

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
CHARTER SCHOOL APPEAL BOARD**

<b>EDUCATION FOR NEW GENERATIONS</b>	:	
<b>CHARTER SCHOOL</b>	:	
	:	
v.	:	<b>CAB Docket No. 2013-10</b>
	:	
<b>NORTH PENN SCHOOL DISTRICT</b>	:	

**OPINION**

This matter comes before the State Charter School Appeal Board (“CAB”) on an appeal by Education for New Generations Charter School (“New Generations”) from the decision of North Penn School District (“District”) to deny its revised application for a charter.

**PROCEDURAL HISTORY**

On October 31, 2012, New Generations submitted its initial application to establish a charter school to the District (the "Initial Application"). After a December 3, 2012 public hearing, this initial application was denied by the District on February 12, 2013. The initial unanimous denial was based upon the following: no comprehensive learning experience (Denial, p.5); no evidence of an ESL Program (Denial, p.5); insufficient evidence of start-up funding (Denial, p.7); no contract with the independent business manager (Denial, p.7); and a lack of demonstration of sustainable support (Denial, p.9).

As permitted by Section 1717-A(f) of the Charter School Law (“CSL”), New Generations chose to revise and resubmit its application on March 22, 2013 ("Revised Application"). On May 17, 2013, the District's Board again voted unanimously to deny the Revised Application stating, "the evidence provided by [the New Generations] does not demonstrate the type of

support that will be necessary to sustain a charter school in the North Penn School District." (Denial on Revised Application, p.2). The other issues were deemed cured by the Revised Application.

Upon receipt of this denial, New Generations commenced the signature petition process. Following a decree issued by Montgomery County Common Pleas Court Senior Judge William T. Nicholas on October 8, 2013 establishing the sufficiency of the petition, New Generations initiated this appeal on October 10, 2013 (HO-2).

### **FINDINGS OF FACT**

1. On October 31, 2012, New Generations filed its initial application with the School District to operate a charter school within the District's boundaries. (Initial Application).
2. On December 3, 2012, the District's Board held a public hearing on the initial application pursuant to public notice. (Exhibits to Transcript of Public Hearing)<sup>1</sup>.
3. None of New Generation's founding members are residents of the District. (Revised Application, Appendix N; Transcript of Public Hearing, p. 44).
4. According to its proposed Bylaws, New Generations would be governed by a Board of Trustees of no less than three and no more than nine persons. (Revised Application, Appendix M, p.4). Although one of the members of the Board of Trustees must be the parent of a student enrolled in the charter school, there is no requirement that any of the members be residents of the District. (Revised Application, Appendix M).
5. At the public hearing, eight citizens spoke in favor of New Generations. Four of these eight had a relationship with founders through their teaching positions in neighboring school districts. (Transcript of Public Hearing, pp. 84-103).

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<sup>1</sup> These are referenced in the Transcript but the Exhibits are not attached.

6. On February 12, 2013, the District's Board unanimously voted, 9-0, to deny the initial application on the grounds that the Charter School proposed no comprehensive learning experience (Denial, p.5); showed no evidence of an ESL Program (Denial, p.5); had insufficient evidence of start-up funding (Denial, p.7); produced no contract with the independent business manager (Denial, p.7); and failed to demonstrate sustainable support (Denial, p.9).
7. On March 22, 2013, New Generations submitted a revised application to the District. (Revised Application).
8. There were 226 pre-enrollment forms submitted with the Revised Application. (Appendix J of the Charter School's Revised Application).
9. The first-year projected enrollment for New Generations is 220 students. (Revised Application, p.2).
10. New Generations obtained signature petitions in which 146 individuals indicated support for the charter school. (Appendix J of the Charter School's Revised Application).
11. There were approximately three dozen letters of support and offers of partnership from business owners, academic leaders, community leaders and parents. (Appendix J of the Charter School's Revised Application).
12. On May 16, 2013, the District's Board voted 8-0 to deny the revised application on the grounds of a failure to demonstrate sustainable support. (Denial of Revised Application).

### **CONCLUSIONS OF LAW**

1. CAB has jurisdiction over this appeal pursuant to the CSL. 24 P.S. §§ 17-1701-A *et seq.*
2. Section 1717-A(e)(2) of the CSL sets forth the factors to be considered by the local

board of school directors in the evaluation of a proposed charter school application:

- i. 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.
3. CAB has the authority under the CSL to agree or disagree with the findings of the District based upon its review of the certified record. 24 P.S. § 17-1717-A(i)(6).
4. New Generations has demonstrated sustainable support for the charter school plan by teachers, parents, other community members and students in accordance with section 1717-A(e)(2)(i) of the CSL. 24 P.S. § 17-1717-A(e)(2)(i).
5. The Revised Application indicates that New Generations is capable, in terms of support and planning, of providing comprehensive learning experiences to its students. 24 P.S. § 17-1717-A(e)(2)(ii).
6. The Revised Application considers the information requested in section 1719-A of the CSL and conforms to the legislative intent of the CSL. 24 P.S. § 17-1717-A(e)(2)(iii).
7. The Revised Application indicates that New Generations may serve as a model for other public schools. 24 P.S. § 17-1717-A(e)(2)(iv).
8. The Revised Application satisfies all of the requirements of the CSL.

## DISCUSSION

### **A. Standard of Review**

In an appeal before CAB, 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). The Commonwealth Court has held in the case of the denial of a charter school application that “[t]he General Assembly has unquestionably granted the CAB the authority to substitute its own findings and independent judgment for that of the local board.” *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 461 (Pa. Cmwlth. 2000). While giving due consideration to the vote of the School Board, CAB must independently review the record in accordance with the requirements of the CSL.

Section 1717-A(e)(2) of the CSL provides that a charter school application is to be evaluated based on the following criteria:

- (i) 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).
- (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 outlined in section 1702-A.
- (iv) The extent to which the charter school may serve as a model for other public schools.

24 P.S. §17-1717-A(e)(2).

While CAB must give a full review of the Revised Application based upon the criteria in the CSL, the parties have focused on the issue of whether or not there is demonstrated sustainable support, particularly by the community in which the Charter School will be located. CAB has thoroughly reviewed the record and agrees with the District and finds that New Generations has met all other requirements of the CSL.

### **B. Sustainable Support**

The CSL requires that a charter school application be evaluated for the “demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing.” 24 P.S. § 17-1717-A(e)(2)(i). “Sustainable support” means support sufficient to sustain and maintain the proposed charter school as an ongoing entity. *Ronald H. Brown Charter School*, Docket No. CAB 1999-1 at p. 18. Support is measured in the aggregate, and failure to demonstrate strong support in any one category is not fatal to a charter school application. *Brackbill v. Ronald H. Brown Charter School*, 777 A.2d 131, 138 (Pa.Cmwlth. 2001). “There is no minimum number of signatures or speakers called for in the [Charter School Law]. There are also no magic words. It is clear that each situation must be examined if the school district is to reach reasonable conclusions about community support.” *Propel Charter School-East*, Docket No. CAB 2005-01& -02 at p. 6.

The District noted several alleged deficiencies in New Generation’s support. At the hearing before CAB, the District argued that there was insufficient evidence that the support in the Revised Application was support for the charter school *plan*. The District noted that there was no evidence that the individuals who submitted the pre-enrollments or the individuals who signed the petition were made aware of the actual plan for the charter school. Additionally, the

District argues that none of the founders reside in, or appear to have any connection with, the North Penn School District. (Revised Application, pp. 33-34; Appendix N, pp. 2, 10).

To the contrary, New Generations argues that it has provided evidence of support far in excess of what is required by the CSL. In addition to submitting pre-enrollment forms in excess of its first-year projected enrollment, New Generations also submitted signatures from 146 individuals indicating support for the charter school and approximately three dozen letters of support and offers of partnership from business owners, academic leaders, community leaders and parents.

CAB finds there to be an adequate demonstration of sustainable support in New Generations' Revised Application. There are substantial pre-enrollments that exceed the first-year projected enrollment for the school,<sup>2</sup> in addition to the numerous letter of support from parents, business leaders, academic leaders, and members of the community. Additionally, CAB rejects the District's argument that there is no evidence that the support provided is support for the charter school *plan*, as opposed to the charter school itself. Such a distinction is immaterial, as support for the charter school plan can be inferred from the overwhelming number of pre-enrollments and letters of support. Furthermore, there is no requirement in the CSL that founders of a charter school reside in the District. In the aggregate, the evidence New Generations provided in its Revised Application shows sufficient support to meet the requirements of the CSL, and CAB rejects the District's finding to the contrary.

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<sup>2</sup> In prior decisions, CAB has found as sufficient evidence of sustainable support in pre-enrollments starting at 34%. *In re. William Bradford Academy Charter School*, CAB Docket No. 1999-8.

## CONCLUSION

Based upon the findings of fact and conclusions of law set forth above and as discussed in this opinion, CAB has determined that all of the requirements of the CSL have been met. Thus, the decision of the North Penn School District to deny the revised charter school application of Education for New Generations Charter School is reversed.



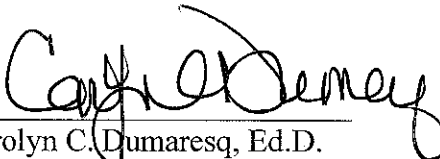
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ORDER

AND NOW, this 3<sup>rd</sup> day of October, 2014, based upon the foregoing and the vote of this Board,<sup>3</sup> the Appeal of the Education for New Generations Charter School is GRANTED, and the North Penn School District is directed to issue a charter to Education for New Generations Charter School pursuant to section 1720-A of the Charter School Law. 24 P.S. § 17-1720-A.

For the State Charter School Appeal Board,

  
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Carolyn C. Dumaresq, Ed.D.  
Chair

Date mailed: 10/6/14

<sup>3</sup> At the Board's meeting on September 30, 2014, the appeal was granted by a vote of 6 to 0, with Members Bracey, Dumaresq, Miller, Munger, Peri, and Yanyanin voting.