

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

In re: :
: :
Appeal of Denial of Charter of :
Pocono Mountain Mathematics Science :
And Technology Charter School :
By Pocono Mountain School District : Docket No. CAB 2004-05

OPINION AND ORDER

I. Introduction

This matter is before the State Charter School Appeal Board (“CAB”) on an appeal by the Pocono Mountain Mathematics Science and Technology Charter School (“Charter School”) under the Commonwealth’s Charter School Law¹ (“CSL”) from a decision by the Pocono Mountain School District (“District”) to deny the Charter School’s revised application for a charter.

II. Background

On or about November 14, 2003, the Charter School submitted an application for a charter to the District seeking to begin operation for the 2004-2005 school year. R.R.,² Book 1, §§ 1-17. In addition to the application, the Charter School submitted letters of intent from parents, the results of a survey purporting to demonstrate support for the Charter School, and information relating to support from the community, local businesses and organizations. R.R.,

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

² “R.R.” refers to the reproduced record from the proceedings below before the District.

Book 1, §§ 2, 5, 7, 8, 19. The Charter School identified its proposed physical location for the school as a space in the “Carriage Square Shopping Center.” R.R., Book 1, §§ 2, 13.

On December 17, 2003, the District held a public hearing on the Charter School’s application pursuant to 24 P.S. § 17-1717-A. R.R., Book 1, § 20. Additional public hearings were held on February 4 and 18, 2004. R.R., Book 1, § 27, 28. On March 3, 2004, the District unanimously voted in a resolution to deny the Charter School’s application, citing that the Charter School:

- failed to demonstrate how it would provide a comprehensive learning experience as mandated by 24 P.S. § 17-1717-A(e)(2)(ii).
- failed to develop an adequate curriculum that could be reviewed and evaluated by the District pursuant to 24 P.S. §§ 17-1717-A, 17-1729-A.
- failed to demonstrate how it intended to meet the needs of special education students as required by state and federal law.
- failed to demonstrate sustainable support as mandated by 17-1717-A(e)(3)(i).
- failed to address the mandatory contents of an application, specifically those required by 24 P.S. §§ 17-1719-A(11), (13), (15) and (16).

R.R., Book 2, § 28. The District’s decision was communicated to the Charter School by providing it a copy of the resolution under a cover letter dated March 4, 2004. R.R., Book 1, § 28. The Charter School did not seek a review of the District’s decision pursuant to the CSL.

Instead, on April 19, 2004, the Charter School submitted a revised application to the

district along with other supplemental materials. This revised application considered by the District at a public hearing on June 16, 2004. R.R., Book 2, § 34. At that hearing, the Charter School submitted an additional 31 letters of intent. R.R., Book 2, § 42. The Charter School's revised application was denied once again by the District on June 16, 2004 because the District maintained that the Charter School:

- failed to present a sufficient curriculum.
- failed to demonstrate that it would provide a comprehensive learning experience.
- failed to demonstrate that it would comply with all special education requirements.

R.R., Book 2, § 33. No other bases for the denial of the revised application were cited by the District.

Thereafter, the Charter School obtained the necessary signed petitions in accordance with 24 P.S. § 17-1717-A(h)(i)(2) and presented the petitions to the Monroe County Court of Common Pleas, which determined that the petitions were sufficient to satisfy the requirements of the CSL in order to seek an appeal of the District's decision. On or about November 14, 2004, the Charter School filed the instant appeal with the CAB.

After the appointment of a hearing officer, several pre-hearing conferences were held and it was determined that no hearing was necessary because the parties were able to agree to the substance of the reproduced record and were able to submit supplemental information relating to the proposed facility for the Charter School by joint stipulation. Accordingly, the parties waived

their right to a hearing before the hearing officer. The parties submitted briefs on this matter, and oral argument was held at the April 5, 2005 CAB meeting. Subsequently, on June 15, 2005 CAB voted to deny the appeal.

III. Findings of Fact

1. On or about November 14, 2003, the Charter School submitted an application for a charter to the District seeking to begin operation for the 2004-2005 school year. R.R., Book 1, §§ 1-17.
2. Accompanying the application were letters of intent from parents, the results of a survey purporting to demonstrate support for the Charter School, and information relating to support from the community and local businesses and organizations. R.R., Book 1, §§ 2, 5, 7, 8, 19.
3. The Charter School identified its proposed physical location for the school as a space in the "Carriage Square Shopping Center." R.R., Book 1, §§ 2, 13.
4. A public hearing was held on December 17, 2003, with additional public hearings on February 4 and 8, 2004. R.R., Book 1, §§ 20, 27, 28.
5. On March 3, 2004, the District unanimously adopted in a resolution to deny the Charter School's application, citing that the Charter School: (a) failed to demonstrate how it would provide a comprehensive learning experience; (b) failed to develop an adequate curriculum that could be reviewed and evaluated by the District; (c) failed to demonstrate how it intended to meet the needs of special education students; (d) failed to demonstrate sustainable support as mandated by 17-1717-A(e)(3)(i); and (e) failed to address the mandatory contents of an application, specifically information

relating to the school facility, professional staff development, criminal background checks and child abuse clearances. R.R., Book 2, § 28.

6. The District's decision was communicated to the Charter School by providing it with a copy of the resolution under a cover letter dated March 4, 2004. R.R., Book 1, § 28.
7. The Charter School did not seek a review of the District's decision pursuant to the CSL.
8. On April 19, 2004, the Charter School submitted to the District a revised application, in addition to other supplemental materials, which were considered by the District at a public hearing on June 16, 2004. R.R., Book 2, § 34.
9. At that hearing, the Charter School submitted an additional 31 letters of intent to enroll students in the school. R.R., Book 2, § 42.
10. The Charter School's revised application was denied by the District on June 16, 2004 because the District maintained that the Charter School failed to: (a) present a sufficient curriculum; (b) demonstrate that it would provide a comprehensive learning experience; and (c) demonstrate that it would comply with all special education requirements. R.R., Book 2, § 33.
11. No other bases denial of the revised application were specified by the District. See R.R., Book 2. § 33.
12. The parties jointly submitted supplemental information documenting that the site originally proposed to be used by the Charter School has now been leased to another entity and is no longer available to the Charter School. Joint Stipulation, para. 3-4 and attachments.

IV. Conclusions of Law

1. The CSL specifically provides that “the reasons for the denial, including a description of the deficiencies in the application, shall be *clearly* stated in the notice.” 24 P.S. § 17-1717-A(5) (emphasis added).
2. Where a denial does not specifically mention a delinquency of an application, CAB has historically found that the district has essentially agreed that the applicant has met that requirement. See In re: Wonderland Charter School, CAB 1999-3; see also In re: Vitalistic Center Charter School, CAB 1999-6.
3. The Commonwealth Court has noted that the failure of a school district to raise a particular deficiency in its denial constitutes a failure to preserve that issue for later appeal. See Central Dauphin S.D. v. Founding Coalition of the Infinity Charter School, 847 A.2d 195 (Pa.Comm. 2004)
4. Because the District has failed to preserve several issues that were raised in its initial denial, but not in its final denial of the charter application, the CAB will not review those issues on appeal.
5. The Commonwealth’s General Assembly enacted the CSL to provide school-age children with additional learning opportunities within the public school system by encouraging creation of schools that offer diverse educational experiences utilizing unique and innovative teaching techniques. See 24 P.S. § 17-1702-A.
6. A school district must assess an application for a charter based upon, inter alia: (a) the demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students; (b) the capability of a charter school

applicant, in terms of support and planning, to provide comprehensive learning experiences to students; (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; and (d) the extent to which the charter school may serve as a model for other public schools. 24 P.S. § 17-1717-A(e)(2).

7. In order for a school district to have legal authority to deny an application for a charter, the charter school must be deficient under at least one of the criteria enumerated in 24 P.S. § 17-1717-A(e)(2). See In re: Bear Creek Community Charter School, CAB 2003-3.
8. The CSL requires that an application to establish a charter school must include, inter alia, “[t]he mission and educational goals of the charter school, the curriculum to be offered and the methods of assessing whether students are meeting educational goals.” 24 P.S. § 17-1719-A(5).
9. The Charter School has provided sufficient information to satisfy 24 P.S. § 17-1719-A(5).
10. The CSL provides that one criterion upon which a charter school application is to be evaluated is “[t]he capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students.” 24 P.S. § 17-1717-A(e)(2)(ii).
10. The Charter School’s initial and revised applications and the supporting information that it submitted to the District demonstrate that the Charter School will be able to provide a comprehensive learning experience to its students.
11. The CAB disagrees with the District’s assessment that the application lacks sufficient

information regarding the Charter School's plan for special education. A charter school cannot know the specific accommodations that it will need to make for special needs children until those specific children have enrolled. In re: Appeal of Environmental Charter School, CAB 1999-14.

12. The CSL requires that a charter school applicant provide the school district with a description and address of the facility for the physical location of the charter school, as well as a description of any ownership interest or lease arrangement that the school might have in the location. 24 P.S. § 17-1719-A(11).
13. In light of the supplemental information that the proposed site of the Charter School is no longer available, and because the Charter School has failed to provide any information as to an alternative location, and the requirements of the 24 P.S. § 17-1719-A(11) have not been satisfied.

V. Discussion

The question to be decided in this appeal is whether the District properly denied the Charter School's revised application. As explained in greater detail below, although the CAB disagrees with the findings of the District, the CAB cannot order the District to issue a charter to the Charter School at this time because of the supplemental information that was submitted by the parties and which was unavailable prior to the District's decision to deny the application.

A. Standard of Review

The CSL provides that the CAB's review of a District decision to deny an application for a charter must provide "due consideration" to the findings of the local school board. 24 P.S. §

17-1717-A(i)(6). In addition, the CAB must articulate its reasons for agreeing or disagreeing with the decision of the local school board. In rendering its decision, the CAB is to review the record of the proceedings before the school district, as well as any supplemental information that was unavailable at the time of the proceedings below.

The Pennsylvania Supreme Court stated, in West Chester Area School District v. Collegium Charter School, 812 A.2d 452 (Pa. 2002), that the CAB must utilize a *de novo* standard of review when considering a school district's denial of a charter on appeal. Consistent with the Pennsylvania Supreme Court's ruling, the CAB has provided guidance on what amounts to "due consideration" in In re: Hills Academy Charter School, CAB 1999-12: "since it has to agree or disagree with the findings of the [district], it can of necessity, determine the weight of the evidence behind each finding and draw its own conclusions." Id. Therefore, while giving due consideration to the findings of the school district, the CAB will make an independent review of each deficiency identified by the District.

B. Scope of Review

In addition, it is important to note here that the scope of the CAB's review of the District's denial of a charter will be limited to the deficiencies identified in the District's resolution to deny the Charter School's revised application. No appeal was ever made from the District's initial denial of the application, and the CAB will not consider the individual bases for denial that were expressed therein unless they were once again raised in the June 16, 2004 resolution.

Specifically, the District's June 16, 2004 resolution lists the following deficiencies as the bases for its denial of the revised application: (1) the lack of a specific curriculum to be offered pursuant to 24 P.S. § 17-1719-A(5); (2) the inability to convince the District of the capability of the Charter School to support and plan a comprehensive learning experience for students; and (3) failure to establish policies and procedures the Charter School will follow concerning special education under its obligations pursuant to 22 Pa.Code Chapter 711. R.R., Book 2, § 33. The District asserts that an additional deficiency in the revised application is the Charter School's failure to submit a sufficient application pursuant to 24 P.S. § 17-1717-A. This deficiency, however, is simply not listed or identified anywhere in the District's June 16, 2004 resolution, despite the fact that such deficiencies specifically served as bases for the District's denial of the initial application.

The CSL specifically provides that "the reasons for the denial, including a description of the deficiencies in the application, shall be *clearly* stated in the notice." 24 P.S. § 17-1717-A(5) (emphasis added). Accordingly, the CAB will consider only the deficiencies specifically and clearly listed in the District's June 16, 2004 resolution. Where a denial does not specifically mention failure to satisfy a requirement of the CSL, the CAB has consistently found that district has agreed that the applicant has met that requirement. See In re: Wonderland Charter School, CAB 1999-3; see also In re: Vitalistic Center Charter School, CAB 1999-6 (absent specific acknowledgement by the school district in a second denial that a deficiency cited in an initial denial was not remedied, the CAB will assume that such deficiency was remedied by the revised application).

Finally, the Commonwealth Court has noted that the failure of a school district to raise a particular deficiency in its denial constitutes a failure to preserve that issue for later appeal. See Central Dauphin S.D. v. Founding Coalition of the Infinity Charter School, 847 A.2d 195 (Pa.Comm. 2004) (failure of the school district to raise the issue of curriculum for non-academically gifted children in its denial did not preserve the issue for later review). Therefore, because the District has failed to preserve several issues that were raised in its initial denial, CAB will not review those issues on appeal.³

The CAB will, however, consider the factual information submitted by the Charter School relative to its initial application. The Charter School has sought to exclude any information submitted prior to its revised application, but this is imprudent. First, all of the information submitted with the initial application is relevant and was available to the District when it rendered its decision on the revised application. In addition, based upon the record, it is unclear precisely what information was submitted in conjunction with the initial application as

³ Notwithstanding the CAB's decision to consider only the deficiencies raised in the June 16, 2004 resolution, the remaining deficiencies identified by the District in its initial denial lack sufficient support in the record and do not warrant the denial of a charter. First, the District had asserted that the Charter School's application was deficient because it failed to provide criminal background checks and child abuse clearances for its proposed staff pursuant to 24 P.S. §§ 171-1719-A(15) and (16). CAB has previously held that such documentation is not required at the time of application when the teachers are only "proposed employees." See In re: Vitalistic Therapeutic Charter School, CAB 1999-6. Also, the Charter School has unequivocally stated in the materials submitted to the District, that it will obtain this documentation for any individuals ultimately hired. See e.g. R.R., Book 2, § 31 and R.R. Book 1, § 2 (pp. 95-97). The Charter School has also provided adequate information relating to staff development as required by 24 P.S. § 17-1719-A(13), contrary to the District's finding in its March 3, 2004 resolution. See R.R., Book 1, § 2. The District's finding that the Charter School lacked sustainable support is also not supported by the record. The Commonwealth Court has agreed with the CAB's determination that sustainable support is to be considered in the aggregate rather than individually in terms of support from teachers, parents, students and community members. See Infinity Charter School, supra. When considered in the aggregate, the record contains sufficient evidence of sustainable support for the Charter School. See R.R., Book 1, §§ 5, 7, 8 and Book 2, § 25, 42-45. The final deficiency from the first denial,—the lack of sufficient information on the proposed facility—is the subject of supplemental information that was jointly submitted by the parties, and therefore does warrant consideration by the CAB. This deficiency will be discussed in the opinion.

opposed to the revised application. Much of the material from the revised application is commingled with and integrated into the initial application material. In fact, some of the information submitted with the revised application appears to merely supplement the information provided for consideration of the initial application. Therefore, it is entirely proper for the CAB to consider all of the information submitted by the Charter School in connection with both its initial and its revised applications.⁴

C. Charter School Application Criteria

The General Assembly enacted the CSL to provide school-age children with additional learning opportunities within the public school system by encouraging schools that offer diverse educational experiences utilizing unique and innovative teaching techniques. See 24 P.S. § 17-1702-A. As such, the CSL provides that a school district must assess an application for a charter based upon, inter alia, 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 [on the charter application].
- (ii) The capability of a 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). Therefore, in order for a school district to have legal authority to deny an application for a charter, the charter school must be deficient under at least one of the

⁴ In addition, both the District and the Charter School have agreed that the record is complete and the issues with the materials relate to the collation of the documents as opposed to the substance of the reproduced record.

criteria enumerated above. See In re: Bear Creek Community Charter School, CAB 2003-3.

D. Deficiencies Identified by the District

As noted before, the District's June 16, 2004 resolution identified three areas in which it believed the Charter School's application was deficient. Giving due consideration to the findings of the District, the CAB will conduct a *de novo* review of each of the three purported deficiencies.

(i) Curriculum

The first deficiency identified by the District is the lack of a specific curriculum to be offered pursuant to 24 P.S. § 17-1719-A(5). The District, however, provides very little detail as to what aspects of the Charter School's description of its curriculum are insufficient. See R.R., Book 2, § 33. In fact, the June 16, 2004 resolution merely avers that the Charter School's curriculum continues to be insufficient without providing any additional details. The District's brief asserts only that the curriculum is "vague and cursory," and that the proposed ninth grade geometry curriculum does not outline the methods of assessing whether students meet educational goals. District Brief, pp. 8-9. The District also asserts in its brief that the curriculum is insufficient because the first grade mathematics description is less than one page in length. Id.

Additional detail regarding why the District believes the curriculum to be insufficient can be gathered from the District's March 3, 2004 resolution denying the initial application.⁵ See R.R., Book 1, § 28. In that earlier resolution, the District asserts that it could not determine how

the Charter School's proposed program of experiential and classroom learning would be implemented. In addition, the initial resolution noted that the application provided no specific performance or content standards for the academic curriculum and failed to include "detail regarding content, assessment, units of study, etc." Id.

The CAB disagrees with the District's findings with regard to the Charter School's proposed curriculum. The CSL requires that an application to establish a charter school must include, inter alia, "[t]he mission and educational goals of the charter school, the curriculum to be offered and the methods of assessing whether students are meeting educational goals." 24 P.S. § 17-1719-A(5). The Charter School has provided sufficient information to satisfy this requirement. It is not necessary for a charter school to completely describe the content of its curriculum in the detail that was apparently sought by the District, moreover, the information provided by the Charter School with regard to its curriculum, mission and goals is sufficient to assess whether the curriculum is acceptable under the CSL.

Here, the Charter School's applications and supporting documentation provide ample information explaining its proposed curriculum for all grade levels in each of the educational disciplines, as well as non-academic aspects of the curriculum. The Charter School's mission and overarching vision are concisely defined and the proposed curriculum will enable the Charter School to fulfill that mission for its students. In addition, the Charter School has sufficiently identified its measurable academic and non-academic goals that will promote student learning. Finally, the application states that the curriculum will be partnered with unique hands-

⁵ It is appropriate and proper for the CAB to look back to the specific reasons cited in the District's initial denial because this deficiency is a common factor between the first and second denials, especially because the second

on learning experiences that will further allow the Charter School to fulfill its vision and mission. Therefore, while giving due consideration to the findings of the District, the CAB disagrees and finds that the Charter School has adequately described its curriculum.

(ii) Comprehensive Learning Experience

Second, the District also asserts that the Charter School failed to demonstrate that it would provide comprehensive learning experiences to the students. The CSL provides that one criterion upon which a charter school application is to be evaluated is “[t]he capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students.” 24 P.S. § 17-1717-A(e)(2)(ii).

As with the District’s identification of other deficiencies, the June 16, 2004 resolution has no specific findings or explanation of the reasons why the District believed that the Charter School was unable to provide a comprehensive learning experience. The only detail relating to this finding is a statement that the Charter School was unable to “convince” the District that it is able to offer a comprehensive education. Even in its brief, the District fails to provide any analysis or support for its conclusion that the Charter School is unable to provide a comprehensive learning experience.⁶

denial lacks any substantive reasons for the denial.

⁶ The District’s Brief includes a section entitled “Sustainability Issue/Comprehensive Learning Experience,” but that section is dedicated entirely to a discussion of whether there is sustainable support for the Charter School pursuant to 24 P.S. § 17-1717-A(e)(2)(i), a deficiency that is not identified in the June 16, 2004 resolution denying the charter application. Despite the District’s brief’s nomenclature of the titles, it fails to provide any explanation as to why the District believes that the Charter School cannot provide a comprehensive learning system.

The only explanation of the District's reasoning on this issue is found in its initial denial,⁷ and even that explanation is cursory at best. In the section of the March 3, 2004 resolution entitled "Curriculum," the District merely states that the Charter School "has not provided information sufficient to determine if it is able to provide [...] comprehensive learning experiences to students" and states that while the Charter School will offer an academically advanced curriculum interwoven with a unique program of experiential and classroom, there is insufficient information as to how the program for experiential and classroom learning will be implemented.

The CAB disagrees with these minimal findings of the District. The Charter School's initial and revised applications and the supporting information that it submitted to the District demonstrate that the Charter School will be able to provide a comprehensive learning experience to its students. The primary legislative objectives of the CSL are to increase learning opportunities for students and provide additional public school choices for parents. 42 P.S. §§ 17-1702-A(2), (5). As explained above, the curriculum proposed by the Charter School shows sufficient planning and specificity and demonstrates that the Charter School will provide students with a comprehensive learning experience. Furthermore, every student attending the Charter School will have an "individual learning plan" that will assist in charting the student's course for learning and development in social, physical and academic areas. This unique approach to instruction will also support the Charter School's ability to provide a comprehensive learning experience. Thus, unlike the District, the CAB is sufficiently "convinced" that the Charter School will be able to provide its students a comprehensive educational experience.

⁷ See footnote 5 above for an explanation as to why it is appropriate for the CAB to review the District's initial denial of the charter application.

(iii) **Special Education Policies and Procedures**

The District's June 16, 2004 resolution also asserts that the Charter School has failed to establish special education policies and procedures. Unlike its identification of the other areas that it found deficient, the District has provided specific reasons for its assessment—however, none of these appear in either the June 16, 2004 resolution or the District's brief, and the CAB must once again look back to the initial denial of the Charter School's application on March 3, 2004. In that resolution, the District contended that the application did not address: (1) the needs of particular types of students; (2) how the Charter School would identify exceptional students; (3) how the Charter School will comply with IDEA regarding multi-disciplinary evaluations; and (4) IEP development, implementation and monitoring. In addition, the District asserted that the Charter School failed to provide sufficient information "to determine the Charter School's ability to fully respond to a range of special needs or exceptional students."

The CAB disagrees with the District's assessment. Because students with disabilities require individualized accommodations and programs, a charter school cannot know the specific accommodations that it will need to make for these children until they have enrolled. In re: Appeal of Environmental Charter School, CAB 1999-14. Also, the CAB has held that there is no requirement that a charter school set forth its specific plan for educating students with disabilities in its application. In re: Vitalistic Therapeutic Center Charter School, CAB 2000-15. Therefore, a charter school need only identify its general plan for accommodating special education students, and the Charter School here has provided sufficient information to satisfy that requirement.

For example, the Charter School has developed a plan for addressing students with disabilities who have either already been identified by the District as having a disability, or are later identified by the Charter School. When a student has already been identified as having a disability, that student's existing IEP will replace the individual learning plan that would otherwise be initiated by the Charter School. The Charter School also will develop a teacher assistance team in order to identify any of its students who might have special needs. In addition, the application clearly identifies a plan for implementing IEP's that includes the use of the local intermediate unit to provide any necessary ancillary services, and avers that it will fully comply with all relevant special education laws. The plan also includes details how the Charter School will integrate special education students with regular education classes and activities. Therefore, contrary to the District's determination, the CAB finds that the Charter School has not failed to provide sufficient information as to how it will accommodate students with disabilities.

F. Proposed Charter School Facility

Finally, the District has raised an issue with regard to the proposed location of the Charter School that warrants consideration by the CAB. Although this deficiency was not identified in its June 16, 2004 denial of the revised application, and although this issue is curiously not afforded any analysis in the District's brief, the parties have jointly submitted supplemental information with regard to the proposed facility. This information was unavailable prior to the District's decision, so it can and must be considered by the CAB at this time.

The Charter School's original proposed a site in its application stated that the school was to be located at a vacant space at the Carriage Space Mall in Tobyhanna, Pennsylvania. R.R.,

Book 1, §§ 2, 13. Although the information submitted by the Charter School with regard to the proposed facility would have been sufficient to satisfy the CSL at the time of the Board's decision, the parties have jointly submitted documentation demonstrating that on September 14, 2004, the owner of the proposed facility entered into a lease with a different entity for the same space that was proposed as the physical location of the Charter School. See Joint Stipulation, para. 3-4 and attachments. Thus, the parties agree that the proposed facility is no longer available to the Charter School for leasing. Moreover, the Charter School has not proposed any additional or alternative sites for its physical location.

The CSL requires that a charter school applicant provide the school district with a description and address of the facility for the physical location of the charter school, as well as a description of any ownership interest or lease arrangement that the school might have in the location. 24 P.S. § 17-1719-A(11). Issues relating to physical facility are not new to the CAB. The CAB has held that the CSL does not require that a charter applicant actually secure the proposed property or provide the district with a lease or sales arrangement, site development plan or a list of alternative sites. See In re: Environmental Charter School, CAB 1999-14; see also In re: Leadership Partners Charter School, CAB 2000-8. Likewise, the CAB has found that a non-binding letter of intent to lease a property is sufficient to satisfy the requirements of the CSL. See In re: Infinity Charter School, CAB 2002-4. Also, the CAB has even approved a charter where all that was available was a street address and drawing of the proposed facility and the school required a zoning variance in order to operate a school in that facility. In re: Legacy Charter School, CAB 2000-14. The Commonwealth Court has also indicated its agreement with the CAB's findings in Infinity Charter School, 847 A.2d 195 (Pa. Commw. 2004), and found that

a school district can require no more information relating to a school facility than that which is identified in the CSL.

The situation at hand, however, is different from those previously considered by the CAB and the Commonwealth Court. Here, the parties agree that the proposed facility is no longer available and the Charter School has not provided any additional information as to an alternative site or regarding whether it has even made any effort to secure a new location for its school. Without such information, the CAB cannot assess whether a non-identified site is acceptable for the operation of a charter school, and the requirements of the CSL have not been satisfied. Therefore, the CAB cannot grant a charter at this time, and we enter the following Order:

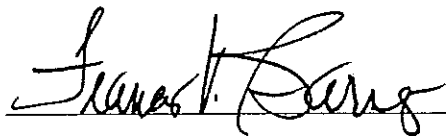
COMMONWEALTH OF PENNSYLVANIA
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In re: :
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By Pocono Mountain School District : Docket No. CAB 2004-05

ORDER

AND NOW, this 7th day of July, 2005, based upon the foregoing and the vote of the Charter School Appeal Board,⁸ it is ORDERED that the appeal of the Pocono Mountain Mathematics, Science and Technology Charter School is DENIED, and based upon the supplemental information jointly submitted by the parties, the decision of the Pocono Mountain School District to deny the charter application is AFFIRMED.

For the State Charter School Appeal Board:



Date Mailed: 7/7/05

⁸ At the Board's June 15, 2005 meeting the appeal, was denied by a vote of 4-0, with members Barnes, Bunn, Reeves and Shipula voting to deny the appeal.