

This matter comes before the Charter School Appeal Board (“CAB”) on appeal by the Howard Gardner School for Discovery from the denial of its Regional Charter School Application for the Howard Gardner Multiple Intelligence Charter School by the School District of the City of Scranton and the Abington Heights School District.

II. FINDINGS OF FACT

A. Procedural

1. The Howard Gardner School for Discovery filed applications with the School District of the City of Scranton and the Abington Heights School District on November 15, 2010 to establish the Howard Gardner Multiple Intelligence Charter School, requesting that it be granted a charter in accordance with the Pennsylvania Charter School Law. 24 P.S. §17-1701, *et seq.* (Note: The Howard Gardner School for Discovery is the applicant applying to form the Howard Gardner Multiple Intelligence Charter School both of which shall be collectively referred to hereinafter as “Howard Gardner.”)

2. The School District of the City of Scranton ("Scranton") held a public hearing on the application on December 28, 2010.

3. The Abington Heights School District ("Abington Heights") held a public hearing on the application on December 27, 2010, and a second public hearing was held on the application on February 9, 2011.

4. On March 2, 2011 Abington Heights rejected Howard Gardner's application.

5. On March 7, 2011, Scranton rejected Howard Gardner's application.

6. On April 6, 2011, Abington sent Howard Gardner written notification, pursuant to 24 P.S. §17-1701-A(e)(5), of its reasons for denying the application. Scranton did not send its written notice of decision until June 1, 2011.

7. Both school districts alleged the same deficiencies in Howard Gardner's application, as follows:

a. Howard Gardner's application fails to show that the school has sustainable support;

b. Howard Gardner's application fails to explain how student assessment will further the charter school's mission, education goals, or the curriculum to be offered;

c. Howard Gardner's application fails to provide an adequate financial and audit plan for the proposed charter school;

d. Howard Gardner's application fails to propose an adequate professional development for the faculty;

- e. Howard Gardner's application fails to demonstrate that the proposed charter school will improve pupil learning;
- f. Howard Gardner's application does not demonstrate that the proposed charter school will increase learning opportunities;
- g. Howard Gardner's application does not sufficiently detail how it will meet the needs of special education students;
- h. Howard Gardner's application does not encourage the use of innovative teaching methods;
- i. Howard Gardner's application does not provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system;
- j. Howard Gardner's application does not demonstrate effective accountability for meeting measurable academic standards; and
- k. Howard Gardner's application does not demonstrate that the proposed charter school could serve as a model for other public schools.

8. Abington Heights School District also found that Howard Gardner's application does not include a location within its boundaries.

9. On April 19, 2011, Howard Gardner filed a Petition to Appeal the Denial of a Charter School Application with the Lackawanna County Court of Common Pleas, at Docket No. H-CV-2487, together with the signatures of 1,452 residents of the Scranton School District and 563 residents of the Abington Heights School District, in accordance with the requirements of 24 P.S. §17-1717-A(i)(2).

10. On May 17, 2011, the Lackawanna County Court of Common Pleas issued an Order decreeing that: (1) the signatures were sufficient pursuant to 24 P.S. §17-1717-A; and (2) the decree shall be timely transmitted to the Pennsylvania Charter School Appeal Board (“CAB”) for further action.

11. On May 19, 2011, Howard Gardner filed its Petition for Appeal with the Secretary of Education.

12. A certified record was submitted to CAB.

13. On September 27, 2011, Howard Gardner, Scranton and Abington presented arguments to CAB supporting their respective positions regarding Howard Gardner’s Petition for Appeal.

B. Substantive

14. At the Abington hearings, eleven Howard Gardner parents and one board member testified; and at the Scranton hearing, eight Howard Gardner parents testified.

15. No one spoke in opposition to the proposed charter at Abington’s hearing; and only one person spoke in opposition to the charter at the Scranton hearing.

16. Howard Gardner’s application includes over 350 letters of support from members of the community. These letters include support from several administrators and professors from local universities and from many prominent local professionals.

17. Several hours of testimony by Vincent Rizzo, Howard Gardner’s Director, clearly outlined and addressed student assessment.

18. The Mission Statement of the proposed charter school specifically addresses how student assessment is at the core of the proposed school’s mission and how that assessment is an essential part of the mission and goals of the school.

19. The Howard Gardner application more than adequately describes the financial plan of the proposed charter school.

20. Howard Gardner's application sets forth the plan to offer professional development as an integral part of the school planning.

21. As part of the professional development program built into the school's design, the school has created innovative writing programs, a rubric system of evaluation for teachers and students, an outdoor school program, a year-round school design, innovative arts integration, and a laboratory atmosphere.

22. Howard Gardner's professional development program is standards-based and student needs-based.

23. The record in this appeal contains substantial evidence of how Howard Gardner proposes to accomplish improving pupil learning.

24. Howard Gardner's application describes numerous opportunities which are not currently available to students in the respective Districts, such as:

- a. Innovative assessments;
- b. Small class size and lower teacher-pupil ratios;
- c. Year-round school; and
- d. Outdoor programming and curriculum.

25. Howard Gardner's application takes into consideration the inclusion of special programming for students with special needs and includes hiring a special education staff (at least one teacher and an aide), as well as making services for psychological and academic testing available.

III. CONCLUSIONS OF LAW

1. Howard Gardner's Petition for Appeal is properly before the CAB, pursuant to the Charter School Law ("CSL"). 24 P.S. §17-1717-A, *et seq.*

2. In reviewing the decisions of the Scranton and Abington Heights school districts to deny Howard Gardner's charter application, CAB is to give due consideration to their 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 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 the CSL 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.

24 P.S. §1717-A(c)(2).

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

IV. DISCUSSION

A. Demonstrated Sustainable Support

Sustainable support must be measured in the aggregate, not by individual categories.

Brackbill v. Ron Brown Charter School, 777 A.2d 131, 137-138 (Pa. Commw. 2001); *see also Cent. Dauphin Sch. Dist. V. Founding Coalition of the Infinity Charter Sch.*, 847 A.2d 195, 2004 Pa. Commw. LEXIS 302 (Pa. Commw. Ct. 2004) (emphasis of the Charter School Law is on the applicant showing that the charter school enjoys reasonably sufficient support from the community, not showing some minimum level of support from each of the more discrete groups listed). Both school districts argue that demonstrated support is lacking because only a relatively small number of individuals testified in support of the charter application at the public hearings. However, both districts fail to credit the documented support included in the application, which includes letters of support from members of the community and from parents intending to register their child at the school. (AHCR 1; SCR 2.)¹ Further, during the public hearings before both school districts, only one individual testified against the formation of the proposed charter school. Thus, we reject the districts' finding that sustainable support was not demonstrated.

B. Curriculum and Accountability for Meeting Measurable Academic Standards

Regarding curricula and assessment methods, this Board has previously found that a school would be using appropriate methods of meeting measurable academic standards where the

¹ The Certified Record references are as follows: Abington Heights is designated as "AHRC"; and Scranton is designated as "SCR."

proposed charter school's application indicated that it would use "teacher assessment of student work, reading inventories, student portfolios, as well as standardized testing and state testing" for its comprehensive assessment plan. *In re: Propel Charter School McKeesport*, CAB 2004-1.

The substantial evidence in the record in this case, including Howard Gardner's application, sets forth the proposed student assessment plan, which includes required state testing. An applicant is required to describe the proposed charter curriculum with substance, not merely in terms of goals and guidelines. *In re: Shenango Valley Regional Charter School*, Docket No. CAB 1999-

11. Further, an applicant must sufficiently articulate methods of accountability to determine whether students are meeting various educational goals. *In re: David P. Richardson Academy Charter School*, Docket No. CAB 2001-8. As stated in its application (AHCR 4, SCR 2 at pp.

19-20), Howard Gardner uses multiple assessments including, and not limited to: (1)

standardized testing; (2) portfolio assessment; (3) projects and demonstrations; and (4)

traditional tests and quizzes. (AHCR 4, SCR 2 at pp. 19-20.) In addition, formative assessments which are more qualitative in nature (*e.g.*, projects, portfolio accumulations) are being used.

(AHCR 4, SCR 2 at p. 13.) Thus, we find that Howard Gardner's application adequately documents compliance with these requirements and reject the districts' contrary findings.

C. Financial Stability and Audit Plan

Regarding the financial stability of the proposed charter school, CAB has held that evaluating an application on the basis of financial considerations is improper. *In re: Fell Charter School*, CAB 2001-9. This Board considers the creation of financial criteria for judging a charter school application to be improper. *In re: Wonderland Charter School*, CAB 1999-3.

Nonetheless, the financial plan documentation contained in Howard Gardner's application, combined with its established history of successful operation for several years, belies any

financial concerns raised by the school districts. (AHCR 4 and SCR 2 at pp. 34-38 and Appendix D.) The Commonwealth Court has held that as long as the Board can determine that the school was capable of providing a comprehensive learning experience for the students, particular specifics in a budget were not required. *Cent. Dauphin Sch. Dist. v. Founding Coalition of the Infinity Charter Sch.*, 847 A.2d 195, 2004 Pa. Commw. LEXIS 302 (Pa. Commw. Ct. 2004), appeal denied by 580 Pa. 707, 860 A.2d 491, 2004 Pa. LEXIS 2407 (2004). While no audit was included in the application, as a private, nonprofit earning less than \$1 million per year, Howard Gardner has not been required to have an audit. The Charter School Law only requires that the application include “[t]he financial plan for the charter school and the provisions which will be made for auditing the school under section 437.” 24 P.S. §17-1719-A(9). The application has described in detail the financial plan of the proposed charter school and so complies with the requirements of the Charter School Law. (AHCR 4 and SCR 2 at pp. 34-38 and Appendix D.)

D. Professional Development Plan for the Faculty

This Board has previously found there to be substantial evidence of professional development opportunities in compliance with the Charter School Law where an application sets forth: that teachers will participate in training and workshops where specific instructional practices are introduced and refined and where student work is reviewed; that students will receive individual coaching in classrooms; that teachers will observe and collaborate with their peers during planning times; that the school will conduct a basic orientation to all teachers to provide an overview of the school, learning experiences and instructional strategies; that two lead teachers will be appointed to provide professional development activity; and that teachers will participate in extended institutes over the summer. *See In re: Propel Charter School*

McKeesport, CAB 2004-1. The Charter School Law does not require that the development plan for teachers describe in minute detail professional development plans for all teachers (*In re: Appeal of Phoenix Academy Charter School*, CAB 1999-10; *see also In re: Propel Charter School McKeesport*, CAB 2004-1; but that a more general program of training satisfies the statutory requirement. Section 5B of Howard Gardner's application sets forth a detailed plan to offer professional development as an integral part of the school planning. (AHCR 4, SCR 2 at pp. 17-18, 41.) The record contains substantial evidence that the application and Howard Gardner as the applicant have a plan for staff and professional development that satisfies the requirements of the Charter School Law. Thus, we reject the conclusions of the districts that professional development was not adequately addressed.

E. Demonstration of Improved Pupil Learning

The Charter School Law does not provide that a charter school must prove to the district, unequivocally, that the charter school will improve student learning. *In re: Collegium Charter School*, CAB 1999-9. The record in this appeal contains substantial evidence of how Howard Gardner proposes to accomplish improving pupil learning. Specifically, Howard Gardner, for years, has adopted a reflective teaching methodology that begins with standardized testing in the fall of the odd numbered school grades, *i.e.*, 3, 5 and 7. (AHCR 4, SCR 2 at p. 20.) The documented growth evidence in Terra Nova testing over the past five years demonstrates that by the start of grade 7 Howard Gardner students are performing above their grade levels. The results also show gradual growth from early grade 3 through grade 7 which growth Howard Gardner attributes to the prescriptive process employed by the school and which Howard Gardner intends to continue to use in its iteration as a charter school. (AHCR 4, SCR 2 at p. 17.)

The application therefore more than adequately demonstrates the potential for improved student learning required by the Charter School Law.

F. Increased Learning Opportunities and Providing Parents and Pupils with Expanded Choices

The Charter School Law does not set a limit on the number of options or programs that may be available. The Charter School Law merely requires that the charter school application set forth the opportunity for parents and pupils to have “expanded choices” by the creation of the charter school that is the subject of the application. *In re: Propel Charter School McKeesport*, CAB 2004-1. The school districts both argue that their own programs are more expansive and/or include everything proposed by Howard Gardner. However, Howard Gardner’s application lists multiple opportunities which it asserts are not available to students in one or both school districts:

1. Innovative assessments (AHCR 4, SCR 2 at pp. 13-14, Appendix A);
2. Small class size and lower teacher-pupil ratios (AHCR 4, SCR 2 at p. 15, Appendix A);
3. Proprietary Science and Spanish curriculum (AHCR 4, SCR 2 at Appendix A; AHCR 6 at pp. 29, 34-36; SCR 4 at pp. 25-28);
4. Year Round School (AHCR 6 at p. 10, SCR 4 at pp. 22-23; AHCR 4, SCR 2 at p. 39);
5. Outdoor programming and curriculum (AHCR 4, SCR 2 at pp. 24, 29; SCR 4 at pp. 25-26);
6. Service and community orientation (AHCR 4, SCR 2 at pp. 21-22);
7. Laboratory setting (AHCR 4, SCR 2 at pp. 11, 17, 29);

8. Interface with Keystone College (AHCR 4, SCR 2 at p. 11, 17, 28-29);
9. NALS association (AHCR 6 at p. 13, SCR 4 at pp. 12, 16; AHCR 4; SCR

2 at p. 11).

Therefore, we find that Howard Gardner has adequately demonstrated that it provides the expanded choices required by the Charter School Law and reject the districts' contrary conclusions.

G. Needs of Special Education Students

The districts both contend that the application should be denied because Howard Gardner failed to explain how it intends to meet its legal obligation to provide a free and appropriate public education to students with disabilities under the Individuals with Disabilities Education Act (2004) and Section 504 of the Rehabilitation Act of 1973. The application and its statements regarding special education demonstrate an understanding of the law and a willingness to do whatever will be needed to comply. Moreover, as a private school, Howard Gardner does not offer a special education program; but counsel for the applicant explained during oral argument before the CAB that Howard Gardner already provides educational services to current students with special needs, further alleviating any concern that it does not understand or cannot provide for the needs of such students. More is not required in an application by the Charter School Law.

H. Use of Innovative Teaching Methods

While both school districts allege that the application does not encourage the use of innovative teaching methods, they fail to describe with any particularity what is lacking in the application, especially since both districts repeatedly make reference to the "unique" program offered by Howard Gardner. Thus, we find that the Howard Gardner application has sufficiently

established the proposed use of innovative teaching methods for purposes of the Charter School Law.

I. The Extent to Which the Proposed Charter School Could Serve As a Model for Other Public Schools

While this aspect of any application is somewhat subjective, Howard Gardner's application at page 11 (AHCR 4, SCR 2) specifically addresses how Howard Gardner's proposed charter school intends to be a model for other public schools. Therefore Howard Gardner's application complies with this aspect of the Charter School Law.

J. Location Within the Boundaries of Abington Heights School District

The Charter School Law provides that "a charter school may be established" (24 P.S. 17-1717-A(a)) and "[a]n application to establish a charter school shall be submitted to the local board of school directors of the district where the charter school will be located" (24 P.S. 17-1717-A(c)). In addition, the law provides that "a regional charter school may be established" (24 P.S. 17-1718-A(a)) and "[t]he boards of school directors of one or more school districts may act jointly to receive and consider an application for a regional charter school" (24 P.S. 17-1718-A(b)). As a proposed regional charter school, we find that Howard Gardner need not have a physical location in every school district to which it applies.

V. CONCLUSION

For all the above-stated reasons, the decisions of Scranton and Abington Heights are reversed; and the charter is granted.

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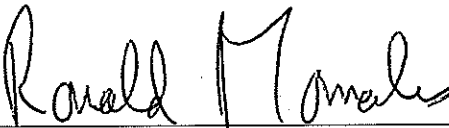
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ORDER

AND NOW, this 3rd day of January, 2012, based upon the foregoing and the vote of this Board², the Appeal of the Howard Gardner School for Discovery is GRANTED; and the School District of the City of Scranton and the Abington Heights School District are directed to issue a charter to the Howard Gardner Multiple Intelligence 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, Chairman

² At the Board's October 25, 2011 meeting, the Appeal of the Howard Gardner School for Discovery was granted by a vote of 6 to 0, with Members Barker, Lawrence, Marks, Munger, Tomalis and Yanyanin voting to grant the Appeal.



PENNSYLVANIA DEPARTMENT OF EDUCATION

REQUEST FOR SECRETARY OF EDUCATION'S SIGNATURE

Name/Title of Originator: Ernest N. Helling, Assistant Chief Counsel

Signature of Originator:

Description of Item to be Signed: Opinion and Order In re:
Howard Gardner Multiple Intelligence Charter
School v. Scranton and Abington Heights
School Districts

Date by which Signature is Required: January 27, 2012

Directions:

All documents requiring the signature of the Secretary of Education must be delivered to the office of the Executive Deputy Secretary with a completed "Request for Secretary of Education's Signature" form.

Prior to being submitted to the Executive Deputy Secretary, a request for the Secretary of Education's signature must be approved by the appropriate cabinet-level officer (Deputy Secretary, Director of Policy, Chief Counsel, Special Assistant to the Secretary).