

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

In Re: Appeal of Legacy Charter School : CAB Docket No. 2000-14
:

OPINION AND ORDER

I. Introduction

This matter is before the Pennsylvania State Charter School Appeal Board (CAB) on an appeal by the Legacy Charter School (Legacy) from the denial of its charter school application (Application) by the Board of School Directors of the Council Rock School District (Council Rock).

II. Findings of Fact

1. On November 15, 1998, Legacy submitted a charter school application to Council Rock.
2. Council Rock held public hearings on December 21, 1998 and February 22, 1999 to consider Legacy's application.
3. Council Rock denied the application on March 4, 1999. A Notice of Denial detailing Council Rock's reasons for the denial was issued to Legacy on April 12, 1999.
4. Legacy obtained the requisite number of signatures to be eligible to appeal the denial, and received a Sufficiency Decree from the Court of Common Pleas dated August 30, 1999.
5. Legacy filed the Application at issue herein with Council Rock on November 15, 1999.

6. The Application did not indicate that it was a resubmitted application.
7. By letter dated November 20, 1999, addressed to Kathleen Irving, Council Rock informed Legacy that it had scheduled a hearing on the Application for December 16, 1999.
8. By letter dated December 6, 1999, Kathleen Irving responded that she considered the Application to be a revised application.
9. At the hearing held on December 16, 1999, the Directors indicated that they considered the Application to be a new application and declined to incorporate the prior record into the new application.
10. At the hearing held on December 16, 1999, Legacy indicated that it would request additional time to supplement the record.
11. No further hearing was requested or held on the Application.
12. Council Rock denied the Application by vote of its Directors on January 6, 2000.
13. A Notice of Denial detailing Council Rock's reasons for the denial was issued to Legacy on February 17, 2000.
14. Legacy again obtained the requisite number of signatures to be eligible to appeal the denial and presented the petition to the Court of Common Pleas of Bucks County. The Court entered an Order on April 20, 2000 certifying that the petition met the requirements of Section 1717(i) of the Charter School Law.
15. Legacy filed a Petition to Appeal with CAB on July 14, 2000.
16. By letter dated August 16, 2000, CAB accepted the appeal and appointed a hearing officer for this matter.

17. The hearing officer held a pre-hearing conference on September 5, 2000. At the conference both parties indicated that they would waive the right to supplement the record.
18. On September 20, 2000, Council Rock filed a response to the Petition to Appeal.
19. Shortly before argument was scheduled to be heard by CAB, Legacy submitted documents that it requested be included in the certified record.
20. The hearing officer notified the parties that they could present argument to CAB concerning inclusion in the record of the November 1998 application and its related documents, as well as, inclusion in the record of the documents submitted just prior to the argument.
21. CAB heard oral argument at its October 5, 2000 meeting.
22. At the time of oral argument, Council Rock asked to include in the record an exhibit it had prepared regarding the issue of sustainable support.
23. Legacy intends to enter into a management agreement with Mosaica Education, Inc. (Mosaica) to provide educational and administrative services for the school, which includes use of the Paragon Curriculum developed by Mosaica.
24. Legacy will provide a longer school day than Council Rock provides, as well as, a longer school year.
25. Legacy's Application described a vacant lot as the proposed site of the school and stated that Mosaica would purchase the facility site, construct a school building on it, and lease the facility to Legacy.
26. A footprint/elevation of a building, superimposed on a site plan for that

site was presented at the hearing held on December 16, 1999.

27. Attached to the Application were 76 enrollment applications.
28. Approximately 31% of the enrollment applications were on behalf of residents of Council Rock School District.
29. The Application included approximately 37 e-mail submissions by parties solicited via a Mosaica Education Website to register in its “guest book.”
30. Approximately 33% of those who registered are from Council Rock School District.
31. Also submitted with the Application was a petition signed by 27 persons, 8 of whom were residents of Council Rock School District.
32. Council Rock denied the application for the following five reasons:
 - a. Identification of the site did not comply with 24 P.S. §17-1719-A(1);
 - b. The financial plan presented by Legacy did not meet the requirement of 24 P.S. §17-1719-A(9);
 - c. Applicant failed to apply for a charter on behalf of an entity that can be granted a charter as required by 24 P.S. §17-1703-A and 24 P.S. §17-1714-A;
 - d. The Application did not show sustainable support as required by 24 P.S. §17-1717-A(e)(2)(i);
 - e. The Applicant did not show a significant difference or innovation in its proposed curriculum or teaching method to comply with 24 P.S. §17-1717-A(e)(2)(iii) and 24 P.S. §17-1702-A(3).

III. Conclusions of Law

1. The present appeal is properly before CAB, pursuant to the Charter School Law, 24 P.S. §§ 17-1701-A, *et seq.*
2. After Council Rock denied the application submitted in 1998, Legacy had the option of revising and resubmitting its application or appealing the decision.
3. The criteria for evaluating a charter school application under Section 17-1717-A(e)(2) of the Charter School Law are:
 - 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 section (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 17-1719-A and conforms to the legislative intent outlined in section 17-1702-A; and
 - d. The extent to which the charter school may serve as a model for other public schools.
4. Sufficient information was submitted by the Applicant to comply with 24 P.S. § 17-1719-A(11) concerning the identification of the proposed physical facility.
5. The financial plan presented by Legacy met the requirements of 24 P.S. § 17-1719-A(9).

6. The Applicant applied on behalf of an entity that may be granted a charter as required by 24 P.S. § 17-1703-A and 24 P.S. § 17-1714-A.
7. The community for purposes of showing sustainable support is Council Rock.
8. Legacy failed to demonstrate sustainable support by teachers, parents, students, and other community members.

IV. Discussion

A. Evidentiary Issues

Before addressing the merits of the appeal, preliminary evidentiary matters must be addressed. Legacy seeks to include two sets of documents in the certified record: 1) the record from the application submitted in November of 1998; and 2) two letters related to the acquisition of property that were not considered by Council Rock and that were submitted to the Hearing Officer shortly before the hearing before CAB. In addition, Council Rock seeks to introduce an exhibit that it created concerning the evidence of support for the charter school.

1. Documents related to the November of 1998 application

At the option of the charter school, it may revise and resubmit an application that has been denied or, in the alternative, the charter school may appeal the denial to CAB. 24 P.S. § 17-1717-A(f) Although the Charter School Law does not explicitly state that these are alternatives, it is clear that these are distinct courses of action, and we have so held previously. *In Re: William Bradford Academy Charter School*, CAB Docket No. 2000-1. Once the charter school gathers the required signatures and submits the petitions to the Court of Common Pleas, the Court must determine if the petition is sufficient. The Charter School Law states, “[i]f the petition is sufficient, the decree shall be transmitted to the State Charter School Appeal Board for

review in accordance with this section.” 24 P.S. § 17-1717-A(i)(5) (emphasis added). In this case, neither the Court nor Legacy transmitted the decree to CAB.¹

However, when Legacy filed its Application with Council Rock on November 15, 1999, it did not specify that the Application was a resubmission and did not state that it was incorporating the application filed in November 1998. Council Rock notified Legacy on November 20, 1999, that a hearing on the application was scheduled for December 16, 1999. By letter dated December 6, 1999, Legacy informed Council Rock that it considered the Application to be a resubmission. At the hearing, Council Rock informed Legacy that it considered the Application to be a new application and would not incorporate the prior record into the new Application. Legacy indicated that it would request additional time to supplement the record at a future time, but Legacy failed to do so.

Having reviewed the record, we believe that Council Rock acted reasonably in concluding that the application filed in November of 1999 was a new Application. After a school district denies a charter to a charter school applicant, the charter school applicant may resubmit the application to the school district. However, the charter school applicant must indicate to the school district that it is resubmitting its application and what, if anything, it is incorporating from the prior application and/or record. It is not sufficient for a charter school applicant to submit another application to a school district without indicating that the application is a new application or a resubmitted application. In this case, Legacy failed to initially identify its 1999 Application as a resubmission, and therefore, the certified record for the 1999

¹ To be eligible to file an appeal of a denial of a charter, a charter school applicant must file a petition with the Court of Common Pleas. 24 P.S. §17-1717-A(i)(2). Receiving an order from the Court that the petition is sufficient does not perfect an appeal with CAB. A Petition to Appeal must be filed with CAB in order for CAB to review the case. Therefore, a charter school applicant is not automatically prevented from filing a resubmitted application with a school district simply because it filed a petition with the Court and received an order from the Court that the petition was sufficient.

Application should not include the record of the 1998 application. Thus CAB has not considered the record of the 1998 application in reaching its decision.

2. Letters Related to Acquisition that were not considered by Council Rock

Just prior to the CAB hearing on this matter, Legacy submitted two documents, not previously available to the Hearing Officer and requested that those documents be included in the certified record. Those documents were two letters related to the acquisition of property for the school.

At a pre-hearing conference held on September 5, 2000, both Legacy and Council Rock agreed to waive their right to supplement the record. As a result, it would be inappropriate for the CAB to now consider those documents. Moreover, for completeness sake, we note that these letters are not pertinent and would not, had they been admitted, altered our decision on the facility issue.

3. Council Rock Exhibit

At the October 5, 2000 hearing before CAB, Council Rock sought to have admitted an exhibit that it had prepared related to the issue of sustainable support. For the same reason as set forth above regarding Legacy's request to include documents in the certified record after its agreement to waive the right to do so, Council Rock's request is denied.

B. Site

One basis given by Council Rock for its denial of the Legacy Application was the failure of Legacy to provide adequate information related to the site of the school facility.

Legacy identified a site in its application and provided testimony at the public hearing related to its efforts to seek zoning approval for the site. In addition, it submitted a footprint/elevation of a building superimposed on a site plan for the identified site.

In prior decisions, CAB has held that a detailed facility plan is not required under the Charter School Law. (*In Re: Environmental Charter School Appeal*, CAB Docket No. 1999-14; *In Re: Leadership Learning Partners Charter School Appeal*, CAB Docket No. 2000-8). In *Leadership Learning Partners*, CAB concluded that, “for approval of a Charter School, the legislature intended this law to be liberally interpreted to encourage the development and growth of such schools.”

Legacy provided, in the Application, a street address for the proposed facility and a drawing of the proposed facility. At the public hearing, Legacy testified as to the steps it was taking to address zoning issues, the success of building similar facilities in other locations, and the lease agreement which would be entered into between Legacy and Mosaica. Legacy described its site in general terms and made it clear that it knew there were issues to be addressed related to the site and that it was taking steps to address those issues. This satisfies the Charter Law.

CAB finds that Legacy met its burden with regard to 24 P.S. § 17-1719-A(11). As CAB found in *Environmental Charter School*, a school district is not permitted to deny a charter based upon the charter school’s failure to have all necessary plans and/or approvals for the facility included in the application.

C. Budget

Council Rock determined that the financial plan submitted by Legacy did not meet the requirements of 24 P.S. § 17-1719-A(9). The Charter School Law requires that a charter school 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).

Legacy included a financial plan with its Application. CAB has held that a simple budget is sufficient. *In Re: Lincoln-Edison Charter School Appeal*, CAB Docket No. 2000-11. In *Lincoln-Edison*, CAB stated, “The budget provides a sufficient basis from which to conclude that the Charter School has considered fundamental budgeting issues and has determined that it will have the necessary funds to operate. *See Application* at 965-971. More detail is not required by the Charter School Law.” The same may be said of the Legacy budget. The Application, as it relates to the budget, complies with 24 P.S. § 17-1719-A(9).

D. Non-Profit Corporate Status

The Charter School Law provides that a charter may only be granted to a nonprofit entity. 24 P.S. § 17-1703-A. A charter school may, however, enter into contracts for services, equipment and supplies, and may acquire real property. 24 P.S. § 17-1714-A(a)(3), (5).

In *In Re: Collegium Charter School Appeal*, CAB Docket No. 1999-9, CAB considered the same agreement as it has before it in the instant case. In the *Collegium* case, CAB concluded that it is unrealistic to expect individuals who wish to provide alternative educational opportunities to be experts in the field of education. It is reasonable to expect those individuals to enter into contracts with individuals or companies that do possess that expertise. Such a contract does not violate the Charter School Law.² CAB concludes that the arrangement between Mosaica and Legacy is within the bounds permitted by the Charter School Law.

E. Sustainable Support

Legacy must show “demonstrated sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the

² The Commonwealth Court agreed with CAB in the *Collegium* case that a charter school may contract with for-profit entities to provide certain management and administrative responsibilities. *West Chester Area School District, et al. v. Collegium Charter School, et al*, 2000 Pa. Commw. LEXIS 486 (Pa. Commw. Ct., August 25, 2000). In fact, the contract at issue in the *Collegium* case was between the charter school and Mosaica Education, Inc., the same entity with whom Legacy intends to contract for services.

public hearing....” 24 P.S. § 17-01717-A(e)(2)(i). This support must be demonstrated when the application is submitted and considered. *Id.*

Council Rock determined that the Legacy Application did not demonstrate sustainable support for the charter school plan by teachers, parents, other community members and students within the Council Rock School District. Council Rock found that the majority of enrollment applications submitted with the application were from districts other than Council Rock. In *Appeal of Vitalistic Therapeutic Center Charter School*, CAB Docket No. 1999-6, CAB found that the proper community for determining sustainable support is the school district in which the charter school is to be located.

Based on the application and the comments at the public hearing before the board, Legacy has not shown sustainable support from the Council Rock community. Although 76 enrollment applications were attached to the Application, only approximately 31% of those applications were for Council Rock children. Also submitted with the application were 37 e-mail visits to the Mosaica website, but it is not possible to determine the intent of the e-mail visits. Although some of the submissions refer to interest in admission, many of them just register an interest, and general interest in charter schools is not sufficient. As CAB has previously ruled, “sustainable support” means support sufficient to sustain and maintain the proposed charter school as an on-going entity. *See, Appeal of Phoenix Academy Charter School*, CAB Docket No. 1999-10; *Appeal of Ronald H. Brown Charter School*, CAB Docket No. 1999-1. A few letters of interest in employment were the only indication of support from teachers. Only one individual testified at the public hearing. No support was shown from community groups or leaders.

The indicia of support must be measured in the aggregate rather than by individual categories. Although the failure of an applicant to demonstrate strong support in any one category is not necessarily fatal, a reasonable amount of support in the aggregate must be demonstrated. In this case, very little support from Council Rock, the community in question, was presented.

CAB finds that Council Rock's determination that Legacy failed to demonstrate sustainable support for the charter school by teachers, parents, other community members and students is supported by the record.

F. Innovation

CAB has previously acknowledged that the features of the Mosaica-Paragon Curriculum can be a model for other public schools. (See *In Re: Hills Academy Charter School*, CAB Docket No. 1999-12; *In Re: Leadership Learning Partners Charter School Appeal*, CAB Docket No. 2000-8; and *In Re: Ronald H. Brown Charter School Appeal*, CAB Docket No. 1999-1). The features of the Legacy program are the same or similar to those set out in *Hills Academy*, *Leadership Learning*, and *Ronald H. Brown*. As a result, Legacy's program complies with 24 P.S. §17-1717-A(e)(2)(iii) and 24 P.S. §17-1702-A(3).

V. Conclusion

Legacy has not shown sustainable support from parents, teachers, other community members and students as required by the Charter School Law. Thus, the decision of the Council Rock School District to deny the Legacy Charter School Application is upheld.

ORDER

AND NOW, this _____ day of November, 2000, based upon the foregoing and the vote of this Board³, the appeal of the Legacy Charter School is hereby denied.

FOR THE STATE CHARTER SCHOOL
APPEAL BOARD

Eugene W. Hickok
Chairman

³ At its November 3, 2000 meeting, the appeal was denied by a vote of 6-0, with members Aliota, Bunn, Hickok, Melnick, Reeves and Shipula voting to deny the appeal.