



Commonwealth of Pennsylvania
State Charter School Appeal Board

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Michael B. Senape, Esquire
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P. O. Box 179
Freeland, PA 18224-0179

Re: Valley Academy Charter School Appeal
from the Denial of Charter By Hazleton Area School District

Dear Messrs. Seach and Senape:

Enclosed please find the decision of the State Charter School Appeal Board in the above-referenced matter which Chairperson Tomalis signed on April 11, 2011. This decision reflects the Board's vote regarding your petition from the meeting of March 30, 2011.

In accordance with the Charter School Law, this decision may be appealed to the Commonwealth Court of Pennsylvania.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Ernest N. Helling".

Ernest N. Helling
Counsel to the Board

Enclosure

cc: Aimee L. Willett, Esquire

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

In re: Valley Academy Charter School	:	
	:	
	:	Docket No. CAB 2010-05
Appeal from the Denial of Charter	:	
By Hazleton School District	:	

OPINION AND ORDER

I. Introduction

This matter is before the Pennsylvania State Charter School Appeal Board (CAB) on Appeal by the Valley Academy Charter School (Valley) from the denial of its Charter School Application by the Hazleton School District (Hazleton).

II. Findings of Fact

1. On or about November 14, 2008 Valley submitted a Charter Application to Hazleton.
2. On December 9, 2008 Valley requested that the District hold the record for the Application until April 1, 2009.
3. On or about April 15, 2009 a public hearing was held regarding Valley's Application.
4. On or about May 14, 2009 Hazleton's Board of School Directors voted to deny Valley's Application during a business meeting.
5. Subsequent to the meeting, Hazleton never provided Valley with written notice stating the reasons for its denial of the Application.
6. On or about June 23, 2009 Samuel A. Marolo, Acting Superintendent of Schools for the District, sent a one-page memorandum to Dr. Gerald L. Zahorchak, Secretary of Education of the Commonwealth of Pennsylvania, to which was attached a five-page document spelling out five (5) reasons for denying the application.

7. On December 2, 2009 Valley filed a Petition of Appeal with the Court of Common Pleas of Luzerne County.
8. On August 26, 2010 the Court of Common Pleas of Luzerne County entered an Order authorizing Valley to file its appeal to CAB.
9. On or about November 2, 2010 Valley filed a Petition of Appeal with CAB.
10. On November 16, 2010 Hazleton responded with an Answer to the Petition for Appeal.
11. A hearing was held before CAB on January 25, 2011.

III. Conclusion of Law

1. CAB has jurisdiction in this matter.
2. The Charter School Law Act of June 19, 1997, 24 P.S., Section 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 directions 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 meetings;
 - 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 or other public schools.

4. Once the local 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 local board's action be sent to the applicant, the Department and the CAB. 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.
5. Hazleton's Board failed to send notice to Valley reflecting the reasons for its denial of Valley's Charter Application.

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. 24 P.S., Section 17-1717-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.

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 by 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 [CAB] the authority to substitute its own findings and independent judgement for that of the local school board." Id., at 461. Accordingly, the Commonwealth Court has found that the proper standard of review to be applied by the CAB in charter denial cases is to be "*de novo*." Therefore, while giving due consideration to Hazleton's vote to deny the Application, CAB will independently review the record in light of the requirements set forth in the CSL.

V. Discussion

Notice.

The initial issue in this appeal is whether Hazleton provided proper notice of its denial to Valley and, if not, what is 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 *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. (emphasis added)

24 P.S. Section 17-1717-A(e)(5). 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 In re: Wonderland Charter School, CAB 1999-03; and Pocono Mountain Mathematics Science and Technology Charter School, CAB 2004-05 at 10. However, we want to clarify that, as stated above, CAB has *de novo* review of the appeal. Therefore, CAB may find 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.

In 2009, CAB was called upon to clarify what it means to have the deficiencies listed “specifically and clearly” in the notice of denial. This is because Propel Charter School-Sunrise contended in its appeal that although it received a denial letter, the letter was insufficient because it did not provide details regarding the reasons for denial of the application. While the reasons for denial must be enumerated, CAB held that the law does not require a certain level of specificity regarding those reasons. A denial letter needs only to comprise a few sentences, as long as the reasons for denial are delineated. *See, Propel Charter School-Sunrise*, CAB 2009-03

6.¹ Thus, a district's school board is given a sufficient amount of discretion in its formulation of a denial notice; but there must, nonetheless, be a written notice.

However, in this case, Hazleton did not send a notice to Valley setting out the deficiencies. Instead, Hazleton's Acting Superintendent sent a two-sentence memorandum to the Secretary of Education on June 23, 2009, over a month after the vote of the school board. The memorandum states: "[a]ttached is the Hazleton Area response to the Charter school review and hearing on April 15, 2009. The Hazleton District rejected the proposed application." Petition to Appeal, Exhibit "C." The attachment to the memorandum sets forth and explains five reasons why "it is the intentions [sic] of the Hazleton Area School District to reject the Valley Academy Charter School application...." *Id.* Thus, even if the Acting Superintendent's memorandum had been sent to Valley, such action would not have satisfied the requirements of the CSL. First, the notice of denial with the deficiencies described must be given by the local board of school directors and not simply by an administrator. Second, there is no indication in the memorandum, in the attachment, or in the minutes of the special board meeting at which the vote to deny occurred (Petition to Appeal, Exhibit "B") that the reasons set forth in the attachment were in fact ever adopted by the school board.

Therefore, since the required notice was not sent to Valley prior to the filing of the appeal in this case, the Statute was violated. Because the CSL clearly requires a written notice after the Board vote, CAB could take the position that Hazleton's lack of notice be deemed a finding that Valley had actually met the requirements of the CSL. Nonetheless, CAB has reviewed the record *de novo* in light of the five alleged deficiencies set forth in the attachment to the Acting Superintendent's memorandum. In addition, we reviewed and admit into the record the documents offered by the charter school. Brief for Valley Academy Charter School, pp 9-10. The Charter School Curriculum was, we find, erroneously omitted from the record certified by

¹ In the Propel case, the district's denial letter set forth in general terms the four reasons for denial of the charter application but provided no elucidation thereof. This was held to be sufficient, particularly since the charter school addressed those reasons in its brief to CAB.

Hazleton. The Affidavits and Response of Wilkes University professors are documents that were previously unavailable. 24 P.S. §17-1717-A(i)(6). Based upon this review, we conclude and find that Hazleton's allegations are not supported by the record, and that there is no basis in the record before CAB for a determination that Valley did not meet the requirements of the CSL.

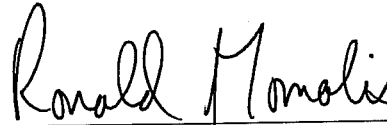
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ORDER

AND NOW, this 11th day of April, 2011, based upon the foregoing and the vote² of this board, the appeal of the Valley Academy Charter School is **GRANTED**.

For the State Charter School Appeal Board



Ronald J. Tomalis
Chairman

Date Mailed: April 11, 2011

² At its meeting of March 30, 2011, CAB voted to grant the appeal by a vote of 6-0 with members, Akers, Barker, Green, Reeves, Shipula and Chairman Tomalis voting to grant the appeal.