

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

**IN RE: Education InnovationsLAB** :  
**Charter School** : **Docket No. CAB 2007-01**  
**Appeal from Denial of Charter** :  
**by the School District of Pittsburgh** :

**I. INTRODUCTION**

This matter is before the Pennsylvania State Charter School Appeal Board (CAB) on Appeal by the Education InnovationsLAB Charter School (Charter School) from the denial of its Charter School Application by the School District of Pittsburgh (School District). The Charter School applied to the School District to form a charter school pursuant to Section 1717-A of the Charter School Law (CSL). 24 P.S. §17-1717-A. The School District rejected the Charter School's application.

**II. FINDINGS OF FACT**

1. On November 15, 2005, the Charter School submitted a charter school application to the School District.
2. The School District held a public hearing on the charter application on December 15, 2005.
3. On January 18, 2006, the School District's Review Team gathered information and asked questions about the Charter School.
4. The School District denied the charter school application on February 26, 2006.
5. The Charter School revised and resubmitted its application on May 4, 2006, but the School District did not accept this submission as a revised and resubmitted application.

6. On June 16, 2006, the Charter School revised and resubmitted the application and the School District held a public hearing on July 17, 2006 and allowed the Charter School seven minutes to make a presentation to the School District.
7. On July 26, 2006, the School District's Review Team met with Charter School representatives for approximately one and one-half hours to ask questions about the application and the Review Team asked the Charter School to provide additional documents.
8. On August 4, 2006, the Charter School provided the Review Team the requested additional documents but also provided other documents that had not been requested by the Review Team.
9. The Review Team made a presentation of its findings and recommendations to the School District on August 9, 2006 and the Charter School was not allowed to cross-examine the Review Team about its findings and recommendations.
10. On August 15, 2006, the School District denied the Charter School's revised application.
11. The Charter School filed an appeal with the Charter School Appeal Board (CAB) on January 2, 2007.
12. The Charter School included in its application copies of 155 preliminary applications for enrollment of students, letters from teachers seeking employment, and a few letters of support from community organizations.
13. The Charter School proposes to use Destination Success, an online program, as its core curriculum for Math, Science and Literacy.
14. The Charter School proposes to have six Laboratories of Inquiry (LABs).

15. Two LABs will be available for the first year of operation, two additional LABs will be available in the second year of operation, and the last two LABs will be available in the third year of operation.
16. The curriculum for the LABs will be developed by the Charter School's teachers and specialists.
17. There is no professional development plan related to curriculum content, scope and sequence of curriculum.
18. The Charter School proposes to have a tutoring center but there is no plan of operation for the center and no description of instructional strategies to be utilized by tutors.
19. The School District provides students with many of the same or similar programs that the Charter School is proposing to provide in its charter plan.

### **III. CONCLUSIONS OF LAW**

1. The present appeal is properly before CAB pursuant to 24 P.S. §§17-1701-A, et seq.
2. The Charter School Law governs the application and approval processes and operation of charter schools in Pennsylvania. 24 P.S. §§17-1701-A, et seq.
3. The criteria for evaluating an Application under 24 P.S. §1717-A(e)(2) are:
  - (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d).
  - (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.

- (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.
  - (iv) The extent to which the charter school may serve as a model for other public schools.
4. The preliminary enrollment applications of students, the letters of support by teachers seeking employment, and the letters from community organizations demonstrate sustainable support for the Charter School in the aggregate as required by 24 P.S. §17-1717- A(e)(2)(i).
  5. The Charter School will not have its entire proposed curriculum available to students in the first two years of operation and the curriculum is not fully developed. The Charter School’s curriculum does not demonstrate that it will provide parents and pupils with expanded choices in the type of educational opportunities that are available within the public school system. 24 P.S. §17-1702-A(5).
  6. The Charter School has not demonstrated that it would be a model for other public schools. 24 P.S. §17-1717-A(e)(2)(iv).

#### **IV. DISCUSSION**

##### **A. Evidentiary Issues**

There are two evidentiary issues that the CAB must address before considering the substantive issues of the Charter School’s appeal.<sup>1</sup> The first issue is whether the Charter School

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<sup>1</sup> A third evidentiary issue is raised in the Charter School’s brief but this matter was addressed previously in a telephone conference call among counsel to the CAB, and counsel for the Charter School and the School District. The issue, raised by the School District, was that the record should include evidence about the Charter School’s process for obtaining signatures in order for the Charter School to receive approval from the Court of Common Pleas to file an appeal with the CAB. Counsel for the CAB informed the School District that the CAB has never considered the petitions that a charter school files with a Court of Common Pleas, pursuant to the Charter School Law, to be relevant to the issue of sustainable support for a charter school. Thus, the process by which the Charter School obtained such signatures is not relevant to the CAB’s determination of whether the Charter School

must be provided with an opportunity to question and cross-examine anyone offering evidence against the Charter School at the hearing conducted before the School District's Board of School Directors ("Board")?

1. ***Background***

The Charter School filed its revised application on June 16, 2006. The Board held a public hearing on the revised application on July 17, 2006. The Board allowed the Charter School to make a presentation about its application.<sup>2</sup> In addition, the Board allowed three minutes for any speakers who wanted to speak about the Charter School's application. Although the agenda included the names of eight people who had apparently asked to speak at the hearing, none of them spoke at the hearing but the Board included in the record any written testimony they had provided.

In addition to the public hearing, the School District organizes "review teams" to review charter school applications, interview the applicants in an informational session, and present their findings and recommendations to the Education Committee of the Board at another public meeting. On July 26, 2006, a Review Team met with representatives of the Charter School and asked questions about the charter school application. This meeting lasted for approximately one and one-half hours. On August 9, 2006, the Review Team presented its findings and recommendations about the Charter School's application to the Board. Although Charter School representatives were at the August 9, 2006 public meeting, they were not allowed to respond to the Review Team's presentation.

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demonstrated sustainable support for its charter school plan. This issue will not be further addressed in this decision because the School District did not address this issue in its brief and, therefore, the CAB finds that the School District is no longer pursuing this issue.

<sup>2</sup> The Charter School was allowed seven minutes to make a presentation to the Board of Directors about its application. Although the School District might have the legal prerogative to limit charter schools to seven minutes for their presentations, the CAB suggests that the School District review its policy and seriously consider allowing charter school applicants more time to make such presentations.

On August 15, 2006, the Board voted to deny the Charter School's application. In conveying this vote to the Charter School, the Superintendent stated in a letter dated August 16, 2006, that the reasons for denial were the "failure to demonstrate sustainable parental commitment" and the "failure to demonstrate expanded choice in the types of educational opportunities currently being offered by Pittsburgh Public Schools and inability to serve as a model to other schools in the Pittsburgh Public Schools system." (Volume X, Tab 39). The Superintendent stated that the detail supporting the denial was attached to the letter, and the attachment was the Review Team's findings and recommendations as had been presented at the hearing on August 9, 2006.

## ***2. Local Agency Law and Review Team Information***

The Charter School argues that the Local Agency Law is applicable to the review of charter school applications because school districts are local agencies and Commonwealth Court has stated that "[w]hen a school board considers charter school applications, it acts in an adjudicatory capacity. School Dist. of Philadelphia v. Independence Charter School, 774 A.2d 798, 803 n. 13 (Pa. Cmwlth. 2001). In addition, the Charter School argues that it had the right to question and cross-examine the Review Team when it made its presentation to the Board because the Local Agency Law requires a local agency to allow reasonable examination and cross-examination at agency hearings. 2 Pa.C.S. §544. Since the Charter School was not allowed to cross-examine the Review Team when it made its presentation to the Board, the Charter School requests the exclusion of certain exhibits to the extent they contain any factual assertions regarding the School District's or the Charter School's educational program.<sup>3</sup>

The Charter School Law ("CSL") provides that when a charter school application is submitted to a school district's board of directors, the board of directors "shall hold at least one

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<sup>3</sup> These exhibits are found in Volume IX of the certified record at tabs 35, 36, 37 and 39.

public hearing on the provisions of the charter application, under the act of July 3, 1986 (P.L. 388, No. 84), known as the Sunshine Act.” 24 P.S. §17-1717-A(d). If the charter application is denied and the applicant resubmits a revised application to the local board of directors, the board “may schedule additional public hearings on the revised application.” The board must consider the revised application at the first board meeting occurring at least forty-five days after receipt of the revised application. “The board shall provide notice of consideration of the revised application under the ‘Sunshine Act’”. 24 P.S. §17-1717-A(f). Although the CSL requires that a school district hold at least one public hearing on the provisions of a charter application, the CSL does not establish what must occur at the public hearing, except that it be held consistent with the Sunshine Act.<sup>4</sup>

In contrast to the provisions of Section 1717-A, the provisions of Section 1729-A explicitly state that the proceedings regarding nonrenewal or termination of a charter, which also require a public hearing, are “subject to 2 Pa.C.S. Ch. 5 Subch. B (relating to practice and procedure of local agencies).” 24 P.S. §17-1729-A(c). Section 1729-A(c) further requires that in the case of a nonrenewal or termination hearing, the board of directors is to present evidence in support of the grounds for nonrenewal or termination and provide the charter school reasonable opportunity to offer testimony before taking final action at a public meeting held pursuant to the Sunshine Act.

Thus, the CSL specifically designates that a public hearing held with regard to the nonrenewal or termination of a charter is subject to the Local Agency Law, which includes allowing reasonable examination and cross-examination. 2 Pa.C.S. §554. However, the CSL does not specifically designate that a public hearing held with regard to a charter school’s application is subject to the Local Agency Law. A method of statutory construction that is

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<sup>4</sup> The Charter School has not claimed that there was any violation of the Sunshine Act by the School District.

relevant to this issue is “expressio unius est exclusion alterius”. This phrase means that when “some things are specifically designated in a statute, things omitted [sic] should be understood as having been excluded.” Samilo v. Commonwealth of Pennsylvania, Insurance Dept., 510 A.2d 412, 413 (Pa. Cmwlth. 1986).

The CSL specifically provides that the Local Agency Law applies to proceedings regarding the nonrenewal or termination of a charter. The CSL does not, however, state that proceedings regarding the review and evaluation of a charter school application are subject to the Local Agency Law. Thus, the CAB finds that the Local Agency Law is not applicable to Section 1717-A of the CSL, which provides the procedures for the review and consideration of a charter school application. Therefore, the School District did not have to provide the Charter School with an opportunity to examine and cross-examine the Review Team’s presentation of its findings and recommendations.

In addition, Commonwealth Court’s statement that a school board acts in an “adjudicatory capacity” when it considers charter school applications does not change the CAB’s decision on this issue. The Court’s reference to the school board acting in an “adjudicatory capacity” was because the school board was making a decision about a charter application, which differs from when a school board legislates and acts in a “legislative capacity.” Commonwealth Court’s statement was made relative to its discussion of whether time limits in Section 1717-A of the CSL were mandatory or directory and not in determining whether the Local Agency Law applied to the review and consideration of charter applications.

The Charter School was provided notice and an opportunity to be heard regarding its charter application. The Review Team allowed the Charter School to respond to questions from the Review Team and to provide further explanation about its proposed charter school plan. As



stated above, the Charter School did not have the right to examine or cross-examine the Review Team's information. In addition, there is nothing to indicate that the Charter School could not have made written comments to the School District about the Review Team's information prior to the School District's vote on August 15 denying the application. The School District was not prohibited from accepting and adopting the Review Team's findings and recommendations as the basis for denying the Charter School's application. See, *In re: Environmental Charter School*, CAB Docket No. 1999-4. Therefore, the CAB denies the Charter School's request to exclude the exhibits found in Volume IX, Tabs 35-37, and 39 of the certified record.

### ***3. Charter School Materials Submitted August 4, 2006***

During the Review Team's informational meeting with the Charter School on July 26, 2006, the Review Team asked the Charter School for some additional documents. The requested documents were (1) enrollment forms; (2) types of questions in the assessment; (3) scope and sequence for Destination Success in reading for grades four to eight; and, (4) a bibliography of what types of reading materials are included in Destination Success. (Volume VIII, Tab 8, ## 2633-34). Besides providing the requested documents to the Review Team on August 4, 2006, the Charter School also provided other documents that were not specifically requested. The Review Team did not consider any documents that it had not requested. Thus, the School District objects to including in the certified record any of the documents provided by the Charter School on August 4, 2006 that were not specifically requested by the Review Team.<sup>5</sup>

Section 1717-A of the CSL requires that a charter school application be submitted to a school district by November 15 of the school year preceding the school year in which the charter school will be established. 24 P.S. §17-1717-A (c). If the application is denied, the applicant

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<sup>5</sup> The documents the School District asks to be excluded from the certified record are found in Volume VIII, Tabs 14-17 and Volume IX, Tabs 18-21, and Tabs 25-32.

can revise and resubmit the application, which is what the Charter School did in this case. 24 P.S. §17-1717-A(f). The CSL does not require a school district to accept additional documents from a charter school applicant after the application is submitted. See, *In re: City College Prep Charter School*, CAB Docket No. 2006-1. The CSL also does not prohibit a school district from receiving additional documents after the application is submitted. Therefore, the School District was not prohibited from asking the Charter School for additional documents but the School District was not required to accept documents that it did not request.

The Charter School cites the case of *In re: Pocono Mountain Mathematics, Science and Technology Charter School*, CAB Docket No. 2004-05 to support its position that the documents it provided on August 4 that were not requested by the Review Team should be included in the certified record. However, Pocono Mountain differs from this case. In Pocono Mountain, the CAB found that “[m]uch of the material from the revised application was 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.” That was why in Pocono Mountain the CAB considered all the information submitted in both the initial and revised applications.

In this case, however, the documents at issue were not provided with either the initial or revised application but were provided after the Review Team asked for other documents. Had the Review Team not asked for any documents, the documents at issue would not have been provided by the Charter School. Therefore, the School District was not required to consider the documents that were not requested, and they will be excluded from the certified record.

**B. Substantive Issues**

The School District's denial of the revised charter application was based on its finding that the Charter School failed to demonstrate sustainable parental commitment, failed to demonstrate expanded choices in the types of educational opportunities offered and failed to show that the charter school would serve as a model to other public schools.

***Sustainable Support***

Pursuant to the CSL, a charter school applicant must show “demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students.” 24 P.S. §17-1717-A(e)(2)(i). Community support must be shown in the application document or by comments received at the public hearing. CAB has interpreted Section 1717-A(e)(2)(i) to mean that the indicia of support is to be measured in the aggregate and not by individual categories of support. Furthermore, the CAB has concluded that an applicant's failure to show strong support in any one category is not necessarily fatal to the application. The Commonwealth Court in *Brackbill v. Ron Brown Charter School* held that CAB's interpretation was reasonable. *Brackbill v. Ron Brown Charter School*, 777 A.2d 131, 138 (Pa. Cmwlth. 2001). However, a reasonable amount of support in the aggregate must be demonstrated to show that the proposed charter school will be supported as an on-going entity.

The Charter School proposes to enroll 160 students in its first year of existence. The Charter School provided copies of approximately 155 preliminary applications for enrollment of students. (Volume VIII, Tab 12). Although some of the preliminary applications were signed in 2005, when the initial application was submitted, the overwhelming majority were signed in early 2006, prior to submission of the revised application in June 2006. There are also letters from a few teachers seeking employment and from a few community organizations.

The School District's determined that the Charter School failed to demonstrate sustainable support generally because no parents, students, teachers or community members spoke at the July 17, 2006 public hearing and no parents or community members participated in the site visit held on July 26, 2006.

The CAB disagrees with the School District's assessment of sustainable support for the Charter School. There is no requirement that parents, teachers and community members speak at the public hearing or participate in a site visit by the Review Team. Having people speak in support of the charter school plan is only one way of demonstrating support. Letters of support and preliminary applications for enrollment are also ways of demonstrating support. The Charter School provided preliminary applications, letters from teachers seeking employment and other letters of support. Thus, the Charter School provided sufficient evidence, in the aggregate, to demonstrate sustainable support.

### ***Curriculum***

The Charter School Law requires that an applicant provide information regarding the "mission and education 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). In addition, one of the legislative intents of the CSL is that the charter school provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system. The School District found that the Charter School failed to demonstrate expanded choices in the types of educational opportunities to be offered to its students and failed to show that the charter school would serve as a model to other public schools.

The Charter School proposes to use Destination Success, an online program, as its core curriculum for Math, Science and Literacy. Destination Success is a supplemental program and has not been used as a core instructional program in any school. There is no research that validates Destination Success as a core instructional program. There is also no written curriculum for reading and mathematics and no clear plan for how such a curriculum is to be developed.

In addition to Destination Success, the Charter School proposes to have six Laboratories of Inquiry or LABs. These LABs are: TechLAB; DesignLAB; ArtsLAB; LanguagesLAB; WorldLAB; and NatureLAB. The LABs curriculum will not be based on textbooks but the curriculum will be developed by the Charter School's teachers and specialists. (Vol. VII, #02175). The Charter School's Chief Academic Officer (CAO) will oversee curriculum development, supervision and assessment. The CAO will be assisted by the Curriculum Committee that will meet at least monthly to review curriculum as it is being or has been implemented. (Vol. VII, #02178). Only two LABs will be available to students in the first year of operation; NatureLAB and WorldLAB. It is expected that the other LABs will be added thereafter: TechLAB and DesignLAB in year two, and LanguagesLAB and ArtsLAB in year three. (Vol. VII, #02184).

The LABs are to promote inquiry-based teaching and learning but there is not a plan for training and implementing inquiry-based teaching and learning. Since there is no curriculum available, the CAB cannot verify that inquiry-based teaching and learning will be promoted. In addition, because there is no written curriculum available the CAB cannot verify that the curriculum is aligned to Pennsylvania standards.

In addition, we find that no professional development plan related to curriculum content, scope and sequence of curriculum exists. Without a written curriculum and without a formal structure for providing necessary professional development associated with curriculum writing, we conclude there is little evidence of the Charter School's ability to provide comprehensive learning experiences to students.

The Charter School also proposes to have a tutoring center but there is no plan of operation. There is no description of instructional strategies to be used in the content of the program and the delivery of instruction is questionable. Students are to receive their interventions in a tutoring center with an aide but there is no plan for specialized training of the aide.

Finally, it is not apparent that the Charter School will provide expanded choices in the types of educational opportunities available within the public school system. The Charter School claims that its use of computer-based programs to deliver Destination Success is innovative and unique. However, the School District offers almost the same computer-based programs that provide reading and mathematics instruction to supplement core instructional programs. In addition, the Charter School's mission is to create a nurturing environment where students and teachers connect to the community through rigorous, interactive programs that focus on creative problem solving and critical thinking. The School District has a number of programs and/or schools that provide what the Charter School is seeking to provide. Some of the School District's academic offerings include: a magnet school specializing in science and technology; a pre-engineering magnet school; a horticulture academy; a math and science academy; integrated arts instruction; and a health careers academy.

Since the Charter School does not have a complete curriculum at this point, the CAB cannot find that the Charter School would create expanded choices in the types of educational opportunities available within the public school system, or that it would be a model for other public schools. Thus, the CAB upholds the School District's denial of the application on these bases.

## **V. CONCLUSION**

Based upon a review of the record in this appeal, CAB finds that the Charter School has demonstrated sustainable support for its charter school plan. However, because the Charter School does not have a completed curriculum, the CAB cannot determine if the curriculum is aligned to Pennsylvania standards or if it will provide comprehensive learning experiences to students. In addition, the Charter School does not intend to have all the LABs available for students in its first and second years of operation. Finally, the Charter School has not demonstrated that it will provide expanded choices in the types of educational opportunities available in the public school system or that it would be a model for other public schools. For these reasons, the corresponding findings of the School District are adopted and the Charter School's appeal will be denied.

**COMMONWEALTH OF PENNSYLVANIA  
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**ORDER**

AND NOW, this \_\_\_\_\_day of December, 2007, based upon the foregoing and the vote of this Board<sup>6</sup>, the January 2, 2007 appeal of the Education InnovationsLAB Charter School is hereby DENIED.

For the State Charter School Appeal Board

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/s/  
Gerald L. Zahorchak, D.Ed.  
Chairman

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<sup>6</sup> At the Board's November 13, 2007 meeting, the appeal was denied by a vote of 6-0 with members Zahorchak, Barker, Green, Reeves, Schweighofer, and Shipula voting to deny the appeal.