

**COMMONWEALTH OF PENNSYLVANIA  
CHARTER SCHOOL APPEAL BOARD**

**In Re: Propel Charter School - Montour** :  
**Appeal from Denial of Charter** : **Docket No. CAB 2004-3**  
**by Montour School District** :

**OPINION AND ORDER**

**I. Introduction**

This matter is before the Charter School Appeal Board (“CAB”) on an appeal by Propel Charter School-Montour (“Propel”) under the Charter School Law (CSL)<sup>1</sup>. Propel challenges the denial of its charter application to establish Propel Charter School – Montour, by the School Board of Montour School District (“School District”)

**II. History**

On November 14, 2003, Propel filed an application for a charter with the School District. A public hearing was held before the Board of School Directors on December 18, 2003. The organizing committee of Propel testified at the hearing. In addition one member of the public spoke in favor of the charter school. Propel provided additional information to the School District on both January 30 and February 16, 2004. On February 19, 2004, the School Board, by an 8-1 vote, denied the application and subsequently issued a written decision.

In its Decision, the Board enumerated the following reasons in support of its denial of the charter application:

1. Lack of demonstrated sustainable support for the Propel plan by teachers, parents,

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<sup>1</sup>Act of March 10, 1949, P.L. 30, added by the Act of June 19, 1997, P.L. 225, 24 P.S. §§17-1701-A through 1732-A.

- other community members or students as required under Section 1717-A(e)(2)(i).
2. Failure to demonstrated that Propel would provide an innovative curriculum which would increase learning opportunities for students pursuant to 1717-A(e)(2)(ii).
  3. Failure of the Propel application to satisfy the requirements of Section 1719-A , (11), by not including specific information concerning the leasing and renovation of the proposed physical facility to be used by the charter school.

Propel filed a petition in the Court of Common Pleas of Allegheny County to certify the appeal to the CAB, which Petition was granted on June 25, 2004. Thereafter, on July 19, 2004, Propel filed a Petition to Appeal with CAB. On August 9, 2004, the School District filed an answer to the Petition. CAB delegated the matter to a hearing officer for the purpose of hearing and certification of the record to CAB.

On August 20, 2004, the hearing officer issued a letter setting a pre hearing conference, which was held on August 25, 2004. The hearing officer issued a scheduling order establishing the time for filing the record below, requests to supplement the record below, and briefs.<sup>2</sup>

On September 15, 2004, the School District filed the certified record. Propel filed an objection to the certified record, asserting that the record did not include a February 6, 2004 submission on behalf of Propel or the minutes of the February 6, 2004 school board meeting, and attaching the Propel documents that were submitted to the School Board. The School District responded that no minutes were made of the February 6, 2004 meeting, which was not a regularly scheduled School Board meeting.

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<sup>2</sup>Propel and the School District waived a hearing before the hearing officer at this time.

Oral argument on the appeal was heard by the CAB at its meeting of September 28, 2004.

### **III. FINDINGS OF FACT<sup>3</sup>**

1. On November 14, 2003, the founding coalition of Propel Charter School-Montour (Propel) submitted an application for a charter to the Montour School District. (C.R.-10)
2. Propel is a nonprofit corporation organized and existing under the laws of Pennsylvania and having as its purpose the operation of a charter school. (C.R. -1)
3. On December 18, 2003, and on February 10, 2004, public hearings were held on the application. (C.R. -10)
4. At the December 18, 2003 hearing, Propel submitted petitions of support containing the names of 194 persons who were residents of the School District, 26 of whom were parents who requested enrollment information. (C.R. 10, pp. 219-254)
5. Propel also provided letters of support from residents, foundations and elected officials. (C.R. 10, pp. 44, 219-254)
6. At the hearing Propel provided the School District with additional documents and information concerning the proposed facility for the charter school, evidence of support, governance and personnel. (C.R.10, pp. 209-259)
7. On January 14, 2004, Propel held a public meeting attended by 40 adults and 20 students. Eleven letters of support for the school resulted from the meeting. (C.R. 10, p. 276, 289-300)
8. On January 30, 2004, Propel informed the School District that, as of that date, it had

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<sup>3</sup>References to the Certified Record are identified as C.R.-Tab Number-Page(s). References to Propel's submission are identified as S.R-Tab or Exhibit Number-Page(s).

- received 129 applications from children to enroll in the school in September 2004, with 53 of those children being residents of the Montour School District. (C.R. 10, p.276)
9. Propel provided the School District with additional data regarding community support, interested parents and enrollment applications on January 30, 2004. (C.R. 10, p.268)
  10. Propel held another public hearing on February 5, 2004, which was attended by 60 adults and 20 students. (C.R. 10, p.301)
  11. As of February 16, 2004, Propel had received applications from parents wishing to enroll their children in the proposed charter school indicating that 196 children would enroll in the school. (C.R. 10, p.301)
  13. Propel intends to operate a school in the School District which will provide innovation by utilizing a small school/small class size plan, and by providing an extended instructional day/school year, frequent assessments of student progress and needs, a core studies program, individualized reading instruction and a music and arts program drawing on community resources in the Pittsburgh area. (C.R. 10, pp. 4, 12-14)
  14. Propel projects an initial enrollment of 300 students in grades K-6, adding grades 7 and eight in subsequent years to reach a maximum enrollment of 400. (*Id.* at p.5)
  15. Propel's classes will be small, with a target of 20 students per class in grades K-4. (*Id.* at p.4)
  16. Propel plans to provide 190 days of instruction per year and 6 hour instructional days. (*Id.*)

17. Propel submitted petitions of support to the School District containing the names and addresses of 194 persons, 26 of whom were parents who sought to have their children enroll in the charter school. (C.R. 10, pp. 220-254)
18. Propel's proposed curriculum will include core studies in mathematics, writing, reading, social studies and science; it will offer enrichment studies in art, performance and music by drawing in local artists and programs. (C.R. 10, pp. 32-36)
19. Propel plans to continually assess students and to offer additional support to meet the needs of each student. (C.R. 10, pp. 32)
20. Propel intends to instruct students in flexible groups with differing levels of attainment to meet the individual and social needs of each child. (C.R. 10, pp. 31)
21. Propel plans to lease a facility in the school district. The application offered a location of the school at 5400 Campbell's Run Road-Building III and provided a letter of intent<sup>4</sup> from the owner's representative. (C.R. 10, pp. 65-66)
22. The letter from the representative of the site owner noted that various approvals including zoning changes would need to be secured prior to finalization of any lease. (C.R.10, *Id.* )
23. Propel provided additional information to the School District regarding architectural plans to make changes to the building for use as a charter school. (C.R. 10, pp. 210-217)
24. As of the date of the CAB hearing on September 28, 2004, the Campbell's Run facility was no longer available. Propel is actively pursuing a new facility to lease,

- for which improvements and zoning changes will also be necessary in order for the facility to be used as a charter school. (September 28, 2004 Hearing N.T. 11-12)
25. Propel's application described its proposed plan of governance, its budget and financial plan and related information. (C.R. 10, Application pp. 4-92)
  26. The School Board denied the granting of a charter by a vote of 8-1 on February 19, 2004 and issued a written decision stating the reasons therefor. (C.R.-10, pp. 302-309)
  27. Propel filed a petition with the Court of Common Pleas of Allegheny County for permission to appeal to the CAB, which was granted by order of the Court of June 25, 2004. (C.R. 10, pp. 310-311)
  28. On July 19, 2004, Propel filed a Petition to Appeal the CAB. (C.R. 10, pp. 312-316)
  29. On August 9, 2004, the School District filed an answer to the Petition. (C.R. 10, pp. 317, 320)

#### **IV. CONCLUSIONS OF LAW**

1. The CAB has jurisdiction in this matter under Section 1717-A(g) of the CSL, 24 P.S. §17-1717-A(g).
2. Propel was given notice and an opportunity to be heard before the School District.
3. The Propel Application showed demonstrated sustainable support by teachers, parents, other community members and students as required by Section 1717-A(e)(2)(i), 24 P.S. §17-1717-A(e)(2)(i).
4. The Propel Application established that it had the capability to provide comprehensive

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<sup>4</sup> The letter is captioned "Letter of Interest." Propel contends it should read "Letter of Intent." Whatever word is used, the letter states: "Terms are yet to be negotiated and zoning needs to be secured prior to finalization."

- learning experiences to students as required by Section 1717-A(e)(2)(ii), 24 P.S. §17-1717A(e)(2)(ii).
5. The Propel Application contained sufficient information to meet the requirements of Section 1719-A (11), regarding a suitable facility, as required by Section 1717-A(e)(2)(iii), 24 P.S. §117-1717-A(e)(2)(iii) and in accordance with the legislative intent of Section 1702-A, 24 P.S. §17-1702-A.
  6. The Propel Application contains sufficient information regarding its charter school plan, including the mission and educational goals of the proposed charter school, the curriculum to be offered and the methods of assessing whether students are meeting educational goals, and other information required under Section 1719-A of the CSL, 24 P.S. § 17-1719-A.
  7. The Propel Application demonstrates that the proposed charter school has the potential to serve as a model for other public schools, as required by Section 1717-A (e)(2)(iv) of the CSL, 24 P.S. §17-1717-A (e)(2)(iv).

## **V. DISCUSSION**

### **A. Preliminary Issue**

At the CAB hearing on September 28, 2004, Counsel for Propel informed both the School District and the CAB that the facility rejected by the Board in its decision was no longer available for it to lease. Counsel advised the CAB at oral argument that it had acquired another facility for which it had a site description and a letter of intent to lease to Propel. Counsel for the School Board objected to the consideration of this evidence on the grounds that the review should be limited to the basis for the School Board's denial. Based on that objection, Propel's Counsel withdrew the offer to submit evidence on the new facility to the CAB.

## **B. Standard of Review**

Section 1717-A (i)(6) of the CSL, 24 P.S. §17- 1717-A (i)(6), provides that in an appeal from the denial of an application, the decision made by the local board of directors shall be reviewed by the CAB on the record certified by the school board and such supplemental information as the CAB deems appropriate under the CSL. The CAB must 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. Further, the CAB has the discretion to allow the local board of directors and the charter school applicant to supplement the record if the supplemental information was previously unavailable. The CAB shall apply these principles in its review of the Decision in this appeal.

## **C. Review**

Section 1717-A (e)(2) of the CSL requires a school board to evaluate a charter school application based upon the following enumerated 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 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).

The School District found that Propel failed to provide sufficient information to establish



demonstrated sustainable support or that it had the capability to provide comprehensive learning experiences. Section 1719-A of the CSL also requires that a charter school include in its application 17 enumerated items. 24 P.S. §17- 1719-A. In regard to this application, the School District determined that the application failed to satisfy subparagraph (11) which provides as follows: “A description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.” 24 P.S. §17-1719-A(11).

**1. Demonstrated, sustainable support under Section 1717-A(e)(2)(i).**

Section 1717-A (e)(2)(i) of the CSL requires that the school board consider whether demonstrated, sustainable support for the charter school exists among teachers, parents, other community members and parents.

Propel relies on evidence of support from 194 persons who signed a petition in support of the charter school. It further points to letters of support included in its application from residents, foundations, and business and elected leaders in the community. Finally, it notes that in response to requests from the board for additional evidence, Propel provided evidence of interest from parents at community meetings held after the application was filed.

The School District argues that its decision should be upheld because community support as set forth in the CSL was not present within the Montour School District. The Board relies on testimony at the hearing that only two persons attended a November 13, 2003 community meeting held by Propel to gauge interest in a charter school in Montour. (C.R., pp. 117-118) Further, it noted that only one supporter of the Charter School was present at the December 18, 2003 public hearing and that many community members in attendance expressed “doubts and negative feelings” regarding the benefits of a charter school in the Montour School District. (C.R. 10, 173-190)

The “demonstrated sustainable support” for the charter school plan is an inherent variable based upon the size of the proposed school, the size of the community and other factors. In considering this factor, the CAB has determined that only the degree of support for the Charter school is relevant, not the degree of opposition or indifference. Previously, the CAB has expressly held that community opposition to a charter school was not relevant in considering the merits of an application. *Phoenix Academy Charter School*, Docket No. 1999-10. Moreover, the CAB evaluates the degree of support in the aggregate, so that failure to demonstrate support in one category is not fatal to the appeal. *Brackbill v. Ron Brown Charter School*, 777 A. 2d 131 (Pa. Cmwlth. 2001).

Propel proposes to operate a small school with an initial enrollment of approximately 300 students in small classes, limited to 20 students in the early grades. The charter’s plan is to add a grade each year to include a program for grades 7 and 8. Thus, the proposal should not be expected to garner a significant proportion of the entire population of the district to support it. CAB also does not find it unusual that this proposal did not garner a significant degree of support from teachers.

In reviewing the evidence of support, the district in part found it insufficient because the district could not verify the support allegedly coming from district residents. However, the CAB finds that the failure of Propel to provide the names of parents committed to sending their children to the proposed charter schools is not an essential criterion to demonstrate sustainable support for the plan. In its Application, Propel provided the School District with information regarding the results of its surveys of the community and its efforts to obtain the support of the community and of local businesses for the Propel School. (C.R. 10, 218-255)

At the core of the School District’s position regarding Propel’s evidence of community support is its opinion that the evidence is “unverified and unverifiable.” The School District’s denial letter found the names on the petitions are not verifiable because the petitions do not include

the date, time and place where the signatures were collected. Moreover, the School District's denial notes that Propel's January 30, 2004 response containing additional information was itself "not verified or verifiable" evidence of support because it likewise did not provide information as to the date, time and place of each signature. The School District also contends that post-application submittals of the number of enrollment applications (196 as of February 16, 2004) Propel had received were conclusory and also "unverifiable."

The CSL does not address the question of what information must be in petitions or other statements of support. Plainly, the CSL does not require the applicant to provide detailed information regarding parents who have indicated an intention to enroll their children in the charter school. The purpose of demonstrable evidence of support is to show that the school has a reasonable likelihood of operating according to its plan over the period of the charter. To require the verifiable personal data suggested by the School Board would thwart the intent of the Legislature, and discourage rather than encourage the development and support for charter schools.

The CAB finds the evidence of support provided by Propel is both substantial and relevant to the issue of the sustainability of the school. For these reasons the CAB concludes that School District's reasoning was unsubstantiated in law and that the District failed to consider unrebutted relevant evidence regarding the support for the charter school plan. The CAB finds this evidence sufficient to meet the requirements of Section 1717-A(e)(2)(i) and the District's contrary conclusion is rejected.

**2. The capability of Propel to provide comprehensive learning experiences to students under Section 1717-A(e)(2)(ii).**

Section 1719-A(5) requires that the charter school demonstrate its capability to provide

comprehensive learning experiences to pupils. 24 P.S. §17-1719-A(5).

Increased learning opportunities for students and more public school choices for parents and students are primary legislative objectives of the CSL. 24 P.S. § 17-1702-A(2)(5). The CAB disagrees with the School District that Propel's proposed curriculum does not show the planning and specificity that assures students would receive comprehensive learning experiences.

Propel intends to operate a small school with small classes. Students will be in school longer each day and over the course of the academic year. Students will be frequently assessed. Classes will be structured to allow students to learn at their individual levels. The primary goal of the Propel education plan is to increase individual achievement levels of students.

The School Board in its decision found that the curriculum was not unique, that it was nebulous and untested and falls short in comparison with the School District's own curriculum. With regard to Propel's attempt to improve students' achievement, the school Board stated: "[W]e have severe concerns regarding Propel or any charter schools (sic) ability to make any impact on student achievement levels." (Board decision p.5)

The CAB finds that the District's approach, in evaluating whether Propel's school plan will provide comprehensive learning experiences, is fundamentally flawed. One of the primary purposes of the CSL is to improve pupil learning. 24 P.S. 17-1702A(1). Although the School District may disagree with the General Assembly's wisdom in making charter schools available to families as a means of improving student achievement, that fundamental disagreement is insufficient basis for denial or a charter application. Moreover, the CAB has previously held that the existence of similar educational programs in the school district does not mean that the charter school cannot serve as a model. Shenango Valley Charter School, Docket No, CAB-

1999-1; William Bradford Charter School, Docket No. CAB-1999-8.

The School Board's decision stated that the proposed curriculum is not unique or revolutionary. However, Propel's Application provides a detailed description of its mission and school plan to provide excellence in core academic disciplines, develop community awareness and provide students with the opportunity to acquire expertise in the arts, music and language. (C.R. 30) Its school design, academic assessment plans, and planned instructional programs in core studies and enrichment studies provide a unique combination of programs that will satisfy the school's mission and provide comprehensive learning opportunities to its students. The CAB notes that it has made similar assessments with regard to other Applications by Propel. See Propel Charter School McKeesport, Docket No, CAB-2004-1 and Propel Charter School (Steel Valley School District), Docket No, CAB-2003-1.

Based on the foregoing, CAB finds that Propel's Application establishes that it has the capability of providing comprehensive learning experiences to students and specifically rejects the School District's contrary conclusion.

### **3. Adequacy of Proposed School Facility**

At the time of the Application and the decision of the School Board, Propel had a written commitment to lease a former office building as a school site.

In its appeal, Propel contends its application satisfied the requirements of Section 1719-A(11) by describing the location of the proposed facility, its physical attributes and providing a letter of intent from the developer to make necessary changes and obtain necessary approvals for the building to be used as a school.

The School District contends that the Application failed to meet the requirements of Section 1719-A(11) of the CSL, 24 P.S. § 17-1719-A(11) because: (1) a school is neither a

permitted nor a conditional use allowed on the 5400 Campbell's Run property (the proposed school address listed in the Application); (2) the facility was unsuitable for use as a charter school; and, (3) no lease had been executed for the property. In support of its position the School District relies on court decisions which concerned the interplay between local zoning codes and the Public School Code, citing Department of General Services v. Ogontz Neighbors Association, \_\_\_ Pa. \_\_\_, 483 A.2d 448 (1984) and Northampton Area School District v. East Allen Board of Supervisors, 824 A.2d 372 (Pa. Cmwlth. 2003).

The CAB finds Ogontz and Northampton inapposite to the instant case. In both of those cases, the court held that local zoning laws were not preempted by the School Code provisions, that empower School Boards to establish the location of public schools. In this case, both Propel and the developer recognized that appropriate zoning approvals have to be obtained. Similarly, Propel and the developer of the proposed facility recognized that physical improvements were necessary in order for the facility to function as a school.

A detailed facility plan is not required by the CSL. The Legislature intended the CSL to be liberally interpreted to encourage the development and growth of Charter schools. It follows that the Legislature could not have intended that school districts require, as a condition of approval of a charter, that all necessary elements of the school's physical plant be established. The CAB does not believe, therefore, that it is necessary for the charter school applicant to have all necessary approvals such as zoning and occupancy permits in place, or that the failure to do so shows a lack of a proper plan on the part of the applicant.

Finally, the CSL does not require a charter applicant to have an executed lease for a facility. See School District of the City of York v. Lincoln-Edison Charter School, 798 A.2d 295, 304 (Pa. Cmwlth. 2002). Further, the CAB and the Commonwealth Court have recognized

that the fact that a facility identified in the application becomes unavailable is not fatal to the CAB's review and approval of a charter. See Brackbill v. Ron Brown Charter School, supra. Although the CAB is mindful of the concerns of the School District, the General Assembly in the CSL has limited the charter applicant's responsibility to demonstrating that it has sufficient plans to have a facility capable of meeting the law's requirements and of housing the school. In this case, the CAB finds that the CSL's requirements were met and that it must reject the School District's determination that Propel failed to meet the facility requirements of the CSL in its application and at the time of the School District's action.

However, the CAB notes that information was provided at the CAB meeting of September 28, 2004 that Propel had, shortly before the meeting, lost the facility proposed in its application. This is an unfortunate circumstance but it is neither fatal nor novel. Where, as here, the record shows that the School Board had not had any opportunity to review the proposed new site, the CAB will fashion an order to allow such review to occur, in accordance with the decision of the Commonwealth Court approving such a procedure in a similar instance. See Souderton Area School District v. Souderton Charter School Collaborative, 764 A.2d 688, 696-98 (Pa. Cmwlth. 2000).

#### **D. Compliance with other Charter School Application Criteria**

Based upon its standard of review, the CAB has made an independent review of the record with regard to each of the bases for evaluating a charter application. The CAB notes that the School Board made no separate findings nor did it reach any legal conclusions with regard to the remaining requirements of Sections 1717-A (e)(2) and 1719-A of the CSL, 24 P.S. §§ 17-1717-A (e)(2), 17-1719-A. The CAB thus concludes that the Application contains sufficient information to meet the requirements of these provisions and so finds.

## **E. Summary**

The CAB finds that the School Board's findings and conclusions should be reversed in that Propel's Application did demonstrate substantial support from the Montour community, the proposed School's capability, in terms of support and planning, the ability to provide comprehensive learning experiences to students, an adequate and appropriate curriculum and the site it intended to use as a school facility. The CAB also finds that Propel has otherwise established that it meets the requirements of the CSL for the grant of a charter.



**COMMONWEALTH OF PENNSYLVANIA  
STATE CHARTER SCHOOL APPEAL BOARD**

**In Re: Propel Charter School - Montour** :  
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**by Montour School District** :

**ORDER**

**AND NOW**, this 28th day of February, 2005, based upon the foregoing Findings of Fact, Conclusions of Law and Discussion the appeal of Propel Charter School-Montour is hereby affirmed and the Montour School District is directed to grant the application and sign the Propel Charter School's Charter under Section 1720-A of the CSL, 24 P.S. §17-1720-A.

It is further ORDERED that prior to opening the school, Propel shall provide the School District and the CAB with information regarding the facility to be used for the charter school.

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/s/  
Francis V. Barnes, PhD.  
Chairman

Date Mailed: February 28, 2005