

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

In Re: Propel Charter School – Sunrise :
: **Docket No. CAB 2009-03**
Appeal from the denial of charter :
by Woodland Hills School District :

OPINION

Background

This matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter “CAB”) on Appeal by the Propel Charter School – Sunrise (hereinafter “Propel”) from the denial of its Charter School Application (hereinafter “Application”) by the Woodland Hills School District (hereinafter “Woodland Hills” or “District”).

Findings of Fact

1. On July 2, 2008, Propel, a Pennsylvania nonprofit corporation, submitted to Woodland Hills its Application to begin operating a charter school within the District for the 2009-2010 school year. *See* Certified Record, Number 1.¹
2. On August 18, 2008, the District held a public hearing on the Application.²
3. In response to questions posed by District officials at the August 18, 2008 hearing, Propel supplemented its Application with two additional submissions to the District – one on August 22, 2008 and another on August 28, 2008. *See* Petition to Amend Record.

¹ Hereinafter, all references to the Certified Record submitted to the State Charter Appeal Board on or about June 22, 2009, will be cited as Cert. R., No. ____.

² No record was made of the August 18, 2008 hearing because the scheduled court reporter was caught in traffic and the tape recorder used to record the proceedings in her absence failed to properly function.

4. On October 21, 2008, a second public hearing on Propel's Application was held. *See* Cert. R., No. 5.

5. At the October 21, 2008 hearing, a motion to approve Propel's charter was made. The motion failed by a vote of 1 to 4. *See* Cert. R., No. 7.

6. Considering the failed motion to be a denial of Propel's Application, on December 1, 2008, the District issued a letter denying Propel's Application to operate a charter school. *See* Cert. R., No. 7.

7. Pursuant to 24 P.S. § 17-1717-A(i) of the Charter School Law, 24 P.S. § 17-1701-A *et seq.* (hereinafter "CSL"), Propel obtained signed petitions and filed such petitions with the Court of Common Pleas of Allegheny County.

8. On April 20, 2009, the Court of Common Pleas of Allegheny County entered a Consent Order, thereby allowing Propel to pursue its appeal to CAB. *See* Cert. R., No. 8.

9. On April 27, 2009, Propel filed a Petition of Appeal with CAB. *See* Petition for Appeal.

10. A hearing in this matter was held before CAB on July 28, 2009.

Conclusions of Law

1. CAB has jurisdiction in this matter.

2. The CSL governs the application process, the approval process, the operation and revocation/renewal of charter schools in Pennsylvania.

3. Section 1717-A(e)(2) of the CSL, 24 P.S. § 17-1717-A(e)(2), sets forth the factors to be used by the local board of school directors in the evaluation of a proposed charter school application:

- (i) Demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the required public hearings;
- (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 of the CSL; and
- (iv) The extent to which the charter school may serve as a model for other public schools.

4. The District's notification to Propel of the denial of Propel's Application complied with the procedural requirements of the CSL. *See* Cert. R. No. 7.

5. Propel demonstrated that its charter school would provide parents and pupils with expanded educational choices as compared to the educational opportunities available within the District. *See* Cert. R. No. 1; *see also* Petition to Amend Record.

6. Propel demonstrated that it would serve as a model for other public schools. *See* Cert. R. No. 1; *see also* Petition to Amend Record.

7. Propel demonstrated that it would increase learning opportunities for all students. *See* Cert. R. No.1; *see also* Petition to Amend Record.

8. Diversity concerns in this matter are not supported by the CSL.

Standard of Review

Before addressing the merits of this appeal, it is necessary to set forth the proper standard of review to be applied by CAB in this matter. Regarding the proper standard of review, section 1717-A(i)(6) of the Charter School Law states:

In any appeal, the decision made by the local board of directors shall be reviewed by [CAB] on the record as certified by the local board of directors. [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). In *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 571 Pa. 503 (2002), the Pennsylvania Supreme Court elaborated upon the proper standard to be applied by CAB when reviewing a district's denial of a charter school application; in that case, the Court held that CAB must apply a *de novo* standard of review and that such a standard "requires CAB to give 'appropriate consideration' to the findings of the District Board, while making an independent determination as to the merits of the charter school application." *Id.* at 516-17. Therefore, CAB shall make a *de novo* review; while giving "due consideration" to the findings of the District, CAB will independently review each of the bases cited by the District for its denial of Propel's charter application.

Discussion

Procedural Matters

On or about July 1, 2009, Propel filed a Petition to Amend Record with CAB. In its Petition, Propel avers that the Certified Record submitted by the District was deficient in that it failed to include the following items: the High School Handbook, which was submitted by Propel as part of its original application; achievement data and student mobility data, which were submitted to the District by certified mail on August 22, 2008; and architectural drawings, letters of intent and a sales agreement excerpt relating to property at 1500 Yost Boulevard, which were submitted to the District by certified mail on August 28, 2008.

For the reasons explained below, CAB is now granting Propel's Petition to Amend Record and will consider the documentation attached thereto when rendering its decision in this matter. First, in its Answer to Propel's Petition for Appeal, the District admits that Propel made a supplemental submission on August 28, 2008, but states that it cannot locate a copy of this

submission. *See* Answer to Petition for Appeal, page 2. Second, in regard to the supplemental submission made by Propel on August 22, 2008, the District admits reference to this submission was made at the October 21, 2008 public hearing; however, the District contends that it has no recollection of having received the submission and that it cannot locate a copy of the submission. *See* Answer to Petition for Appeal, page 2. Based upon the District's Answer to Propel's Petition for Appeal, the District was clearly aware that both submissions existed and that Propel believed the District was in receipt of both submissions. During the October 21, 2008 hearing, the District could – and should - have informed Propel that it had no recollection of receiving the August 22 submission and could not locate the August 28 submission; however, the District failed to do so.

More importantly, by letter dated May 5, 2009, Counsel to CAB advised both Propel and the District that the proceedings in this matter would be governed by Title 1 of the Pennsylvania Code. Thus, pursuant to section 35.35 of Title 1, 1 Pa. Code § 35.35, the District had 20 days from date of service of Propel's Petition to Amend Record to file an Answer. Because the District failed to file such Answer, the facts contained within Propel's Petition are deemed admitted and Propel's Petition to Amend the Record is now granted.

**The Woodland Hills School District Complied
With Procedural Requirements of the Charter School Law**

In both its Petition of Appeal and Brief in Support of its Petition of Appeal, Propel contends that the letter issued by the District informing Propel that its Application had been denied (hereinafter "denial letter") was deficient. *See* Petition of Appeal, page 3; *see also* Brief in Support of Petition of Appeal, pages 5-6. Specifically, Propel argues that the five sentences in the District's denial letter provided no description of the alleged deficiencies in its Application as required by section 1717-A(e)(5) of the CSL.

Section 1717-A(e)(5) of the CSL provides:

Written notice of the board's actions shall be sent to the applicant, the department and the appeal board. If the application is denied, the reasons for the denial, including a description of deficiencies in the application, shall be clearly stated in the notice sent by the local board of school directors to the charter school applicant.

24 P.S. § 17-1717-A(e)(5). In its letter, the District articulated its reasons for denying Propel's Application; specifically, the District concluded that Propel failed to demonstrate that it provided parents and pupils with expanded choices in the types of educational opportunities that are available to students within the District and would serve as a model for the District; Propel failed to demonstrate that it would improve pupil learning or increase learning opportunities for all students; Propel failed to complete the requirements of filing an application as required by sections 17-1717-A and 17-1719-A of the CSL, 24 P.S. §§ 17-1717-A, 17-1719-A; and Propel East – another Propel Charter School within the District – is segregating the District's students and an additional Propel Charter School would further continue re-segregation. *See* Cert. R., No. 7.

A district denying a charter school application must provide the reasons for the denial, including a description of the deficiencies; however, the level of specificity required of a district is not delineated in the statute. *See* 24 P.S. § 17-1717-A(e)(5). Although the District's letter is short, the District did delineate the reasons for its denial of Propel's Application. Moreover, Propel in its Brief and argument before CAB responded to the alleged deficiencies set forth in the District's denial letter. Thus, CAB concludes that the denial letter complied with the requirements of the CSL. *See* 24 P.S. § 17-1717-A(e)(5).³

³Although the District's denial letter technically complied with the mandates of the CSL, the denial letter could have contained a more detailed description of the District's conclusions. Because without specific detail, it becomes difficult for CAB to understand a district's reasoning

**Propel Submitted a Completed Application
Which Demonstrated That It Would Serve as a Model to Other
Public Schools and Would Expand Learning Opportunities for Parents and Students**

The District denied Propel's Application as insufficient because Propel allegedly failed: to demonstrate that it would provide parents and pupils with expanded choices in the types of educational opportunities that are available within the District and cannot serve as a model for the District; to demonstrate that it would improve pupil learning or increase learning opportunities for all pupils; and to satisfy the requirements of the application as required by the Charter School Law. *See* Cert. R. No. 7.

More specifically, the District, either in its Answer to Petition for Appeal or Brief in Opposition to Petition for Appeal, made numerous statements expounding upon the alleged deficiencies of Propel's Application. For example, the District asserted that Propel failed to identify the proposed faculty for its school and their qualifications or general or specific hiring criteria. Additionally, the District asserted that: Propel failed to provide the appropriate clearances for its staff; Propel failed to identify the manner in which community groups will be involved in the charter planning process; Propel's program is not unique or significantly different from that of the District; Propel failed to demonstrate that it will increase learning opportunities, whereas student performance at other Propel schools is spotty; and Propel failed to adequately describe the curriculum to be offered, including the curriculum related to special education students and the method of assessing student achievement. *See* Answer to Petition for Appeal; *see also* Brief in Opposition to Petition for Appeal.

With the exception of an argument related to its finding that Propel failed to adequately describe the curriculum it would offer, including the curriculum related to special education

behind and justification for its findings, CAB would encourage districts, in order to comply with the spirit of the CSL, to include such detail.

students, the District provided little or no evidence and/or substantive arguments in support of its other findings. On the other hand, Propel has provided evidence to refute each of the District's findings, including information related to the proposed faculty and their qualifications and information related to how community groups will be involved in the charter planning process. *See* Cert. R. No. 1. Specifically, Propel included in its Application a description of a Leadership Committee, which is comprised of parents and community members and which is slated to meet regularly. *See* Cert. R. No. 1. Additionally, Propel's Application includes detailed information related to the school's anticipated faculty and administrative/supervisory positions, including Propel's expectation that its core academic staff hold appropriate certification, as well as Propel's professional development plan for its staff. *See* Cert. R. No. 1. Moreover, CAB has previously recognized that it is often unlikely that a charter school applicant will have identified potential or actual employees before a school district's review of the charter school application. *See In re: William Bradford Academy Charter School*, CAB Docket No. 1999-8. Thus, if a charter school applicant proposes to comply with state and federal laws related to required clearances and background checks prior to employing individuals who will have contact with children, the application will be deemed sufficient. In this regard, Propel has complied with the CSL.

In support of its finding that Propel failed to adequately describe the curriculum to be offered, the District argues that Propel did not include a list of textbooks, software, reading lists or courses to be offered at Propel. The District erred in making this finding, as failure to include a list of specific textbooks, software and reading lists in a charter school application is not a reason to deny a charter under the CSL. Furthermore, Propel's K-8 School Design Prospectus and its 9-12 School Design Prospectus – which were both included in Propel's Application - do

provide detailed information related to Propel's proffered curriculum. *See* Cert. R. No. 1. Specifically, Propel's Application included a detailed description of the academic, community and personal standards to be developed by Propel's students, as well as a detailed description of its mission and school plan to provide excellence in core academic disciplines, develop community awareness and provide students with the opportunity to acquire expertise in both core and enrichment studies. Propel's school design, academic assessment plans, and planned instructional programs in core studies and enrichment studies provide, we find, a unique combination of programs that will satisfy the Propel's mission and provide comprehensive learning opportunities to its students.⁴ In short, Propel has demonstrated that its curriculum will be an interdisciplinary, project-based curriculum that is unavailable in the District or anywhere else in the Mon Valley. *See* Cert. R. No. 1.

Finally, the District argued that Propel's Application was deficient in how Propel described the education of special education students and because Propel did not include an analysis of how many special education students it anticipated enrolling nor did it budget for the potential costs of educating special needs students. Propel, however, has included in its Application a section related to the education of special education students, including a description of how it will comply with all federal and state special education laws. *See* Cert. R. No. 1. Additionally, in its Financial Plan, Propel included a budget related to the education of students with disabilities. *See* Cert. R. No. 1. Thus, CAB concludes that Propel's Application complied with the requirements of the CSL in these respects. *See* 24 P.S. § 17-1717-A.

⁴ CAB notes that it has made similar assessments with regard to other Applications by Propel, as the educational program proposed by Propel is substantially the same as the educational program currently used in Propel Charter School – Steel Valley and Propel Charter School - Montour. *See Propel Charter School – Steel Valley*, CAB Docket No. 2003-1; see also *Propel Charter School – Montour*, CAB Docket No. 2004-3.

The District's Diversity Concerns Are Not Supported By the Charter School Law

In its denial letter, the District informed Propel that a Propel Charter School already operating within the District, Propel East, is segregating the District's students and that an additional school would further continue re-segregation. The District further informed Propel that the District was formed through a federal court mandate and the formation of the particular charter would have the effect of flying in the face of that court order. *See* Cert. R., No. 7. The District's concerns related to racial balance is not supported by the CSL. While the District would be prohibited from approving an application of a charter school that would place the district in violation of a court desegregation order, the District is under no such desegregation order. Thus, the District improperly denied Propel's Application on this basis.

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ORDER

AND NOW, this 1st day of December, 2009, based upon the foregoing and the vote of this Board⁵, the appeal of the Propel Charter School – Sunrise is GRANTED.

For the State Charter School Appeal Board



Gerald L. Zahorchak, D.Ed.
Chairman

Date Mailed: December 1, 2009

⁵ At the Board's October 27, 2009 meeting, the appeal was granted by a vote of 4-1 with members Akers, Green, Shipula and Zahorchak voting to grant the appeal and member Barker voting to deny the appeal.