

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

In Re: Vida Charter School :  
: :  
: Docket No. CAB 2009-02  
Appeal from the denial of Charter by :  
the Gettysburg Area and Hanover :  
Public School Districts :

**OPINION AND ORDER**

**I. INTRODUCTION**

This matter comes before the Pennsylvania State Charter School Appeal Board (CAB) on Appeal by the Vida Charter School (Charter School) from the denial of its Charter School Application by the Gettysburg Area School District and the Hanover Public School District (Districts).

**II. FINDINGS OF FACT**

1. The Charter School applied to the Districts to form a regional Charter School on or about November 13, 2007.
2. Gettysburg Area School District rejected the Charter School's initial application on February 19, 2008.
3. Hanover Public School District rejected the Charter School's initial application on March 10, 2008.
4. The Charter School resubmitted its application to the Districts on or about April 22, 2008.
5. On or about May 29, 2008, the Charter School received a letter from counsel for Hanover Public School District indicating that that District would not vote on the Charter School's revised application.

6. On June 2, 2008, the Gettysburg Area School District rejected the Charter School's resubmitted application based on deficiencies in areas listed in that District's Resolution dated June 2, 2008. The deficiency area headings are noted in terms of the statutory standards, as follows:

- i. The application is deficient in its description of the strategies to be used by the Applicant for meaningful parent and community involvement;
- ii. The Applicant failed to demonstrate sustainable support for the Charter School Plan by teachers, parents, other community members, and students;
- iii. The Applicant failed to demonstrate the capability of the Charter School Applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the proposed charter;
- iv. The Applicant failed to adequately address all of the information requested in the Charter School Law in § 1719-A, as well as § 1702-A; and
- v. The Applicant failed to demonstrate how the Charter School may serve as a model for other public schools.

The District's Resolution was supplemented by a document that elucidated 37 findings leading to the above deficiencies.

7. The Court of Common Pleas of Adams County issued a decree establishing the sufficiency of the petition to appeal the charter denial.
8. The Charter School filed this appeal on March 13, 2009.
9. The Gettysburg Area School District has certified the record to CAB.
10. The Charter School has not objected to the record except insofar as new information regarding a proposed facility for the Charter School may have

become available before the hearing. No such information has been submitted in order to supplement the record.

11. The Hanover Public School District has indicated through its counsel that, instead of actively participating in this appeal, it intends to rely on the arguments made by the Gettysburg Area School District, and the subsequent CAB decision with respect to this case. The Charter School does not object to this approach.
12. Both parties waived their right to a hearing conducted according to 2 Pa. C.S. §§ 501-508 and 1 Pa. Code, Chapters 31-35, agreeing instead that the certified record, together with any supplemental information provided to CAB, provides all relevant and necessary documentation and information for the Appeal Board to issue a written decision affirming or denying the appeal.
13. An informational hearing was held before CAB on June 16, 2009.
14. The application is not deficient in its description of the strategies to be used by the Applicant for meaningful parent and community involvement.

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

1. The present appeal is properly before CAB, pursuant to the Charter School Law, 24 P.S. §§ 17-1701-A, *et seq.*
2. The applicable standard of review is not the standard used by appellate courts because CAB has the authority, under the Charter School Law, to agree or disagree with the findings of the Districts (24 P.S. § 17-1717-A(i)(6)).
3. The Commonwealth Court has found that the proper standard of review that is to be applied by CAB in charter denial cases is to be “*de novo*” (*W. Chester Area Sch. Dist. v. Collegium Charter Sch.*, 571 Pa. 503, 516 (Pa. 2002)).

4. Failure by the local board of directors to hold a public hearing and to grant or deny the application for a charter school within the appropriate time periods shall permit the applicant for a charter to file its application as an appeal to the appeal board. In such case, the appeal board shall review the application and make a decision to grant or deny a charter based on the criteria established in paragraph 7, below (24 P.S. § 17-1717-A(g)).
5. In reviewing any school board's final determination, CAB shall 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 (24 P.S. § 17-1717-A(i)(6)).
6. The Charter School Law allows CAB to accept information to supplement the record if the information was previously unavailable (24 P.S. § 17-1717-A(i)(6)).
7. The criteria that CAB must evaluate in making a decision in a charter school appeal are set forth in 24 P.S. § 1717-A(e)(2), as follows:
  - 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 subsection (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.

- d. The extent to which the charter school may serve as a model for other public schools.
8. Section 17-1717-A incorporates the requirements of Section 1719-A of the Charter School Law.
  9. The Charter School application must include information on the manner in which community groups will be involved in the charter school planning process (24 P.S. § 17-1719-A(8)). The information provided by the Charter School is sufficient to satisfy this requirement.
  10. The Charter School has sufficiently demonstrated sustainable support for the charter school plan by teachers, parents, other community members and students as required by 24 P.S. § 1717-A(e)(2).
  11. The Charter School has adequately demonstrate the capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the proposed charter as required by 24 P.S. § 1717-A(e)(2).
  12. The Charter School application must include 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)). The Charter School has adequately met this requirement.
  13. The Charter School has otherwise included adequate information in its application to fulfill its obligations under 24 P.S. § 17-1719-A.

14. The Charter School has adequately elucidated the extent to which the charter school may serve as a model for other public schools, as required by 24 P.S. § 1717-A(e)(2).

#### **IV. DISCUSSION**

In rejecting the Charter School's re-application, the Gettysburg Area School District produced findings regarding the deficiencies of the Charter School's application under the following headings, which comport with the criteria by which a Charter School application must be evaluated under 24 P.S. § 17-1717-A(e)(2):

1. meaningful parent and community involvement,
2. sustainable support,
3. comprehensive learning experience,
4. adequacy/completeness of application, and
5. the extent to which the school functions as a model for other public schools.

The Gettysburg Area School District did not neatly categorize its findings according to the headings above, though the discussion herein will attempt to do so in addressing those findings according to our obligation under 24 P.S. § 17-1717-A(i)(6) to specifically articulate agreement or disagreement. To the extent that CAB is obligated to review the application in the place of the Hanover Public School District according to 24 P.S. § 17-1717-A(g) (that district having failed to grant or deny the Charter School's re-application in a timely fashion), this analysis will also satisfy that requirement.

## **1. Meaningful Parent and Community Involvement**

A charter school applicant is required to include in its application “[i]nformation on the manner in which community groups will be involved in the charter school planning process” 24 P.S. § 17-1719-A (8).

The finding made by Gettysburg Area School District which is most proximately related to this criterion is that the Charter School provided few specifics on how community groups would be or have been involved in the planning process (Deficiencies Statement Adopted by GASD on June 2, 2008, #26). The CAB, however, finds that the ongoing composition of Vida’s board (to be chosen by parents, per Revised Vida Charter School Application dated April 22, 2008, p. 58), and Vida’s discussion of planned community involvement in its application (Revised Vida Charter School Application dated April 22, 2008, pp. 53-60) meet the statutory requirement that applicants discuss prospective community group involvement in the planning process. Thus, this reason for the district’s denial of the application is rejected.

## **2. Sustainable Support**

A charter school applicant is required to demonstrate in its application “sustainable support for the charter school plan by teachers, parents, other community members and students” 24 P.S. § 17-1717-A(e)(2)(i).

The Gettysburg Area School District’s findings 1-6 indicate the Charter School’s application to be deficient with regard to this criterion because the application contains no letters of support from current teachers in the Districts, professional associations, community groups, business groups, educational institutions, or elected officials (Deficiencies Statement Adopted by GASD on June 2, 2008, #1 – 6). The lack of donative support or fundraising efforts is also criticized (Deficiencies Statement Adopted by GASD on June 2, 2008, #7). The District chose to

further emphasize in its brief that the speakers at the hearing, the letters of support and pre-registration forms, and the signed petitions should all be discounted because they are, variously, inadequate in number, phrased in a neutralizing way, produced by persons who may or may not be parents, or reflect support from parents of non-school-age children (Brief in Opposition to the Appeal of Vida Charter School, dated May 8, 2009).

The District acknowledges that support under this criterion may be determined in the aggregate (*Brackbill v. Ron Brown Charter Sch.*, 777 A.2d 131 (Pa. Cmwlth. Ct. 2001)), but judged in this case that “public support for this charter school reasonably necessary for it to succeed is lacking” (Brief in Opposition to the Appeal of Vida Charter School, dated May 8, 2009).

We disagree, and find instead that the support shown in the hearing and in letters, petitions, and pre-enrollment forms is adequate in the aggregate to demonstrate public support for the school as the school is conceived in its initial, opening phase. CAB has previously indicated that sustainable support is measured against the initial opening and operation plan of the Charter School (Bear Creek Community Charter School, CAB 2004-2 at 7). Here the Charter School plans to initially enroll only 94 students in grades K-3, and the Charter School has presented not only letters of support and petitions which in and of themselves add substantial weight to the demonstrated degree of sustainable support, but also pre-enrollment forms for approximately 44 school-aged children (of 94 pre-enrollment forms). Our findings in other, similar cases have reflected a similar standard to demonstrate sustainable support. *See, Montour Sch. Dist. v. Propel Charter School-Montour*, 889 A.2d 682, 84 (Pa. Cmwlth. Ct. 2006)). We find the support reflected in the pre-enrollment forms, together with the other application



material, is adequate to demonstrate sustainable public support for a school of this size. For these reasons this rationale for the district's denial of the application is also rejected.

### **3. Comprehensive Learning Experience**

A charter school applicant is required to demonstrate in its application "[t]he capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter" 24 P.S. § 17-1717-A(e)(2)(ii).

The Gettysburg Area School District appears to have fashioned its findings numbered 13 – 21 in response to this criterion. In these findings, the School District notes inadequacies as to the provision of Spanish language instruction, as to staff development or services as they are related to standards of student achievement, as to the minimal uniqueness of the curricular plan and the "Lectura" program, and as to the specificity regarding the dual-language teaching plan.

We disagree with these findings. In reviewing the re-application materials, we find instead that the plan for and description of a curriculum, and the dual-immersion approach, is reasonably clear and wholly adequate to provide a comprehensive learning experience to the students targeted for the Charter School's initial opening phase. This Board and the Commonwealth Court have found in the past that an applicant need only provide a curriculum for those grades that the school will teach when it opens. *See, Carbondale Area Sch. Dist. v. Fell Charter Sch.*, 829 A.2d 400, 409 (Pa. Cmwlth. Ct. 2003). Further, the School District's findings indicating that curricular materials and the "Lectura" program do not support students becoming bilingual and biliterate appear to be misimpressions of the nature of this dual immersion program.

Findings 17 and 18 concern the Charter School's plan to recruit Spanish-speaking students, and the allegedly segregative effect that would have, both on the Charter School

students, if it has few non-Spanish speaking students and upon the students of the Gettysburg Area School District if the ethnic diversity of the District is diminished. (Deficiencies Statement Adopted by GASD on June 2, 2008, #17 and 18). We find no evidence in the record that the Charter School aims to draw only Spanish-speaking students, or primarily Spanish-speaking students. We further find that in pursuing the legislative intent of the Charter School Law in 24 P.S. § 17-1702-A, any Charter School could be susceptible to similar criticism by attracting some arguably-homogeneous group of students based upon its unique approach. Although the District's concerns about the potential ethnic impact of the Charter School may be factually valid, those concerns do not create a legal impediment to the approval of this application under the Charter School Law. Only if the District were subject to a desegregation plan, would this be an issue. *See* 24 P.S. §17-1730-A. For these reasons this rationale for the District's denial of the application is also rejected.

#### **4. Adequacy / Completeness of Application**

A charter school applicant is required to adequately address the information requested in the Charter School Law at 24 P.S. § 17-1719-A, and must conform to the legislative intent outlined in 24 P.S. § 17-1702-A.

The School District's findings numbered 8 – 12, 21 – 25, and 27 – 37 appear to coincide with this criterion.

Finding 8 indicates that the Charter School has not expressed its intent to submit Form PDE-397 prior to facility construction; however, the Charter School has expressed this intent in its re-application (Revised Vida Charter School Application dated April 22, 2008, p.67).

Findings 9 through 12 judge the Charter School's proposed facility to be inadequate both because of its physical attributes and because the Charter School does not have a commitment

from the owner to hold the space. We find, however, that the Charter School's application has met the requirements of the Charter School Law. There is no requirement that Charter Schools provide detailed facility information of the kind the School District sought, only that the application provide a description and address of the physical facility, and ownership and lease status. *Central Dauphin Sch. Dist. v. Founding Coalition of the Infinity Charter Sch.*, 847 A.2d 195 (Pa. Cmwlth. Ct. 2004), and "there is no requirement that the facility be under a contractual obligation before the charter is granted". *Brackbill v. Ron Brown Charter School*, 777 A.2d 131, 139 (Pa. Cmwlth. Ct. 2001).

Finding 21 indicates that the Charter School has not adequately described or formulated its professional development programs to improve student performance. We find, however, that the description of the professional development program meets the requirements of the Charter School Law in its specificity and design at this stage.

Findings 22 – 25 indicate that the Charter School's by-laws are incomplete, that its application for tax-exempt status is pending, and that one member of the Board of Trustees cannot serve because of a conflict of interest. We find that, to the extent to which these allegations may be true, they are not fatal to the Charter School's application.. We conclude that the Charter School has fulfilled the requirements of the Charter School Law by providing proposed governance documents and methods for their completion according to 24 P.S. § 17-1719-A(4).

Further, the School District finds that the composition of the Board of Trustees (i.e.; populated by members of the Founding Coalition, many of whom will also be employed by the school) presents "an apparent conflict of interest with respect to the allocation of limited financial resources" because the Board of Trustees will set compensation and benefit levels.

(Deficiencies Statement Adopted by GASD on June 2, 2008, #24). The School District, however, has not expanded upon its argument in its brief or in the June 16, 2009 hearing.

The Ethics Act defines a conflict of interest as “[u]se by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated” 65 Pa.C.S. § 1102. The Charter School law indicates that “[t]rustees of a charter school shall be public officials”. 24 P.S. § 17-1715-A. While the final determination of any solution to a problem under the Ethics Act is within the purview of the State Ethics Commission, the Ethics Act allows for the means by which a public official may be hired and may navigate any potential conflicts in a way that satisfies the Ethics Act. 65 Pa.C.S. § 1103(f) and (j). There might not be a conflict inherently caused or threatened by the employment of a member of the Board of Trustees by the school that cannot otherwise be mitigated by following applicable rules under the Ethics Act. 65 Pa.C.S. § 1101, et seq.. However, CAB believes it is not a prudent policy for members of the Board of Trustees to be employed by the Charter School and strongly suggests that the Charter School examine this policy and seek guidance from the Ethics Commission.

Finally, findings 27 – 37 identify the School District’s conception of fatal deficiencies in the Charter School’s financial plan. They include lack of budgeting for field trips, extracurricular activities, library and media services, and guidance, psychological or related support services. The findings further criticize the amounts budgeted for health services, food and supply costs, and curriculum acquisition. CAB finds instead that the noted deficiencies are not sufficient to justify the rejection of the application. The Charter School Law “does not

require such detailed specifics in an application as long as ... the applicant is capable of providing a comprehensive learning experience for students”. *Cent. Dauphin Sch. Dist. v. Founding Coalition of the Infinity Charter Sch.*, 847 A.2d 195, 202 (Pa. Cmwlth. Ct. 2004). We believe the applicant in this case has substantiated that it can provide a comprehensive learning experience for students. We do note, however, that the Charter School would be well advised to consider the areas noted by the school district (e.g.; budgeting for field trips, extracurricular activities, library and media services, amounts budgeted for health services, food and supply costs, and curriculum acquisition) in pursuing its final financial plan.

For the foregoing reasons, the Districts’ findings regarding this criterion are rejected.

#### **5. Function as a Model for Other Public Schools**

A charter school applicant is also to be evaluated based upon “[t]he extent to which the charter school may serve as a model for other public schools”. 24 P.S. § 17-1717-A(e)(2)(iv).

The Gettysburg Area School District Finding 19 could be construed to be a finding related to this criterion, insofar as it indicates that the Charter School’s curricular materials were standard and not unique. CAB finds instead that the application, in the aggregate, relates a number of innovations that, taken together, do describe a model school. These include the “Lectura” curriculum, the dual immersion approach, and also the lifestyle, violence-prevention, and physical fitness programs. Thus, this criterion is satisfied and the district’s contrary finding is rejected.

#### **6 Consideration of Other Charter Application Requirements**

Because Hanover Public School District did not formally act upon the revised charter application, CAB reviewed the entire application *de novo* in the place of the school district. *See* 24 P.S. §17-1717-A(g). In addition to the previous discussion and rejection of the application

deficiencies identified by the Gettysburg Area School District and relied upon by Hanover, CAB does not find any other deficiencies or areas where the requirements of the Charter School Law were not satisfied in the Charter School application in this case.

**V. CONCLUSION**

In all respects, CAB concludes and finds that the Application does comply with the Charter School Law. For these reasons, the decisions of the School Districts to deny the Vida Charter School Application are reversed and the regional charter is granted.

COMMONWEALTH OF PENNSYLVANIA  
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STATE CHARTER SCHOOL APPEAL BOARD

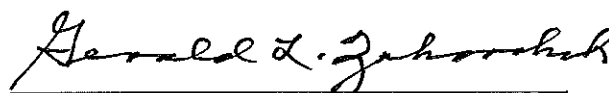
IN RE:

Appeal of the Vida Charter School : Docket No. CAB 2009-02  
from the Denial of the Charter School :  
Application by the Gettysburg Area and :  
Hanover Public School Districts :  
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ORDER

AND NOW, this 3rd day of September, 2009, based upon the foregoing and the vote of this Board,<sup>1</sup> the Appeal of the Vida Charter School is **GRANTED** and the Gettysburg Area School District and the Hanover School District and the Districts are directed to issue a regional charter to Vida Charter School pursuant to §1720 of the Charter School Law, 24 P.S. §17-1720-A in accordance with law.

For the State Charter School Appeal Board,



Gerald L. Zahorchak, D.Ed.  
Chairperson

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<sup>1</sup> At the Board's July 28, 2009 meeting, the appeal was granted by a vote of five to zero with members Akers, Barker, Green, Shipula and Zahorchak voting to grant the appeal.