

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
STATE CHARTER SCHOOL APPEAL BOARD

In Re: Appeal of Voyager Charter School : Docket No. CAB 2005-9  
Of Pennsylvania, Inc., t/a Voyager :  
Charter School :

**OPINION AND ORDER**

**I. Introduction**

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

**II. Findings of Fact**

1. On October 21, 2002, Janine Shay, Maryann Furlong, Ellisa Habbart, Art Moffa, Nancy Hall, Doug Morrow, Mark Shay, Carol Simon, Helen Taylor, and Andrew Thomson submitted an application with the District for a charter to operate a charter school to be known as Voyager Charter School.
2. On January 7, 2003, articles of incorporation were filed with the Commonwealth of Pennsylvania Department of State for Voyager Charter School of Pennsylvania, Inc. trading as Voyager Charter School. These articles of incorporation were provided to the District.

3. On February 10, 2003, the Board voted to deny Voyager's application for a charter.
4. Voyager submitted letters to the District, which had been signed by parents and indicated their intent to enroll their children in the school. These letters concerned approximately sixty-one children.
5. Voyager submitted to the District over 100 letters of support from residents of the District.
6. Voyager submitted to the District letters of support from State Representatives Matthew Ryan and Stephen E. Barrar.
7. Voyager submitted to the District a letter of support from Congressman Curt Weldon.
8. Voyager submitted to the District a letter of support from Senator Rick Santorum.
9. Voyager submitted to the District a letter of support from local groups and agencies.
10. Voyager did not submit evidence of support of teachers, except to say that one of the founders is a former teacher.
11. Voyager uses the "Infinity model" for its school design and curriculum.
12. The "Infinity model" is a curriculum "framework" designed by Nancy Hall and is based upon the curriculum of districts in which she had worked.
13. Nancy Hall had never worked at a district in Pennsylvania.
14. The "Infinity model" is based upon Colorado educational standards.

15. The proposed charter school is intended to be a school for the gifted.
16. The application specifically states that the curriculum is not appropriate for non-gifted students.
17. Voyager identified itself as a school for the gifted on its website.
18. Voyager's educational program will be specifically tailored to the individual needs of gifted students.
19. Voyager has no plan in place for the education of non-gifted students.
20. Voyager intends to use segregated or self contained programs for the gifted.
21. Voyager's application and its website make it clear that the intent is to operate the school as a school for the gifted.
22. The mission of Voyager is to advance the education of gifted students and does not include a mission to educate non-gifted students.
23. Voyager submitted to the District proposed bylaws for the school which include a description and method for the appointment or election of members of the Board of Trustees of Voyager.
24. A majority of the Board of Trustees of Voyager will have the ability to change the "Infinity model" components of the school if the District agrees that the change can be made.
25. Voyager submitted to the District a financial plan for the school, including a projected five year budget, a cash-flow projection, and a five year projection.
26. Voyager's financial plan considers start-up costs, teacher salaries and

benefits, field trip costs, classroom materials, special education consulting services, administrative staff salaries and benefits, and facilities expenses.

27. Voyager submitted to the District information regarding potential facilities for the location of the school.
28. The site listed as Voyager's preferred facility is no longer available.
29. Another of the sites listed in the Application is still available.

### **III. Conclusions of Law**

1. The present appeal is properly before the CAB, pursuant to the Charter School Law, 24 P.S. §§ 1701-A, *et seq.*
2. The standard that the CAB must apply in making a decision in this case is set forth in 24 P.S. § 1717-A(e)(2).
3. The criteria for evaluating a charter school application under Section 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 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.
4. The CAB must give due consideration to the findings of the School District.
5. The applicable standard of review is not the standard used by appellate courts because the CAB has the authority, under the Charter Law, to agree or disagree with the findings of the school district, and to allow the charter school and/or the local board of directors to supplement the record if supplemental information was previously unavailable.
6. The financial plan submitted by Voyager met the requirements of 24 P.S. § 17-1719-A(9).
7. Sufficient information was submitted by Voyager to comply with 24 P.S. § 17-1719-A(11) concerning the identification of the proposed physical facility.
8. The community for purposes of showing sustainable support is Garnet Valley.
9. Voyager failed to demonstrate sustainable support by teachers, parents, students, and other community members.
10. Voyager has failed to establish that the school will provide a

comprehensive program for all students who may choose to enroll, in compliance with to 24 P.S. § 17-1717-A(e)(2)(ii) of the Charter School Law.

11. CAB has no jurisdiction to address issues raised by Garnet Valley concerning “pubic” non-profit corporations or the constitutionality of the Charter School Law.

#### **IV. Discussion**

##### **A. Procedural Issue**

Before addressing the substantive issues in this appeal, we must dispose of a preliminary procedural issue. The School District alleged that the CAB did not comply with the necessary timelines in the Charter School Law (“CSL”) in accepting and reviewing Voyager’s appeal. Thus, the School District argues, CAB should be divested of its jurisdiction and the School District’s denial of the charter should be upheld as justified and proper.

Section 1717-A(i)(7) of the CSL requires that “not later than thirty (30) days after the date of notice of the acceptance of the appeal, the appeal board shall meet to officially review the certified record.” In addition, “not later than sixty (60) days following the review conducted pursuant to clause (6), the appeal board shall issue a written decision affirming or denying the appeal.” 24 P.S. §17-1717-A(i)(8). In *Shenango Valley Regional Charter School v. Hermitage School District and Sharon City School District*, 756 A.2d 1191 (Pa. Cmwlth. 2000), the issue was whether the CAB issued its written decision within sixty days of reviewing the certified record. In *Shenango Valley*, the Court noted that the CAB first considered the appeal on August 18 when it heard oral

argument from counsel. Then the CAB subsequently closed the record and concluded the hearing on September 15 when it voted on the appeal. The written decision was issued November 2, and the Court held that this was within sixty days of the September 15 meeting, which was when the CAB met to officially review the certified record.

In this case, the letter sent by the CAB's counsel on October 26, 2005<sup>1</sup> stating that the Voyager appeal had been accepted and that a hearing officer would be appointed was not the notice of acceptance referenced in section 1717-A(i)(7). Based on past practice and the *Shenango Valley* decision, the notice of acceptance of the appeal is when the CAB first considers the appeal, which is when it receives the certified record from the hearing officer and counsel present their oral arguments to the CAB. Thus, the notice of acceptance of the appeal occurred on February 28, 2006 when the certified record was received and counsel presented oral arguments. CAB was then to meet and officially review the record within thirty days of February 28, 2006.

The CAB met on April 11, 2006, which was forty-two days after the date of the notice of acceptance of the appeal, and voted on the appeal. This was not within the thirty day time period within which the CAB was to meet and officially review the record. When the CAB voted on April 11, 2006, however, it voted to deny Voyager's appeal. The vote to deny Voyager's appeal provides the same result requested by the

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<sup>1</sup> Although the October 26, 2005 letter states that the CAB accepted the appeal, the letter also explained that a hearing officer had been appointed and that she would hold a pre-hearing conference to establish a schedule to obtain the hearing transcript and exhibits and a schedule for the filing of briefs and findings of fact. The hearing officer would then return the appeal file to the CAB for its review and determination. The letter stated that the matter was tentatively listed for argument at the CAB's November 29, 2005 meeting. Thus, from this additional information in the letter, and from the ruling in *Shenango Valley*, the School District knew, or should have known, that the official notice of acceptance of the appeal would be when the CAB met to accept the entire record certified by the hearing officer and heard counsels' oral arguments.

School District in its procedural motion and any failure of the CAB to meet a prescribed timeline, as set forth in the CSL, thus, constitutes harmless error in this instance.

**B. Site**

One basis given by Garnet Valley for its denial of the Voyager Application was the adequacy of the planned site for the school facility. The Charter School Law requires that an applicant provide, “[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)

Voyager identified multiple sites in its application, as well as the ownership of the sites and the arrangements that it would make related to using those sites. In addition, it submitted a site plan and a floor plan for the proposed facility.

Only one of those sites is now available. Both Voyager and Garnet Valley have identified issues related to the site.

In prior decisions the CAB has held that a detailed facility plan is not required under the Charter School Law. (*In Re: Environmental Charter School Appeal from Denial of Charter by Palisades School District*, CAB Docket No. 1999-14; *In Re: Leadership Learning Partners Charter School Appeal from Denial of Charter School Application by the School District of Philadelphia*; CAB Docket No. 2000-8). In *Leadership Learning Partners, Id.* the 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.” Voyager provided, in the Application, a street address and site plan and a floor plan for the proposed facility. Voyager 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. That is all that is required by the Charter Law. The CAB finds that Voyager met its burden with regard to 24 P.S. § 17-1719-A(11). As CAB found in *Environmental Charter School*, it 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. Thus, this ground for denial is rejected.

**C. Budget**

Garnet Valley also determined that the financial plan submitted by Voyager did not meet the requirements of 24 P.S. 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).

Voyager included a financial plan with its Application. The CAB has held that a simple budget is sufficient. *In Re: Lincoln-Edison Charter School Appeal from Denial of Charter by the School District of the City of York*, CAB Docket no. 2000-11. In *Lincoln-Edison*, the 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 Voyager budget. The Application as it relates to the budget complies with 24 P.S. § 17-1719-A(9) and this cannot serve as a basis for rejection.

#### **D. Comprehensive Learning Experience**

The Charter School Law states in, in pertinent part, “[A] charter school shall not discriminate in its admissions policies or practices on the basis of intellectual ability....”

24 P.S. § 17-1723-A(b)(1) The act further states that “[A] charter school shall not unlawfully discriminate in admissions, hiring or operation.” 24 P.S. § 17-1715-A(3).

Although Voyager has established an admission policy that does not, on its face, discriminate, there is ample evidence in the record to show that the actual operation of the school will result in discrimination on the basis of intellectual ability.

Although Voyager has indicated that it will admit all students who apply, it has made clear that the educational program will not be designed for the learning characteristics and needs of non-gifted learners. It is apparent that, if the school will not provide a program that is designed for the needs of non-gifted learners, it cannot provide a comprehensive learning experience for those students.

There is ample evidence in the record that the founders of Voyager intend that the school be operated as a school for the gifted. For example, the application states, in its introduction, “However it is our intent to provide another choice for parents; a choice that provides full-time educational programming to meet the intellectual academic and social-emotional needs of their gifted child.” The mission statement of the school and the goals of the school continue to emphasize that the school is intended to meet the needs of gifted students. The application further shows that the educational program for the school is designed “based on the common characteristics and needs of mentally gifted students.” Nowhere in the application is there evidence of a program to meet the needs of non-gifted students.

Voyager relies on the decision in Infinity Charter School, Docket No. CAB 2002-4, as support for its argument that it will not discriminate on the basis of intellectual ability. That case is, however, distinguishable from this one. The decision in Infinity focused on the admission policies that Infinity had established. It found that the admission policy did not discriminate, but it did not address the actual operation of the school.

Based on the clear intent of the founders of Voyager that it be operated as a school for gifted students, and based on the lack of programs intended or designed to address the needs of non-gifted students, the CAB finds that Voyager would not offer a comprehensive learning experience as required by 24 P.S. § 17-1717-A(e)(2)(ii). Thus, the CAB adopts this finding.

#### **E. Sustainable Support**

Voyager must show “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. § 17-01717-A(e)(2)(i). This support must be demonstrated when the application is submitted and considered. *Id.*

Garnet Valley determined that the Voyager Application did not demonstrate sustainable support for the charter school plan by teachers, parents, other community members and students within the Garnet Valley School District, because of what it considered to be the misleading nature of Voyager’s invitation for support.

Testimony was offered that enrollment would have to reach 80 students for the school to be viable. Letters of intent from parents, which were attached to the Application, show an interest in enrolling approximately sixty-one students. Letters from

community members were included in the Application, including, in addition to others, letters from Senator Santorum, Congressman Curt Weldon and State Representatives Matthew Ryan and Stephen E. Barrar. No evidence of support from teachers was submitted with the application. Over one hundred residents of the District signed letters of support for Voyager but there is some concern about the language in these letters. All of the letters from residents included the following language, inserted by Voyager, which indicated that the support was for a school that would “better serve our intellectually and/or academically gifted students...”

As the 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, Docket No. CAB 1999-10; Appeal of Ronald H. Brown Charter School, Docket No. CAB 1999-1.* 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, there is no evidence of support from teachers, except a reference that one member of the founders is a former teacher. However, there are letters of intent to enroll students and letters of support from residents. Thus, Voyager has shown sustainable support for its charter school plan. A matter of concern, however, is that it is clear from the letters of support and the testimony of those appearing at the public hearings, that those offering support believed that the school was for gifted students. It is not clear that any of the supporters were aware that it would not be possible for Voyager to discriminate on the basis of intellectual ability. In addition, there is no evidence to show that the supporters

of the school would continue to support it, if it was clearly understood that the school would not be able to limit its student body to gifted students.

The Charter School Law requires an applicant to demonstrate sustainable support for the charter school plan. Although, as discussed in the previous section, Voyager's charter school plan would result in impermissible discrimination based on intellectual ability, the CAB finds that Voyager demonstrated sustainable support for the charter school plan by teachers, parents, other community members and students. However, because we found that Voyager's charter school plan would result in impermissible discrimination based on intellectual ability, the issue of sustainable support, in this appeal, is not the deciding factor in denying Voyager's appeal.

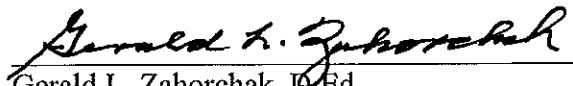
#### **V. Conclusion**

As discussed herein, Voyager has not shown sustainable support for an approvable charter school plan. Nor has it shown that it will offer a comprehensive learning experience to all students who might be admitted. In all other respects, the Application does comply with the Charter School Law. Due to the failure to show that a comprehensive learning experience will be provided, the decision of the Garnet Valley School District to deny the Voyager Charter School Application is upheld.

**ORDER**

AND NOW, this 8<sup>th</sup> day of June 2006, based upon the foregoing and the vote of the Board<sup>2</sup>, the appeal of the Voyager Charter School is hereby **DENIED**.

FOR THE STATE CHARTER SCHOOL  
APPEAL BOARD

  
Gerald L. Zahorchak, B.Ed.  
Chairman

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<sup>2</sup> At the Board's April 11, 2006 meeting, the vote was 4-0 to deny the appeal, with members Bunn, Reeves, Shipula and Zahorchak voting to deny the appeal.