

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

In re: Chester Charter School :
for the Arts :
 : **Docket No. CAB-2012-02**
Appeal from the denial of charter :
by Chester Upland School District :

OPINION AND ORDER

I. Introduction

This matter is before the Pennsylvania State Charter School Appeal Board (“CAB”) on Appeal by the Chester Charter School for the Arts (“CCSA”) from the denial of its Charter School Application by the Chester Upland School District (“CUSD”).

II. Findings of Fact

Procedural

1. On or about September 30, 2011, CCSA submitted a charter application to CUSD.
2. On or about November 14, 2011, December 13, 2011, and January 23, 2012, public hearings were held regarding CCSA’s application.
3. On or about January 26, 2012, CUSD’s Board of School Directors voted to deny the CCSA’s Application.
4. CUSD did not issue its written findings of fact and conclusions of law, listing the problems with the charter application, until April 26, 2012.
5. On or about March 28, 2012, the Court of Common Pleas of Delaware County entered a Consent Order authorizing CCSA to transfer its appeal to CAB.
6. On or about March 30, 2012, CCSA filed a Petition of Appeal with CAB.
7. On or about May 15, 2012, CCSA filed its brief in support of its Petition of Appeal with CAB.

8. On or about May 19, 2012, CUSD responded with an Answer to the Petition of Appeal.
9. On or about May 19, 2012, CUSD filed a Motion for Leave to Supplement the Record and Memorandum in Support thereof.
10. On or about May 31, 2012, CUSD filed its Brief in Opposition to the Appeal of CCSA.
11. A hearing was held before CAB on June 6, 2012.

Substantive

12. The founders of CCSA previously partnered with CUSD to create an arts-oriented school within CUSD, known as the Chester Upland School of the Arts (“CUSA”).
13. The founders of CCSA terminated their partnership with CUSD in order to create CCSA.
14. CUSA is still operating within CUSD, but the school is no longer affiliated with the founders of CCSA.
15. The educational program of CCSA will be sufficiently different from the educational program at CUSA. The differences include, but are not limited to:
 - a. CCSA will have an art teacher, drama teacher, and dance teacher.
 - b. CCSA will have a foreign language instruction starting in kindergarten.
 - c. CCSA will have a longer school day for certain grades.
 - d. CCSA plans to expand to serve grades K-12, whereas CUSA only serves up to grade 8.
 - e. CCSA will have a summer orientation program for students.
16. CCSA’s name has not led to confusion with the district-operated CUSA.

17. CCSA is not anti-union.
18. If CCSA employees formed a collective bargaining unit, CCSA would prefer to use performance as a basis for employment decisions rather than seniority.

III. Conclusions of Law

1. CAB has jurisdiction in this matter.
2. The Charter School Law Act of June 19, 1997, 24 P.S. §17-1701-A, et. seq. (“CSL”), governs the application process, the approval process, the operation and the revocation/ renewal of charter schools in Pennsylvania.
3. Section 1717-A(e)(2) of the CSL sets forth the factors to be considered by the local board of school directors in the evaluation of a proposed charter school application:
 - a. Demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the required public hearings;
 - 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 of the CSL; and
 - d. The extent to which the charter school may serve as a model for other public schools.
4. Once the board makes a decision regarding a charter application, notice must be

sent to the applicant. Section 1717-A(e)(5) requires that written notice of the board's action 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. 24 P.S. § 17-1717-A(e)(5).

5. CCSA's application cannot be denied on the basis of the financial impact that a new charter school will have on a school district. Keystone Cent. Sch. Dist. v. Sugar Valley Concerned Citizens, 799 A.2d 209 (Pa. Cmwlth. 2002).
6. CCSA's expanded educational offerings demonstrate that CCSA can be a model for other public schools. 24 P.S. § 17-1719-A(9).
7. CCSA's name complies with the CSL. 24 P.S. § 17-1714-A(a)(1).
8. CCSA's application met all the requirements of the Charter School Law.

IV. 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. 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 School District v. Collegium Charter School, 760 A.2d 452 (Pa. Cmwlth. 2000), the Commonwealth Court addressed the proper standard to be applied CAB in its review of a school district's denial of a charter school application. The Court held that "the General Assembly has unquestionably granted the [CAB] the authority to substitute its own

findings and independent judgment for that of the local school board.” *Id.* at 461. Accordingly, the Commonwealth Court has found that the proper standard of review that is to be applied by the CAB in charter denial cases is to be “*de novo*.” Therefore, while giving due consideration to CUSD’s vote to deny the Application, CAB will independently review the record in light of the requirements set forth in the CSL.

V. Discussion

a. Notice.

The initial issue in this appeal is whether CUSD provided proper notice of its denial to CCSA and, if not, the consequence of such failure.

The law provides that, upon reviewing a charter school application, the school board must notify the applicant that its application has been either denied or granted. Section 1717-A(e)(5) of the CSL explains:

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) (emphasis added). Where a denial notice does not specifically mention failure to satisfy a requirement of the CSL, CAB has consistently found that the district has agreed that the applicant has met that requirement. See Valley Academy Charter Sch., CAB 2010-05; Wonderland Charter School, CAB 1999-3. However, as stated above, CAB has *de novo* review of the appeal. Therefore, CAB may find deficiencies in a charter school’s application even if the school district has not identified such deficiencies. Thus, CAB can deny the grant of a charter for reasons other than those specified by the school district or when a school district, as here, has not identified deficiencies.

Since no notice was sent prior to the filing of the appeal in this case,¹ the statute was violated. Because the CSL clearly requires written notice after the Board vote, CCSA argues that it must be deemed that CUSD found that CCSA met the requirements of the CSL. CAB agrees that it may take this position but, recognizing its role as a *de novo* reviewing body, it has carefully reviewed CCSA's application and has concluded that it does indeed satisfy the requirements of the CSL. In addition, CAB has considered whether the grounds for denial set forth in CUSD's answer would serve as a basis for its denial of the application.

b. Financial State of School District.

CUSD maintains that the current financial crisis within the district must be a consideration when determining whether to grant CCSA's application. However, it is well-settled that the financial impact on a school district is an improper basis for denying a charter application. Keystone Cent. Sch. Dist. v. Sugar Valley Concerned Citizens, 799 A.2d 209, 218 n.14 (Pa. Cmwlth. 2002). As we have previously stated:

When the Legislature passed the Charter Law it knew the funding mechanism set forth therein required school districts to pay subsidy money to charter schools attended by a school district's resident students. Obviously, by passing the Charter Law with this funding mechanism for charter schools, the Legislature decided that the cost to school districts was outweighed by the benefit of having charter schools.

Collegium Charter Sch., CAB 1999-9 at 17, aff'd sub nom. West Chester Area Sch. Dist. v. Collegium Charter Sch., 760 A.2d 452 (Pa. Cmwlth. 2000), aff'd 812 A.2d 1172(2002).

CUSD acknowledges that generally financial considerations are not a basis for denial of a charter application. However, CUSD argues that the present financial turmoil at CUSD is dire.

¹ CUSD argues that notice of the denial was given to CCSA because counsel for CCSA was present at the meeting at which the decision denying the application was rendered. CUSD's Response to CCSA's Appeal, at 4. However, pursuant to the statute, written notice must be given to the applicant. There is no evidence that written notice was given prior to April 26, 2012.

Regardless of the current financial state of CUSD, it is clear that this is an improper consideration when reviewing a charter school application. This basis for denying CCSA's application is, thus, rejected.

c. The Extent to Which the Proposed Charter School Could Serve As a Model for Other Public Schools.

Another basis for CUSD's denial of the application is that CCSA allegedly will not serve as a model for other public schools as required by section 1717-A(e)(2)(iv) of the CSL. 24 P.S. § 17-1717-A(e)(2)(iv). CUSD asserts that this concern is supported by the fact that CCSA's application is a mere replication of the creation, management, operations and curriculum of the currently-operating CUSA.

The purpose of the Charter School Law is "to encourage the use of innovative methods, not to exclude charter applicants whose proposed methods may not be as innovative or as different as the school district believes they should be." Sugary Valley Rural Charter Sch., CAB 1999-4. However, a charter school must expand the curricular choices available to students and encourage innovative and different teaching methods. Id. at 8.

CAB has further held that the existence of similar programs in the school district does not prove fatal to a consideration of whether a charter school can serve as a model for other public schools pursuant to Section 1717-A(e) of the CSL. See Infinity Charter Sch., CAB-2002-04; Shenango Valley Charter Sch., CAB 1999-1. Therefore, the fact that CUSD already has an arts-oriented school is irrelevant to the consideration of whether CCSA would serve as a model for other public schools. CCSA would provide an educational program that is innovative and distinctive from CUSA. Additionally, CCSA will be sufficiently different from CUSA. A few examples of the differences in the program offerings are: (1) CSSA will have an arts teacher, drama teacher, and dance teacher. CUSA does not; (2) CCSA will have a foreign language

instruction starting in kindergarten. CUSA does not; CCSA will have a longer school day for certain grades; and (4) CCSA plans to expand to K-12. CUSD is only K-8. Therefore, CAB finds that CCSA can serve as a model for other public schools, regardless of the operation of a similar school by CUSD. Thus, CAB finds that CCSA satisfies the CSL criterion of being a model and we reject the district's contrary finding.

d. Name of Charter School.

CUSD also raises a concern that the name Chester Charter School for the Arts is deceptively similar to Chester Upland School of the Arts, the district-operated school for the arts. The Charter School Law requires that "any name selected [by a charter school] shall include the words 'charter school.'" 24 P.S. § 17-1714-A(a)(1). The name "Chester Charter School of the Arts" complies with the Charter School Law. Furthermore, CUSD provided no evidence that the name has led to any actual confusion. Therefore, CAB finds that CCSA's name satisfies the requirements of the Charter School Law and it is not deceptively confusing.

e. Union affiliation.

Finally, CUSD argues that CCSA is opposed to the use of seniority as a criteria for staffing contrary to the teachers' collective bargaining act and that this philosophy is contrary to the Public Employee Relations Act of 1970, which establishes rights in public employees to organize and bargain collectively. However, the evidence does not support this assertion.

CCSA states that it would prefer to use performance, instead of seniority, as a basis for employment decisions. CCSA also recognizes that public employees do have the right to organize. After such organization, the role of seniority and performance would need to be negotiated. The Public Employee Relations Act supports this assertion. 43 P.S. § 1101,101, et seq. Contrary to CUSD's statement, section 1125.1 of the Public School Code of 1949 does

require seniority to be used as a basis for determining the order of layoffs of employees in a regular public school. 24 P.S. § 11-1125.1. However, this section of the Public School Code does not apply to charter schools. 24 P.S. § 17-1732-A. Therefore, CAB finds that CCSA is not anti-union.²

f. Motion for Leave to Supplement the Record

On or about May 30, 2012, CUSD submitted a Motion for Leave to Supplement the Record with the following documentation: 1) CUSD Annual Financial Report for year ending June 30, 2011; 2) CUSD Draft Proposed 2012-2013 Budget; 3) CUSD Cash Flow for 2012-2013; and 4) PDE summary of a financial report that shows the condition of CUSD subsidies from July 2011 to December 2011 and their distribution. CUSD asserts that the record must be supplemented with this information to provide CAB with a more complete picture of CUSD's financial condition.

CAB denies CUSD's Motion for Leave to Supplement the Record with the above-mentioned documentation because they are not relevant. The General Assembly specifically provided that the funding for charter schools shall come from school district revenues. As discussed above, denying a charter application on the basis of the fiscal condition of the school district is not a proper ground for denial. Keystone, 799 A.2d at 218 n.14. CUSD's motion provided no argument as to why this information is relevant beyond its demonstration of the district's financial state and the potential injury the District could suffer if further funds were diverted to another charter school.

On the basis of the above discussion, CAB makes the following Order:

² CAB notes that this issue is clearly beyond the scope of the CSL and that an entity's union animus is contestable in other forums under other laws.

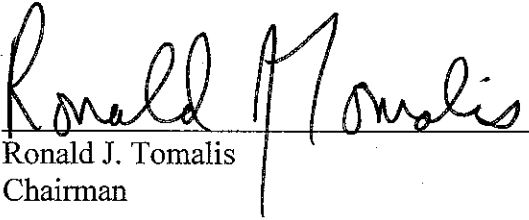
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ORDER

AND NOW, this 25th day of July, 2012, based upon the foregoing and the vote of this Board,³ the Petition to Appeal the denial of the Chester Upland School District of the Chester Charter School for the Arts' Charter is **GRANTED**; and the District is directed to issue a Charter in accordance with the Charter School Law.

For the State Charter School Appeal Board



Ronald J. Tomalis
Chairman

³ At the Board's June 6, 2012 meeting the Appeal of the Chester Charter School for the Arts was granted by a vote of 6 to 0, with Members Lawrence, Magnotto, Marks, Munger, Tomalis and Yanyanin voting to grant the Appeal.