

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

In Re: Thomas Paine Charter School :
: **Docket No. CAB 2009-04**
Appeal of the Denial of Charter by :
Catasauqua Area and Northampton Area :
School Districts :

OPINION AND ORDER

I. INTRODUCTION

This matter comes before the Pennsylvania State Charter School Appeal Board (CAB) on Appeal by the Thomas Paine Charter School (Charter School) from the denial of its Charter School Application by the Catasauqua Area and Northampton Area School Districts (Districts).

II. FINDINGS OF FACT

1. The Charter School applied to the Districts to form a regional Charter School on or about November 14, 2007.
2. Catasauqua held a public hearing on the application on December 19, 2007 and voted to reject the application and issued its written decision on March 3, 2008.
3. Northampton held a public hearing on the application on December 17, 2007, voted to reject the application on February 11, 2008 and issued its decision on March 31, 2008.
4. The Charter School submitted a second application to both Districts on or about August 26, 2008.

5. The second application was entitled "2008 Pennsylvania Charter School Application" and is nowhere specifically designated as being a resubmission or revision of the initial application submitted in November of 2007.
6. The second application (the "2008 application") is complete in and of itself and constitutes a separate and distinct application from the initial application.
7. On October 7, 2008, Catasauqua held a hearing on the 2008 application.
8. Catasauqua rejected the 2008 application on December 4, 2008 and issued its decision on December 5, 2008, which decision rested on two grounds, as follows:
 - i. The application failed to include a curriculum that satisfies the minimum state academic standards and the charter applicant had failed to determine whether the curriculum aligned with state standards. *See*, 24 P.S. §§ 17-1719-A(5), 17-1729(a)(2). This deficiency also violates 24 P.S. § 17-1717-A(e)(2)(ii) (regarding sufficiency of planning to provide comprehensive learning opportunities to students) and 24 P.S. § 17-1717-A(e)(2)(iv) (regarding serving as a model for other public schools); and
 - ii. The application failed to demonstrate that the Charter School has considered issues relative to the proposed facility and to identify/acknowledge that work was needed to prepare the building for school use, violating various provisions of the Charter School Law (CSL). *See*, 24 P.S. §§ 17-1717-A(e)(2)(ii), 17-1719-A(11), 17-1722-A(a).
9. Northampton held a hearing on the 2008 application on October 6, 2008.

10. On December 8, 2008 Northampton voted to deny the 2008 application and issued its decision on December 18, 2008 setting forth the reasons for the denial as follows:
 - i. the Charter School's teaching methods are not innovative and are like those of the district;
 - ii. the Charter School's curriculum does not meet minimum state standards and will not improve student learning;
 - iii. the Charter School's curriculum will not increase learning opportunities for all students, including those with disabilities; and
 - iv. the Charter School's financial plan is inadequate.
11. The Court of Common Pleas of Lehigh County, pursuant to stipulation of the parties, issued a decree establishing the sufficiency of the petition to appeal the charter denial on April 13, 2009.
12. On April 23, 2009 the Charter School filed this appeal.
13. The Districts have filed answers and their respective certified records with the CAB.
14. The Charter School objected to certain documents in the record as certified by Northampton.
15. The objected to information was available at the time when Northampton reviewed and voted on the Charter School application and is excluded from the record before CAB.

16. The Districts and the Charter School filed proposed findings of fact, conclusions of law and briefs with CAB.
17. In the interim, the Charter School lost the facility specified in the 2008 application and located a new facility.
18. The Districts and the Charter School agreed to supplement the record by having the Districts review and visit this new facility and agreed that the Districts could also supplement their decisions by taking action regarding this change to the application.
19. Northampton objected to certain documents with which the Charter School sought to supplement the record.
20. The Charter School's proposed supplemental exhibits #4, 5 and 6 were previously available and are excluded from the record before CAB.
21. Both Districts voted to reject the new facility and filed supplemental findings and briefs in support of their decisions.
22. The Charter School, on October 22, 2009 filed a combined reply brief in response to the Districts' objections to the new facility.
23. A hearing was held before CAB on October 27, 2009, at which the parties presented argument and responded to questions from CAB.
24. The Charter School failed to demonstrate its capability, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the proposed charter because the curriculum was not fully aligned to state standards.

25. The Charter School failed to demonstrate that it would serve as a model for other public schools.
26. The Charter School's proposed new facility is inadequate and the school's financial plan does not take into account the costs of needed upgrades and renovations.

III. CONCLUSIONS OF LAW

1. The present appeal is properly before CAB, pursuant to the CSL, 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 CSL, to agree or disagree with the findings of the Districts. *See*, 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*" *See, West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 571 Pa. 503, 516 (Pa. 2002).
4. 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. *See*, 24 P.S. § 17-1717-A(i)(6).
5. The Charter School Law allows CAB to accept information to supplement the record if the information was previously unavailable. *See*, 24 P.S. § 17-1717-A(i)(6).

6. 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:
 - i. The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d).
 - ii. The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.
 - iii. The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.
 - iv. The extent to which the charter school may serve as a model for other public schools.
7. Section 17-1717-A incorporates the requirements of section 1719-A of the Charter School Law.
8. The Charter School has not 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).
9. 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. *See*, 24 P.S. § 17-1719-A(11). The Charter School has adequately met this requirement.

10. The new facility, proposed for use by the Charter School, is inadequate for the school's proposed grade configuration and plans as set forth in the 2008 application.
11. The Charter School will not serve as a model for other public schools, as required by 24 P.S. § 1717-A(e)(2).

IV. DISCUSSION

Catasauqua and Northampton rejected the Charter School's 2008 application for several reasons that fall into and will be addressed herein under two broad umbrella categories. The first category is that of deficiencies in the Charter School's curriculum. Included in this category are the subcategories of whether the curriculum meets Pennsylvania's standards, whether it will improve student learning, whether it is innovative and whether it will afford adequate opportunities for students with disabilities. The second category is that of the proposed school facility and, specifically, whether the support expressed for the original location and school concept remains applicable, whether the Charter School adequately budgeted for the new facility and whether that facility is adequate under the Charter School's plan.

1. Curriculum/Comprehensive Learning Experience

A charter school application is required to include "the curriculum to be offered and the methods of assessing whether students are meeting educational goals." 24 P.S.

§ 17-1719(5). In concert with this requirement, the Charter School must establish “[t]he capability ..., 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 issue raised by the Districts and one of the bases for their denial of the application was that a curriculum that did not meet all the state standards and which was not fully aligned with them (*see* Chapter 4 of 22 Pa. Code) could neither provide comprehensive learning experiences to students, improve pupil learning or serve as a model for other schools. We concur.

The Charter School proposes to use the Core Knowledge Curriculum and attached excerpts from this curriculum to its 2008 application. The fact that the attached curriculum was not complete was apparent to the Districts and, in part, is what led them to deny the application. In fact, the District’s noticed numerous significant omissions in the application, which are detailed in their written decisions and also in their pleadings on this appeal. In addition, when asked about the alignment of the curriculum components included in the Charter School’s 2008 application with the state standards, the school’s representative indicated that the alignment would be completed in the future, as part of the school’s professional development program. This does demonstrate, as found by the Districts, that the Charter School did not establish in its application that it had the capability in terms of its planning, to provide comprehensive learning experiences to its students.

The Charter School brought what was alleged to be the finally completed Core Knowledge Curriculum to the October hearing before CAB.¹ Also before CAB, the

¹ The Charter School did not ask to have this document included in the record as supplemental information that was previously unavailable. Moreover, even were this information included, CAB would be inclined to

Charter School indicated that it was not aware of whether the Core Knowledge Curriculum was fully aligned at the time it submitted the 2008 application. N.T. 40. The Charter School admitted that it had only submitted sample alignments in a few areas. CAB finds this troublesome in several respects and, thus, concludes that the Districts properly denied the application on this basis. The curriculum of a school, any school, is one of the most significant building blocks of the educational program at that institution. To not have the curriculum completed and fully aligned shows a lack of adequate planning. As we have previously observed, a charter school's failure to provide a sufficient curricular plan is a basis for denial of an application, and that plan must be fully developed at the time the application is filed, rather than being a goal or guideline that an appropriate curriculum will be developed later. *Appeal of Environmental Charter School at Frick Park*, CAB No. 2007-05, at 6-7. In this case, we similarly hold that the Charter School has not satisfied the requirement to include a curriculum in its application when that curriculum is incomplete and will not be completed until a future date. Thus, we adopt the findings of the Districts in this regard and uphold their denial of the 2008 application on this basis.

2. 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 Northampton School District found that the Charter School's proposed teaching methods are not innovative and are not unique. It did so on the basis of its own

remand this matter to the Districts, which have already carefully reviewed the school's curriculum, so that they could, in the first instance, determine whether the "complete" Core Knowledge Curriculum met all of the standards in Chapter 4.

knowledge of how the district operates and because of the absence of any evidence from the Charter School to the contrary. The Charter School counters by way of its objection to Northampton's proffered exhibits, which we have excluded. The Charter School also argues it is unique by pointing to the Core Knowledge Curriculum, which was, however, found to be inadequate, because of its incompleteness. Thus, on the basis of the record before us, we concur with Northampton and find that the Charter School, as its proposal is presented in its application, will not serve as a model for other schools.

3. The new facility proposed by the Charter School is adequate.

During the course of this appeal proceeding, the Charter School lost access to the facility in Catasauqua in which it had planned to operate and, thus, located and proposed a new facility in Northampton for the operation of its charter school. *See*, Certified Record No. 13a, at pages 3-4. In response to the Charter School's proposal to operate its school in Northampton, the Districts both conducted supplemental public hearings at which they received evidence related to the newly proposed facility (the Northampton facility) and issued Supplemental Resolutions reaffirming their denial of the 2008 application. *See*, Certified Record Nos. 12 and 15.

The Districts Supplemental Resolutions were based upon three critical elements: (1) the Charter School failed to demonstrate sufficient sustainable support for the Northampton facility; (2) the unreasonable nature of the Charter School's financial plan as it relates to the Northampton facility and the uncertainty surrounding the ownership of the Northampton facility; and (3) the unsuitable nature of the Northampton facility to house a charter school. *See*, Certified Record Nos. 12 and 15.

First, the Districts contend that the Charter School has failed to provide direct evidence in the form of signatures on petitions, letters of support and pre-enrollment commitments for the newly proposed facility. *See*, Certified Record Nos. 12 and 15. In a prior case, CAB has previously held that a charter school applicant that proposes a different location for its facility than the location identified in its charter school application must demonstrate support for the proposed facility or must demonstrate that the previously expressed support continues to exist. *See, In re: Penn Johns Charter School*, CAB Docket No. 2008-05. In the instant case, however, the Charter School has provided no evidence of support for its operation at the Northampton facility and/or that the support originally garnered approves of the change in location.²

Secondly, the Catasauqua School District contends, and CAB agrees, that the Charter School failed to provide a revised budget that adequately addresses necessary expenditures for construction and/or renovation at the proposed Northampton facility. *See*, Certified Record Nos. 14 and 15. The Charter School proposes to lease the Northampton facility pursuant to a nonbinding agreement between Charter School Properties, LLC (CSP) and the Charter School. *See*, Certified Record No. 14 at No. 2. In relevant part, the nonbinding agreement provides, “[r]ent for the property in its current condition will start at \$9.00 per square foot...and will increase by \$0.50 per square foot each year to \$11.00 per square foot, triple net, in year five.” The agreement further provides, “CSP and Thomas Paine will work together to define a construction/renovation

²There is no question that the Charter School demonstrated sustainable support for the operation of its school when the plan was to operate the school out of the Catasauqua facility. Although support likely exists for the Charter School to operate out of the Northampton facility, there is substantial difference between the Catasauqua facility and the Northampton facility. The Northampton facility is considerably smaller, it lacks a cafeteria, playground or gymnasium and can only service grades Kindergarten through 6th grade, instead of Kindergarten through 8th grade. This substantial difference may lead to diminished support for the Charter School; thus, CAB cannot overlook the fact that no evidence demonstrating support of the Northampton facility was provided by the Charter School.

plan in accordance with Thomas Paine's requirements for the Charter School. CSP will complete all improvements and renovations. The cost of the renovation and other tenant fit out financing costs will be incorporated in the lease price and fully amortized over the term of the lease." *See*, Certified Record No. 14 at No. 2.

The District's interpretation of this agreement, with which CAB concurs, is that the total lease price to be paid by the Charter School for the Northampton facility will be the sum of the \$9.00 - \$11.00 per square foot rental for the property in its current condition, plus the cost of renovations and other tenant fit out financing costs. It is true that a charter school applicant is required only to submit a budget that provides a sufficient basis from which to conclude that the charter school has considered fundamental budgeting issues and has determined that it will have the necessary funds to operate.³ However, the Charter School has failed to meet this burden, as it is questionable whether the Charter School has considered budgeting issues as they relate to the Northampton facility. The Charter School contends that its monthly rental payment will be no higher than the amount set forth in the revised budget. *See*, Certified Record No. 16. The Charter School has not explained, however, the basis for this statement, when substantial construction/renovation at the Northampton facility will be necessary. While the costs of construction and/or renovation have not been definitely calculated, the record demonstrates that substantial work will be necessary to bring the Northampton facility into an operational condition. *See*, Certified Record No. 14 at No. 6. Thus, we concur with Catasauqua and find that the Charter School's financial plan is not reasonable.

³ *See*, Voyager Charter School, CAB Docket No. 2005-09.

Moreover, the record before CAB is devoid of evidence that the current owners of the Northampton facility intend to sell the property to CSP. CSP may be in negotiations to purchase the building, but no letter of intent or other specifics related to the purchase have been introduced into the record.⁴ Section 17-1719-A of the CSL requires a charter school applicant to submit information related to the ownership of and any lease arrangements for the facility in which it proposes to operate its school. 24 P.S. § 17-1719-A(11). Without evidence which links the ownership of the Northampton facility to CSP, the Letter of Intent to lease between CSP and the Charter School is of no value. Because the Charter School failed to present evidence demonstrating that CSP will purchase or lease the property from its owners and then lease or sublease to the Charter School, we find that the Charter School failed to comply with the requirements of section 17-1719-A(11) of the CSL.

Finally, the Districts argue that the Northampton facility is not a suitable facility for a charter school for numerous reasons, including that adequate space for bus and parent drop-off/pick-up is not available on the site and will need to be maintained elsewhere on school premises or on the public street. Moreover, the building is significantly smaller than the Catasauqua facility, which smaller space will force the Charter School to drop 7th and 8th grades. There is also no cafeteria or gymnasium or areas for a library, administrative offices or health room at the Northampton facility. *See*, Certified Record Nos. 12 and 15.

In response, the Charter School contends that particular and exact details regarding the preparation of the facility for use as a school are not required and that a

⁴ The only letter of intent found in the record is the Letter of Intent setting forth proposed lease arrangements between CSP and the charter School. *See*, Certified Record No. 14 at No. 2.

charter school applicant must only demonstrate that it has considered the issues pertaining to the use of the proposed facility as a school. Although CAB has held that the CSL does not require a detailed facility plan, a charter school applicant must be able to at least identify and/or acknowledge that work will be required to prepare the building for use as a school. *In Re: Environmental Charter School*, CAB Docket No. 1999-14. While it is true that the Charter School has acknowledged that the Northampton facility will require renovations and improvements prior to use as a school facility, it has failed to demonstrate that it has adequately considered the many issues raised by the Districts. Because the facility limitations raised by the Districts appear to require significant changes to the scope of the 2008 application, the suitability for the Northampton facility is highly questionable.

V. CONCLUSION

For the reasons discussed above, CAB concludes and finds that the Application does not comply with the Charter School Law and that the decisions of the School Districts to deny the Thomas Paine Charter School Application are affirmed.

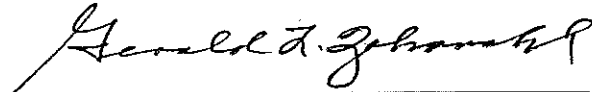
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ORDER

AND NOW, this 17th day of February, 2010, based upon the foregoing and the vote of this Board⁵, the Appeal of the Thomas Paine Charter School is **DENIED** and the Charter School Application Denials of the Catasauqua Area and Northampton Area School Districts are hereby **AFFIRMED**.

For the State Charter School Appeal Board,



Gerald L. Zahorchak
Chairperson

Date Mailed: February 17, 2010

⁵ At its meeting of December 15, 2009 the Board voted to deny the appeal by a vote of 6-0 with members Akers, Barker, Green, Reeves, Shipula and Zahorchak voting.