

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

McKeesport Area School District, :
Petitioner :
v. : No. 373 C.D. 2015
: Submitted: June 26, 2015
Young Scholars of McKeesport :
Charter School, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE PELLEGRINI FILED: July 13, 2015

The McKeesport Area School District (School District) appeals from an order of the State Charter School Appeal Board (CAB) granting the appeal filed by the Young Scholars of McKeesport Charter School (YSMCS) and directing the School District to issue a charter to YSMCS as provided for in Section 1717-A of the Pennsylvania Charter School Law (Law).¹ For the reasons that follow, we affirm.

¹ Act of March 10, 1949, P.L. 30, *added by* the Act of June 19, 1997, P.L. 225, 24 P.S. §§17-1701-A - 17-1732-A.

On November 15, 2012, YSMCS filed an application with the School District for a charter to open and operate a public charter school. The School District held a public hearing on the application during which two members of the McKeesport community testified on behalf of granting a charter to YSMCS.² The School District's Board voted to deny the charter application, finding that (1) it failed to show "[t]he 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)"; (2) it failed to show "[t]he capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter"; (3) the application did not "sufficiently consider the information requested in section 1719-A or conform to the legislative intent outlined in section 1702-A"; and (4) the charter school would not serve as a model to other schools in the School District.

YSMCS then submitted a revised application to the School District in which YSMCS submitted 30 petition forms³ containing the name of approximately

² One of the witnesses was a real estate agent who maintains the property listing on behalf of the church where the proposed school is to be located.

³ Each petition form stated the following:

Petition in Support of the Opening of the YOUNG SCHOLARS OF MCKEESPORT Charter School in September 2013. The undersigned below indicate through their signatures their support for the approval of the YOUNG SCHOLARS OF MCKEESPORT Charter School to be located in the McKeesport Area School District. We urge the Board of Education of McKeesport Area

(Footnote continued on next page...)

450 individuals in demonstrating support for the opening of the charter school. It also submitted approximately 17 pre-enrollment forms⁴ demonstrating an intention to enroll approximately 34 additional students into YSMCS, along with approximately 40 Educational Improvement Survey Forms identifying approximately 71 potential students for enrollment.⁵ YSMCS also submitted another 12 pre-enrollment forms and two letters of support demonstrating support for YSMCS and the actual pre-enrollment of approximately another 14 students.

In that revised application, YSMCS also stated that it anticipates educating “a student who is conversant in at least two major world languages and understands the interdependence of the world’s peoples.” (Reproduced Record

(continued...)

School District to approve the application submitted by the Founders.

(Revised Application.)

⁴ Each pre-enrollment form stated the following:

I understand that the Young Scholars of McKeesport Charter School has not yet been granted a charter. By signing this pre-enrollment form, I am stating my intent to send my child(ren) to the Young Scholars of McKeesport Charter School... If a charter is granted for the school, I understand that I will need to complete official enrollment documents in order for my child(ren) to be enrolled in the school.

(Revised Application.)

⁵ The Educational Improvement Survey Forms do not contain names, ages or grades of the students to be enrolled and do not commit to enrollment.

(R.R.) at 361a.) It plans to utilize “research-based pedagogy that is designed to foster language learning as well as impart a global perspective that promotes appreciation and understanding of world languages, regions, cultures and traditions...” and to create an “instructional environment in which students encounter rigorous instruction in their individual vernacular as well as immersion in other languages to create a common bond among all students, especially students who are non-English speakers.” *Id.* YSMCS’s revised application set forth, among other details, its curriculum, goals and objectives; the assessment tools and methods it will implement in achieving its goals; its financial plan; and its ability to serve as a model for other public schools.

After a hearing, the School District denied the revised application on the same grounds as the original application. YSMCS then filed a timely Emergency Petition to Certify Petition for Appeal with the requisite number of signatures with the Allegheny County Court of Common Pleas (trial court).⁶ The trial court certified the petition and authorized YSMCS to appeal to the CAB, which YSMCS timely did.

The CAB granted YSMCS’s appeal and directed the School District to issue it a charter, concluding that YSMCS has illustrated sustainable support for

⁶ The trial court certified the petition for appeal pursuant to 24 P.S. §17-1717-A(h)(2) which provides that for “a charter school applicant to be eligible to appeal the denial of a charter by the local board of directors, the applicant must obtain the signatures of at least two per centum of the residents of the school district or of one thousand (1,000) residents, whichever is less, who are over eighteen (18) years of age.” 24 P.S. §17-1717-A(h)(2). YSMCS attached 1,377 signatures to its petition.

the charter school, that it has shown the ability to provide a comprehensive learning experience to students; that its application conformed with the requirements of Section 1719-A of the Law and the intent of the General Assembly; and that it has established that it can serve as a model for other public schools in accordance with the Law. The School District then appealed to this Court.⁷

A.

The School District first contends that the CAB erred in concluding that YSMCS's revised application demonstrated sustainable support from the community for the charter school.

Section 1717-A(e)(2) of the Law provides that:

A charter school application submitted under this article shall be evaluated by the local board of school directors based on criteria including, but not limited to, the following:

(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

⁷ Our scope of review is limited to determining whether the adjudication is in violation of constitutional rights, is not in accordance with the law, or is not supported by substantial evidence. *Ronald H. Brown Charter School v. Harrisburg City School District*, 928 A.2d 1145, 1147 n. 6 (Pa. Cmwlth. 2007).

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.

24 P.S. §17-1717-A(e)(2).

To meet the requirement of “sustainable support for the charter school plan by teachers, parents, other community members and students,” this Court has held that a charter school only needs to demonstrate reasonably sufficient support from the aforementioned groups in the aggregate, not a minimum level of support from each of the groups. *Montour School District v. Propel Charter School-Montour*, 889 A.2d 682, 687 (Pa. Cmwlth. 2006). Sustainable support can be shown through pre-enrollments, signed petitions of support, community meetings and letters of support. *Id.* See also *Brackbill v. Ron Brown Charter School*, 777 A.2d 131, 137 (Pa. Cmwlth. 2001).

YSMCS submitted 30 petition forms containing the names of approximately 450 signatures demonstrating support for the charter school and 40 survey forms identifying approximately 71 potential students for enrollment. It submitted 17 pre-enrollment forms identifying approximately 34 additional students and another 12 pre-enrollment forms and two letters of support, demonstrating support for YSMCS and the actual pre-enrollment of approximately

14 students. Two community members had also credibly testified in favor of the charter school. CAB found that the combination of these records and testimonies were sufficient to satisfy the requirement of sustainable support.

The School District contends that YSMCS's revised application did not demonstrate sustainable support from the community because the petition signatures, pre-enrollment forms, letters of support and public testimony is substantially less than the evidence shown in our decisions where community support has been an issue, specifically, in *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195, 197 (Pa. Cmwlth. 2004), where the charter school applicant had provided evidence of over 80 pre-enrolled students and had more than 20 people speak at public hearings demonstrated sustainable support, and in *Montour*, 889 A.2d at 687, where there were 196 students pre-enrolled.

It is difficult to compare levels of support for charter school applicants from disparate school districts. Aside from the difference in population for each district and the size of the school district, there are issues of whether the proposed students being targeted are from the chartering district or other school districts. In considering this requirement, we examine whether the CAB made sufficient findings to show that it did not abuse its discretion in finding that there was adequate community support. In this regard, it found:

YSMCS submitted 30 petition forms with its Revised Application containing the names of approximately 450 individuals at Appendix B. Each of the petition forms contained the following language: "The undersigned

below indicate through their signatures their support for the approval of the YOUNG SCHOLARS OF MCKEESPORT Charter School to be located in the McKeesport Area School District.” Thus, it is clear on the face of the petitions that those who signed them specifically expressed their support for YSMCS.

Additionally, YSMCS included with its Revised Application approximately 17 Pre-Enrollment Forms, each of which stated the following:

I understand that the Young Scholars of McKeesport Charter School has not yet been granted a charter. By signing this pre-enrollment form, I am stating my intent to send my child(ren) to the Young Scholars of McKeesport Charter School... If a charter is granted for the school, I understand that I will need to complete official enrollment documents in order for my child(ren) to be enrolled in the school.

The Pre-enrollment forms (sic) clearly indicate an intention to enroll approximately 34 additional students into YSMCS.

Similarly, YSMCS submitted approximately 40 Educational Improvement Survey Forms identifying at least another 71 potential students for enrollment. Although the Forms do not contain the particular names, ages or grades of the students to be enrolled, and do not commit to enrollment, they demonstrate support for the YSMCS in general, and represent the potential enrollment of approximately 71 students. The YSMCS has also submitted 12 Pre-Enrollment Forms and two letters of support which similarly indicate support for YSMCS and the actual pre-enrollment of approximately 14 students.

Two members of the McKeesport community testified favorably on behalf of YSMCS at the December 28, 2012 hearing. Although one of the witnesses was a real estate agent who maintains the property listing on behalf of the church where the proposed school is to be located, the

witness's testimony was found to be credible by the Board, as was the testimony of the second witness who testified in favor of the charter school. Although the District has offered correspondence from local elected officials which, it contends, counters the testimony of the two charter school witnesses, their opposition cannot serve to negate the aggregate support offered by the multiple community members offered by YSMCS. Indeed, it is the degree of support for a proposed charter school plan that is relevant, not the degree of opposition thereto. *In re: Propel Charter School of McKeesport*, CAB Docket No. 2004-1.

Further, a careful review of the basis for the officials' purported opposition to the charter school reveals that their comments were not directed towards particular shortcomings of YSMCS but, instead, were based upon their general opposition to the charter school system. Based upon its review of the record, in the aggregate, CAB finds that YSMCS has established demonstrated and sustainable support for its school, and that YSMCS has satisfied this prong of the review as required by the [Law].

(CAB Opinion, 3/6/15, at 17-18.)

Because the CAB carefully analyzed all the evidence of community support and fully explained its reasons for finding that such support exists, we will not disturb that finding on appeal.

B.

The School District next argues that YSMCS failed to provide increased learning opportunities and expanded educational choices through the creation of the charter school. Specifically, the School District argues that

YSMCS failed to present examples of differences in its curriculum aside from a language program, which is similar to the School District's language program, which affords students the opportunity to pursue more than one language, thereby failing to illustrate an innovative curriculum pursuant to 24 P.S. §17-1702-A.

Under Section 1717-A(e)(2)(iii), a charter school application must conform to the legislative intent outlined in Section 1702-A of the Law. 24 P.S. §17-1717-A(e)(2)(iii). Section 1702-A provides that the intent of the General Assembly in enacting the Law was:

[T]o provide opportunities for teachers, parents, pupils and community members to establish and maintain schools that operate independently from the existing school district structure as a method to accomplish all of the following:

- (1) Improve pupil learning.
- (2) Increase learning opportunities for all pupils.
- (3) Encourage the use of different and innovative teaching methods.
- (4) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- (5) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- (6) Hold the schools established under this act accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

24 P.S. §17-1702-A.

Here, YSMCS plans on educating students in at least two major world languages and teach them the interdependence of the people of the world by using a “research-based pedagogy that is designed to foster language learning as well as impart a global perspective.” (R.R. at 361a.) It aims to also create an “instructional environment in which students encounter rigorous instruction in their individual vernacular as well as immersion in other languages to create a common bond among all students, especially students who are non-English speakers.” *Id.* Although there are similarities between YSMCS’s language program and that of the School District, in that they both offer students the opportunity to learn more than one language, we have held that “similarities, alone, are insufficient to support a finding of non-compliance with the [Law] when there is substantial evidence of uniqueness.” *Montour*, 889 A.2d at 688. YSMCS’s program is more than just about creating bilingual students; it is focused on developing global citizens who understand and appreciate the world’s various languages, regions, cultures and traditions. As such, YSMCS’s proposed charter school sufficiently meets the criteria set forth by the General Assembly in Section 1702-A.

C.

Finally, the School District argues that YSMCS’s financial plan fails to demonstrate that the charter school will be capable of providing a comprehensive learning experience due to its lack of concrete funding

commitments in the revised application.⁸ It argues that YSMCS only demonstrated that its source of funding comes from the Estimated State Aid (“ESA”) based on Average Daily Attendance (“ADA”) which equals 12,219.26. With a budget of \$1,539,580, that means that there would have to be 129 students enrolled; the forms demonstrate the pre-enrollment of approximately 48 students, which indicates that YSMCS did not base its primary source of revenue on any concrete numbers or commitments.

Under Section 1719-A(9), a charter school application shall include “[t]he financial plan for the charter school and the provisions which will be made for auditing the school” 24 P.S. §17-1719-A(9). A financial plan only has to show that it has considered the budgeting issues and that based on reasonable assumptions, it will have the necessary funds to operate the school it proposes. Moreover, in *Central Dauphin*, we held that the Law does not require a specific budget so long as the school board or the CAB can determine that the applicant will be able to provide a comprehensive learning experience for students. 847 A.2d at 202.

Regarding the number of potential identified students, whether the number is 48, as the School District claims, or 71, as the CAB found, it was not unrealistic to assume that it could meet its budgeted enrollment numbers once its

⁸ Under this argument, the School District also contends, for the first time on appeal, that YSMCS’s planning is inadequate because it has not yet obtained a location to host the proposed school because, while it has a sales agreement on a closed Catholic school, it has not finalized the purchase. However, because the School District did not properly preserve this issue below, they may not raise it before this Court. Issues not preserved below “are waived and cannot be raised for the first time on appeal.” Pa. R.A.P. 302(a).

charter was approved. Moreover, when the CAB performed a *de novo* review of the application, it noted that YSMCS identifies the ESA as the school's basic source of revenue and articulates that manner by which it is calculated. The CAB further noted that YSMCS also identifies other sources of revenue, including general-purpose aid programs, state transportation aid program, federal funds for child nutrition, federal charter school grants, and grants and donations from local charitable foundations. YSMCS also anticipates receiving approximately \$100,000 from Planning and Implementation Grants through the Public Charter Schools Program and \$50,000 from private loans. Further, members of the Board of Trustees are also said to make personal donations to help fund the start-up of the school, with the school also potentially pursuing financing options through bank loans. YSMCS also pinpoints operational expenses, such as teacher salaries and health and dental insurance, and provides details of its five-year operational budget, which describes the method of accounting to be used, describes its payroll system, and provides the methods by which audits will be conducted and financial statements will be prepared.

Given the information provided by YSMCS and considered by the CAB in making its decision, we agree that YSMCS has adequately described its financial plan with regard to the applicable provisions of the Law.

Accordingly, the order of the CAB is affirmed.

DAN PELLEGRINI, President Judge

