

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
CHARTER SCHOOL APPEALS BOARD**

**In Re: Mt. Jewett Area Charter School** :  
**for Academic Excellence** :  
: :  
**Appeal from the denial of charter** : **Docket No. CAB 2009-01**  
**by the Kane Area School District** :

**OPINION AND ORDER**

**I. INTRODUCTION**

This matter is before the Pennsylvania State Charter School Appeal Board (CAB) on an appeal by the Mt. Jewett Area Charter School for Academic Excellence (Charter School) from the denial of its charter school application (Application) by the Kane Area School District (District).

**II. FINDINGS OF FACT**

1. On or about November 13, 2007, the Application for the Charter School was filed with the District.
2. On or about December 19, 2007, the District held a public hearing on the Application.
3. On or about February 21, 2008, the District voted to deny the Application.
4. On or about March 13, 2008, the District issued its written decision setting forth its reasons for denying the Application (“First Denial”).
5. On or about May 2, 2008, the Charter School filed a Notice of Appeal.
6. On or about July 1, 2008, the Charter School withdrew its appeal without briefs being filed, the CAB hearing argument or CAB issuing a decision on the merits.
7. On or about October 3, 2008, the Charter School filed the amended Application with the District.

8. The parties stipulated that the Charter School's amended Application was a revised application.
9. On or about December 3, 2008, the District denied the amended Application without holding a public hearing.
10. Subsequent to December 3, 2008, the Charter School gathered sufficient signatures to appeal the denial of the amended Application.
11. On or about January 16, 2009, the District issued its written decision denying the amended Application (hereinafter, referred to simply as Application).
12. The Charter School filed an appeal from denial of its revised application with CAB on January 29, 2009.
13. On or about March 19, 2009, the District submitted its Answer and New Matter as well as the record of the proceedings.
14. An approximately 10 foot x 12 foot cross is located on the front of St. Matthews Church and is visible from Main Street.
15. The bus route contained in the Application indicates that the students will be exposed to the uncovered cross on a daily basis while riding to and from school and that they will attend school in a part of the building on which the cross is located.
16. Nothing in the Application indicates that the students will be isolated from any church services which may take place during the school day.
17. Students will also be exposed to religious hymns played by the church bells during the school day.
18. The Application contained the following evidence of community support:
  - a. 208 letters of support in favor of the Charter School;

- b. 89 signatures on petitions in support of the Charter School;
  - c. 32 parents indicated an intent to enroll students in the Charter School;
  - d. approximately 175 individuals attend a community meeting on the Charter School;
  - e. 38 businesses have expressed support of the Charter School;
  - f. 56 individuals have signed up to be volunteers for the Charter School;
  - g. pre-enrollment intent was expressed for approximately 90 students.
19. An admission preference is included in the Application for children of the founders of the Charter School.
20. No criminal history and child abuse clearances were provided for 56 volunteers identified in the Application.
21. The Charter School will be located closer to students in Mt. Jewett than any school provided by the District.
22. Many of the class sizes at the Charter School are smaller than at Kane Elementary School.

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

- 1. CAB must give due consideration to the findings of the District.
- 2. A charter school has the burden of proving that all of the enumerated requirements for the contents of the charter school application were satisfied.
- 3. 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.

4. The lease agreement between St. Matthews Church and the Charter School is an appropriate, arms length transaction.
5. The Application meets the requirements of 24 P.S. § 17-1715-A (4), in that the school is nonsectarian.
6. The Application fails to meet the requirements of 24 P.S. § 17-1715-A (5) because religious objects and symbols are displayed on the premises of the Charter School.
7. The Application meets the requirements of 24 P.S. § 17-1717-A(e)(2)(i), because it demonstrates sustainable support for the Charter School plan by teachers, parents, other community members and students.
8. The Application meets the requirements of 24 P.S. § 17-1724-A(b), because it provides the general qualifications needed for non-certified positions.
9. Adequate descriptions were provided for non-certified positions.
10. An adequate professional development plan was submitted.
11. The Application meets the requirements of 24 P.S. § 17-1723-A(a) because it gives a permissible preference for admission to children of parents who actively participated in the establishment of the Charter School.
12. The Application meets the requirements of 24 P.S. § 17-1719-A(13), because it includes the proposed faculty and professional development plan for the faculty of the Charter School.
13. The Application fails to meet the requirements of 24 P.S. §§ 17-1719-A (15) & (16) and 24 P.S. § 17-1724-A(h)(2)(i), because the Application does not include criminal history and child abuse clearances for individuals who will have direct contact with students.

14. The Application meets the requirements of 24 P.S. §§ 17-1717-A(e)(2)(ii) and (iv), because the Application shows that the Charter School is capable in terms of support and planning, of providing the types of comprehensive learning experiences contemplated in the Application and may serve as a model for other public schools.
15. The Application meets the requirements of 24 P.S. § 17-1702-A, because it establishes that the Charter School will improve pupil learning, increase learning opportunities, use different or innovative teaching methods or provide parents and students with expanded educational choices.
16. Technology is adequately included in the first year budget.
17. The curriculum in the Application is adequately described.
18. The Application meets the requirements of 24 P.S. § 17-1719-A(5), in that the curriculum is sufficient.
19. The Application fails to demonstrate Charter School's ability to provide a free and appropriate public education to expelled students.

#### **IV. MOTION TO QUASH**

The District has filed a motion to quash this appeal on the basis that Charter School appealed the denial of its original application and could not, therefore, submit a revised appeal. District cites Appeal of Legacy Charter School, Docket No. CAB 2000-14, as support for this position.

The decision in Appeal of Legacy Charter School, is clearly distinguishable from the matter presently before CAB. In that matter, CAB did not directly address the question of whether the charter school could submit a revised application after an appeal of the original decision because that issue was not before it. What was before CAB was the question of whether

the original application should have been incorporated into the record on the appeal of the denial of the second application. CAB determined that it should not be incorporated, primarily because the charter school had not identified the application as a resubmitted application and the school district informed the charter school that it was treating the application as a new application. Although the charter school indicated that it would supplement the record at a future time, it did not do so until it appealed the second denial. As a result CAB determined that the school district acted reasonably in not considering the record from the original application and CAB did not consider it either.

In the instant matter, the Charter School identified the application as a resubmitted application and the District stipulated that it was a revised application. The District did not identify any way in which it was actually prejudiced by the resubmission of the application. As a result, the appeal is proper and will be considered by CAB.

**V. MOTION TO PRECLUDE TESTIMONY FROM SCHOOL DISTRICT WITNESSES**

The Charter School asserted that CAB should not hear testimony from school district witnesses. It is the Charter School's position that the facts to be testified to would impermissibly supplement the record. The District indicated that the testimony would be merely to reiterate information already in the record. CAB ruled that it would hear the testimony that was offered, consistent with the assertion by the District's counsel that the testimony would not go beyond what was already in the record. No subsequent objection to any particular portion of the testimony was raised during the hearing.

**VI. STANDARD OF REVIEW**

Before addressing the merits of this appeal, it is necessary to set out the proper standard of review to be applied by the CAB in this matter. Pursuant to the Charter School Law, "[T]he appeal board may consider the charter school plan, annual reports, student performance and

employee and community support for the charter school in addition to the record. The appeal board 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 PS § 17-1729-A(d). The Commonwealth Court, in West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa. Cmwlth. 2000), addressed the proper standard to be applied by CAB in its review of a school district’s denial of a charter school application. In discussing this language, the Commonwealth Court said:

By giving the [CAB] the right to disagree with the local school board and requiring it to specifically articulate reasons for doing so, 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 “*de novo*.” Based upon this standard, while giving due consideration to the findings of the District, the CAB will make an independent review on each of the bases cited by the District for its denial of Charter School’s application for a charter.

## **VII. DISCUSSION**

In issuing its decision on the revised application, the District indicated that the revised application failed to meet certain requirements of the Charter School Law. Based on a reading of the denial letter, CAB has determined that the following reasons form the basis of the District’s denial of the Charter School Application:

- A. The Application fails to meet the requirements of 24 P.S. §§ 17- 1715-A(4) & (5), in that the school is not nonsectarian and religious objects and symbols are displayed on the premises of the Charter School;
- B. The Application fails to meet the requirements of 24 P.S. § 17-1717- A(e)(2)(i), in that it does not demonstrate sustainable support for the Charter School plan by teachers, parents, other community members and students.

- C. The Application fails to meet the requirements of 24 P.S. § 17-1724-A(b), in that it does not provide the general qualifications needed for non-certified positions.
- D. The Application fails to meet the requirements of 24 P.S. § 17-1723-A(a) in that it gives an impermissible preference for admission to children of parents who actively participated in the establishment of the Charter School.
- E. The Application fails to meet the requirements of 24 P.S. § 17-1719-A(13), in that it fails to include the proposed faculty and professional development plan for the faculty of the Charter School.
- F. The Application fails to meet the requirements of 24 P.S. §§ 17-1719-A (15) & (16) and 24 P.S. § 17-1724-A(h)(2)(i), in that the Application does not include criminal history and child abuse clearances for individuals who will have direct contact with students.
- G. The Application fails to meet the requirements of 24 P.S. §§ 17-1717-A(e)(2)(ii) and (iv), in that the Application does not show that the Charter School is capable in terms of support and planning, of providing the types of comprehensive learning experiences contemplated in the Application.
- H. The Application fails to meet the requirements of 24 P.S. § 17-1702-A, in that it does not establish that the Charter School will improve pupil learning, increase learning opportunities, use different or innovative teaching methods or provide parents and students with expanded educational choices.
- I. The Application fails to meet the requirements of 24 P.S. § 17-1719-A(5), in that the curriculum is insufficient.
- J. The Application violates the District's policy because it fails to demonstrate the Charter School's ability to provide a free and appropriate public education to expelled students.
- A. Whether the school is nonsectarian and whether religious objects and symbols are displayed on the premises of the Charter School**

The District has raised concerns related to the involvement of St. Matthews Lutheran Church (the Church) with the Charter School.

Many of the issues raised by the District are legitimately part of a landlord/tenant relationship. Nothing on the face of the lease is inconsistent with an arms length transaction between a landlord and a tenant. A landlord might well, as part of a lease, make renovations to a building to allow tenant to occupy that building. It is reasonable to name a tenant as an



additional insured in a lease, and to give a right of first refusal for purchase. The lease indicates that the Charter School will have sole possession of the portion of the facility that it leases during the time that classes are being conducted. The fact that the President of the Coalition seeking to charter Mt. Jewett Charter School is also the St. Matthew's pre-school administrator and that other members of the Coalition are connected to St. Matthew's is not sufficient to show an impermissible entanglement between the Church and the Charter School. There is nothing in the Charter School law which precludes members of a church from establishing a charter school, so long as the charter school which is created is non-sectarian, as it appears this one will be.

The existence of the cross on the premises and the possibility of exposure of the students to the church bells during the school day are more problematic. The language of 24 P.S. § 17-1715-A (5) is clear, "A charter school shall not provide any religious instructions, nor shall it display religious objects and symbols on the premises of the school." The cross is part of the premises. The students will be exposed to the cross, which is part of the building in which the school is housed. The religious symbol is, therefore, likely to be associated with the school that is being attended. This violates 24 P.S. § 17-1715-A (5) and is inconsistent with CAB's ruling in *Eloise and Edith Academy*, Docket No. CAB 1999-13.

The Charter School argues that it is using the Church because the District refused to make the Mt. Jewett elementary school available to it, and is instead using that building as a warehouse. Although, use of the building as a school might be a better purpose, the law does not require that the District make the building available to be used as a charter school. It is the obligation of the Charter School to locate a proper facility in which to operate a charter school. Only in the case of a conversion charter school would a school district be obligated to provide space to the conversion charter school. See 24 P.S. § 17-1717-A(b)(1).

It is also irrelevant to this matter that the District temporarily used the same premises many years ago. The Charter School Law (CSL) did not apply to the District.

Thus, the failure of the District to provide a facility to the Charter School and the District's prior use of the facility do not ameliorate the issue of the religious symbols at the school. The use of the facility violates 24 P.S. § 17-1715-A (5) and is inconsistent with CAB's ruling in Eloise and Edith Academy, Docket No. CAB 1999-13.

**B. Whether the Application demonstrates sustainable support for the Charter School plan by teachers, parents, other community members and students.**

The Charter School 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).

The District has argued that sustainable support was not shown since no one attended the public hearing to support the charter school. The District alleges that the public hearing is the true test of support. This argument is contrary to CAB rulings, which have not held the hearing to be the true test of sustainable support. To the contrary, in Ronald H. Brown Charter School, CAB Docket No. 1999-1 CAB found that the support need not be shown at the public hearing, but may be evidenced in the application.

The District has also challenged the show of support outside of the Mt. Jewett area. In Appeal of Vitalistic Therapeutic Center Charter School, CAB Docket No. 1999-6, CAB found that the proper community for determining sustainable support is the school district in which the charter school is to be located. Although the majority of the support shown was from Mt. Jewett, petitions were signed by people from Kane and Smethport. Parents from Smethport indicated an intent to enroll students in the Charter School. Since, in this instance, the Mt. Jewett area is not contiguous to the other municipalities which make up the District, we find it is not necessary for the Charter School to show extensive support from communities other than Mt. Jewett and that

the support shown from outside the Mt. Jewett area is sufficient to meet the requirements of the CSL.

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 Charter School has submitted the following to show support: (1) 208 letters of support that favor the Charter School; (2) 89 petitions which favored the Charter School; (3) 32 parents who indicated the intent to enroll children in the Charter School; (4) 38 businesses which have shown support for the Charter School in various ways; and (5) 56 individuals who have signed up to be volunteers for the Charter School. In addition, there are teachers involved in the creation of the Charter School. The support required may be demonstrated in the aggregate and need not be established for each listed group. Montour School District v. Propel Charter School-Montour, 889 A.2d 682 (Pa. Cmwlth. Ct. 2006). The District has questioned whether the number of parents who have indicated that they will enroll their children is sufficient to sustain the Charter School. The CAB has previously held that while evidence of pre-enrollment is not required to show sustainable support, it is certainly indicative of support. In re: Dr. Lorraine k. Monroe Academy Charter School, Docket No. CAB 2000-16. The Charter School has shown that up to 90 students are expected to enroll which is indicative of support

In light of the petitions, letters of support and pre-enrollment indications, the CAB finds that the Charter School has demonstrated sustainable support for the school.

**C. Whether the Application provides the general qualifications needed for non-certified positions.**

The District asserts that the application is deficient because it does not list the general qualifications for non-certified positions. The positions in question, although not listed in the

District's denial letter, appear to be: (1) custodian; (2) cafeteria worker; (3) business manager; and (4) teacher's aid. The only position for which there does not appear to be a job description, taking the original Application and the revised application together, is for the custodian. CAB finds that the failure to include a job description for a custodian in the application is not a valid basis for denying an application for a charter.

**D. Whether the Application gives an impermissible preference for admission to children of parents who actively participated in the establishment of the Charter School.**

The District contends that the CSL prohibits preference being given to children of parents who actively participated in the establishment of the school where those students are not residents of the District. In its decision in Eloise and Edith Academy, A Charter School, Docket No. CAB 1999-13 at 15, CAB stated:

However, the Charter School Law allows a charter school to give preference in enrollment to a child of a parent who has actively participated in the development of the charter school. § 17-1723-A. The Charter School is not prohibited from filling all available openings with such children if there are enough of them to fill all openings. (emphasis added)

The District argues that the Eloise and Edith Academy case is distinguishable because CAB did not specifically address what would be required if the number of applications exceeded the number of spaces available. CAB's language in Eloise and Edith Academy clearly states that the charter school could fill all spaces with children of parents who have actively participated in the development of the charter school.

However, in the Eloise and Edith Academy case, CAB did not have to address the issue of giving preference to children of parents who actively participated in the establishment of the charter school who were not residents of the District. In addition to allowing preference for children of parents who actively participated in the establishment of the charter school, the CSL states "[f]irst preference shall be given to students who reside in the district or districts." 24 P.S.

§17-1723-A(a)(emphasis added). So even though a charter school may give preference to children of parents who actively participated in the establishment of the charter school, first preference shall be given to resident students.

Therefore, the Charter School must first give preference to resident students and if there are more spaces available, the Charter School may give preference to children of parents who are not residents of the District but who actively participated in the establishment of the Charter School. If children of parents who actively participated in the establishment of the Charter School are residents of the District, they may be given preference over resident students whose parents did not actively participate in the establishment of the Charter School.

Thus, the Charter School's preference to children of parents who actively participated in the establishment of the Charter School, even if the parents are not residents of the District, is not permitted. First preference shall be for residents of the District. This basis for disapproval of the charter application is adopted.

**E. Whether the Application includes the proposed faculty and professional development plan for the faculty of the Charter School.**

The District argues that the Charter School has not complied with the CSL, because it has not submitted a detailed professional development plan beyond year one. CAB held in

Environmental Charter School, CAB Docket No. 1999-14, at page 18:

Similarly, it would be reasonable to assume that the professional development plan may be preliminary until the professional staff is hired and specific development needs can be assessed. In most instances, a professional staff would not be hired until the charter was approved. In addition, the Charter Law gives teachers a greater responsibility for the learning program at the charter school, and therefore, it is conceivable that they should be involved in the final planning of the professional development plan.

Since the Charter School has provided a detailed professional development plan for at least the first year, it has complied with the CSL.

**F. Whether the Application includes criminal history and child abuse clearances for individuals who will have direct contact with students.**

The Charter School has not included criminal history and child abuse clearances for individuals who will have direct contact with students. 24 P.S. § 1719-A states, “An application to establish a charter school shall include all of the following information:...

(15) A report of criminal history record, pursuant to section 111, for all individuals who shall have direct contact with students.

(16) An official clearance statement regarding child injury or abuse from the Department of Public Welfare as required by 23 Pa.C.S. Ch. 63 Subch. C.2 (relating to background checks for employment in schools) for all individuals who shall have direct contact with children.” (emphasis added)

The language of 1719-A is clear and unambiguous. The reports must be submitted with the application. Although it is true, that those reports may become stale, and the volunteers may cease involvement with the program, since they are identified in the application as individuals who will have direct contact with children, the reports were required to be submitted with the application. The Charter School relies on Central Dauphin School District v. Founding Coalition of the Infinity Charter School, 847 A.2d 195 (Pa. Cmwlth. Ct. 2004), to say that this requirement need not be met. That case is, however, distinguishable. In Central Dauphin, the reports were not provided for individuals who had not been identified. In this matter, the individuals have already been identified. As a result, the Charter School has not complied with 24 P.S. § 1719-A §§ (15) and (16), since it has not provided the required reports for all individuals identified in its application who will have direct contact with children. This basis for the District’s denial is adopted.

**G. Whether the Application shows that the Charter School is capable in terms of support and planning, of providing the types of comprehensive learning experiences contemplated in the Application.**

The District argues that the application fails to comply with the CSL with regard to its ability in terms of support and planning to provide the types of comprehensive learning experiences contemplated in the application.

First, the District asserts that the facility is not large enough to provide the types of comprehensive education experiences required by the CSL. The only physical evidence in the record concerning the size of the facility was provided by the Charter School. On its face, it seems to be of sufficient size to comply with the CSL. Without evidence from the District to explain its conclusory statements that the facility is not large enough, CAB has no basis for finding that it is not sufficient.

Second, the District contends that the Charter School does not have sufficient resources to acquire highly qualified staff. Although we agree with the District that the Charter School will need to employ teachers who are highly qualified, that responsibility rests upon the Charter School and the District's contention at this point is merely speculative. In addition, the District expresses concerns about other positions that are not identified in the application. It does not, however, identify any requirement that these positions be filled. As a result, this criteria cannot form the basis for denying the application.

Third, the District stated that it would not grant a charter until the Charter School has at least some members that have the experience and expertise which are necessary to implement and maintain successful educational programs. The record indicates that seven members of the Charter School founding management have degrees in elementary education and/or Pennsylvania teaching certificates. Based on the record, CAB finds that the District cannot refuse to approve the application on this basis.

Finally, the District's policy requires that a charter school provide unique extra-curricular activities. The District argues that the Charter School did not comply with additional criteria for charter schools which were adopted by the District. It states that it may adopt additional criteria so long as the criteria are reasonable and the applicant had prior notice of the requirements. The District argument somewhat misstates the requirement for allowance of the adoption of additional criteria. According to the Supreme Court in West Chester Area School District v. Collegian Charter School, such conditions must be more than reasonable; they must also be consistent with the statutory provisions of the CSL. Since school districts must allow charter school students to participate in the school district's extra-curricular activities, if the charter school does not offer them, it is difficult to see how the nature of the extra-curricular activities that are offered by the Charter School could be a basis for denying the Charter School's application. This requirement is not consistent with the CSL and cannot, therefore, be a basis for denying the Application.

**H. Whether the Application establishes that the Charter School will improve pupil learning, increase learning opportunities, use different or innovative teaching methods or provide parents and students with expanded educational choices.**

Based on a review of the record CAB finds that the Charter School would comply with the requirements of 24 P.S. § 17-1702-A.

First, the District asserts that the Charter School will not have the appropriate technology available to implement the curriculum. The application indicates that the Charter School will have computers available for students in the classroom lab and have twenty-five laptop computers available for computer classes. The District indicates that this violates District policies, However, the District fails to specify how this would violate the CSL. As a result this is not a ground for denial of the application.



Second, the Charter School asserts as reason to approve its application that the Charter School will provide educational opportunity close to the home for students who live in Mt. Jewett and that the District does not provide that opportunity. The District asserts that the Charter School will not be unique because students may enroll who do not live close to the school. If students come from a distance to attend the Charter School, that is their choice. The fact that students may wish to travel to the school does not defeat the argument that the provision of a school which is closer for Mt. Jewett residents provides an opportunity that is not provided by the District.

Third, the District challenges the Charter School's assertion that it has smaller class sizes. The record indicates that the Charter School is presently capping its class size at a smaller number of students than the District presently employs.

There may be similarities in what is offered between the District and the Charter School. Those similarities will not result in a defeat of the Charter School application. Similarities are not alone sufficient grounds to deny the application. Propel Charter School-Montour, 889 A.2d 682, (Pa. Cmwlth. Ct. 2006). Because of the smaller class sizes and the location of the school, the CAB finds that the Charter School will offer comprehensive programs with expanded choices for students.

**I. The Application fails to meet the requirements of 24 P.S. § 17-1719-A(5), in that the curriculum is insufficient.**

24 P.S. § 17-1719-A (5) requires that the curriculum be described. The application provides a detailed description of the curriculum to be provided, which is what is required. The District asserts that its policy requires a curriculum comparable to that of the District. The decision to grant or deny a charter should not be based on a comparison between the curriculum that is offered by the Charter School and that offered by the District. Hills Academy Charter School, CAB Docket 1999-12. Charter school applications should not be denied on the basis

that the proposed curriculum is not as innovative or as different as the school district feels that it should be. Sugar Valley Charter School, CAB Docket 1999-4.

The Charter School has described Learning Expeditions which will be an essential element of the Charter School's curriculum. The fact that the curriculum may be similar to the District's does not make it insufficient. As a result CAB concludes that the description of the curriculum is sufficient to comply with the requirements of the CSL.

**J. The Application violates the District's policy because it fails to demonstrate the Charter School's ability to provide a free and appropriate public education to expelled students.**

By not providing any specifics with regard to programs or services that will be implemented to insure that it can provide a free and appropriate public education to expelled students, the Charter School has failed to meet the requirements of the CSL. See, Family Choice Charter Schools, Docket No. 2007-06. Under Family Choice, simply stating that the Charter School will contract with community education and/or social service providers for additional services required for its students is not sufficient. Although the Charter School may be correct that expulsion of students below grade 6 is extremely rare, there is no evidence in the record to support it. Thus, the Charter School must have plans to address such an eventuality.

**VIII. CONCLUSION**

Charter School students would be exposed to religious symbols. The Charter School has failed to provide criminal history and child abuse clearances for individuals who will have direct contact with children. It has also failed to show that it could provide an appropriate free education to expelled children. Due to these failures, the decision of the Kane Area School District to deny the application of the Mt. Jewett Area Charter School for Academic Excellence is upheld.

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
CHARTER SCHOOL APPEALS BOARD**

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**for Academic Excellence** :  
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**Appeal from the denial of charter** : **Docket No. CAB 2009-01**  
**by the Kane Area School District** :

**ORDER**

AND NOW, this 21<sup>st</sup> day of August, 2009, based upon the foregoing and the vote of this Board,<sup>1</sup> the appeal of the Mt. Jewett Area Charter School for Academic Excellence 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>1</sup> At the July 28, 2009 meeting of the Board, the application was denied by a vote of 6 – 0 with members Akers, Barker, Green, Reeves, Shipula, and Zahorchak voting to deny the appeal.