

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION**

STATE CHARTER SCHOOL APPEAL BOARD

In Re: Infinity Charter School :

Appeal from denial of charter by : **Docket No. CAB 2002-4**
Central Dauphin School District :

I. INTRODUCTION

The Infinity Charter School (“ICS”) brings this appeal to challenge the decision of the Board of Directors of the Central Dauphin School District (“CDS”) denying its application to operate as a charter school within the school district. ICS has requested that the Charter School Appeal Board (“CAB”) reverse CDS’s denial of a charter and to order that the school district issue a charter to ICS because the decision of the CDS Board of Directors was allegedly made in error. CDS, on the other hand, maintains that the denial of ICS’s charter school application was justified and proper pursuant to Section 1717-A(e) of the Commonwealth’s Charter School Law. 24 P.S. §17-1717-A(e).

After giving due consideration to the record below and the additional information and documents submitted for review by the CAB by stipulation of the parties, the CAB finds that ICS has satisfied all of the requirements to be issued a charter. Thus, the CAB concludes that CDS improperly denied ICS’s application for a charter and ICS’s appeal of such denial is sustained and CDS is ordered to execute a charter for ICS pursuant to Section 1720-A of the Charter School Law. 24 P.S. §17-1720-A.

II. BACKGROUND INFORMATION

In July 2001, ICS filed an application for a charter with CDS, seeking to operate a charter school that would serve students in grades K-12 within the school district pursuant to the Commonwealth’s Charter School Law (“the Law”). 24 P.S. §17-1701-A et seq. Three separate public meetings were held by CDS relating to ICS’s charter application on

September 10 and 24, 2001 and on October 30, 2001, respectively. In addition to the information received by CDSD at these public meetings, ICS also provided additional materials for CDSD's consideration of the charter application.

At a public meeting on November 19, 2001, CDSD voted to deny ICS's application, and a written notice of denial was issued to ICS on November 21, 2001. The grounds cited by CDSD for its denial of ICS's charter application are as follows:

- A. The proposed charter school would impermissibly discriminate on the basis of intellectual ability, measures of achievement or aptitude.
- B. ICS failed to demonstrate sustainable support for the charter school.
- C. ICS failed to provide sufficient information describing its proposed site and physical location for the charter school.
- D. ICS failed to establish a satisfactory plan or demonstrate any ability to meet the financial needs of the charter school.
- E. The application should have been filed as a regional charter school.
- F. ICS failed to establish that it would be a model for other public schools and provide opportunities not readily available to students in the school district.
- G. ICS failed to identify proposed faculty and staff or to include required reports and clearances with its application materials.

See Petition, Exhibit A, pp. 2-3.

On or about January 1, 2002, ICS filed a petition for leave to appeal CDSD's denial with the Court of Common Pleas of Dauphin County, and on August 26, 2002 after a hearing, that court entered a decree that ICS's petitions were sufficient. An appeal of CDSD's decision to deny ICS's charter application was filed with the CAB on August 29, 2002, and by letter dated September 26, 2002, the CAB accepted ICS's appeal, and appointed a hearing officer in accordance with the General Rules of Administrative Practice and Procedure. 1 Pa.Code Ch. 35. Following a pre-hearing conference held on October 3, 2002, the parties submitted to the hearing officer the record below pursuant to 24 P.S. §17-

1717-A(i)(6) as well as several pieces of additional information and documents, which the parties stipulated were admissible for the purpose of the instant appeal.

The parties were given the opportunity to submit both initial and reply briefs, and oral argument was held in this matter before the CAB at its meeting on October 24, 2002. Accordingly, the CAB has jurisdiction over this matter pursuant to 24 P.S. §17-17-A(i), and this appeal stands ready for adjudication.

III. FINDINGS OF FACT

1. Petitioner is the Infinity Charter School ("ICS"), which identifies its proposed physical location as 51 Banks Street, Harrisburg, Pennsylvania.
2. Respondent is the Board of Directors of the Central Dauphin School District ("CDS").
3. On July 30, 2001, the founding coalition of ICS submitted a timely application for a charter to CDS for the purpose of operating a charter school within the school district. R¹. 1.
4. On September 10, 2001, a public hearing was held by CDS relating to ICS's application for a charter. R. 2.
5. On September 24, 2001, a second public hearing was held by CDS relating to ICS's application for a charter. R. 2.
6. On October 30, 2001, a third public hearing was held by CDS relating to ICS's application for a charter. R. 2.
7. On November 19, 2001, CDS denied ICS's charter application by a vote of 5-4. Petition², Exhibit A.

¹ For the purpose of this Adjudication, "R." refers to the record below and the supplemental information submitted by stipulation of the parties. The following number indicates the document number in the record.

² For the purpose of this Adjudication, "Petition" refers to the Petition of Appeal filed by ICS with the CAB on August 29, 2002.

8. Written notice of denial was provided to ICS on November 21, 2001. Petition, Exhibit A.
9. Pursuant to Section 1717-A(h)(2) of the Charter School Law (24 P.S. §17-1717-A(h)(2)), ICS obtained signed petitions and submitted them to the Court of Common Pleas of Dauphin County. Petition, Attachment.
10. The Court of Common Pleas of Dauphin County determined after a hearing that the petitions were valid and otherwise satisfied the requirements of Section 1717-A(h)(5) of the Charter School Law (24 P.S. §17-1717-A(h)(5)). Petition, Attachment.
11. On August 29, 2002, ICS filed a Petition to Appeal with the Charter School Appeal Board ("CAB"). Petition and Attachment and Exhibits.
12. The purpose of ICS is to operate a charter school that will provide an educational option for gifted students. R. 1, pp. V.2, V.5, V.7, VI.4. .
13. ICS will accept any student regardless of intellectual ability and there is no educational screening that is completed in conjunction with enrollment. R. 1, p. IX. 7.
14. ICS is prepared to address the needs of non-gifted or disabled students that might enroll in the charter school. R. 1, pp. V.29-30
15. There is sustainable support for ICS from the community, parents, teachers and students. R. 1, 2, 12.
16. ICS has provided sufficient information relating to its proposed facility and site for its charter school. R. 1, 11.
17. CDS denial of ICS's application provided insufficient specific reasons for its denial based upon its review of ICS's financial plan. Petition, Exhibit A.
18. The financial plan demonstrates that ICS has considered fundamental budgeting issues and sufficient funds will be available to operate the charter school. R. 1, 6.

19. ICS filed its application for a charter only with CDS, as opposed to filing such charter regionally with more than one school district. R. 1.
20. ICS would act as a model for other public schools and will provide educational opportunities that differ from those currently provided by CDS. R. 1.
21. ICS provided sufficient information relating to its proposed faculty and staff. R. 1.
22. Should any of these Findings of Fact be deemed to be Conclusions of Law, the ones so found are incorporated therein.

IV. CONCLUSIONS OF LAW

1. The Charter School Law, Act of June 19, 1997, P.L. 225, No. 22 (24 P.S. §§17-1701-A et. seq.) governs the denial of a charter application by a school district in the Commonwealth of Pennsylvania.
2. The Pennsylvania General Assembly enacted the Charter School Law to provide school children with additional opportunities to attend public schools that offer diverse and innovative educational techniques, operating independently of the traditional state public school system. 24 P.S. §17-1702-A.
3. Section 1717(e)(2) of the Charter School Law sets forth the criteria under which a school district is to evaluate an application for a charter. 24 P.S. §17-1717-A(e)(2).
4. The Appeal Board must give "due consideration" to the findings of the local school board, but the Appeal Board is also free to agree or disagree with those findings. 24 P.S. §17-1729(d).
5. 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.*" West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa.Cmwth. 2000).

6. A charter school shall not discriminate in its admission policies or practices on the basis of intellectual ability, or athletic ability, or measures of achievement or aptitude, status as a person with a disability, proficiency in the English language or any other basis that would be illegal if used by a school district. 24 P.S. §17-1723-A(b)(1).
7. Nothing in the record demonstrates that ICS will discriminate in its enrollment practices and policies on the basis of intellectual ability or any other reason, and CDSB has improperly denied ICS's charter application on this basis.
8. A school district must evaluate a charter application in order to ensure that there is demonstrated, sustainable support for the charter school by teachers, parents, other community members and students. 24 P.S. §17-1717-A(e)(2)(i).
9. Evidence of support is to be measured in the aggregate. In re: Ronald Brown Charter School, Docket No. CAB 1999-1 at p. 18; In re: Souderton Charter School Collaborative, Docket No. CAB 1999-2 at p. 12; In re: Leadership Learning Partners Charter School, Docket No. CAB 2000-8 at p. 9.
10. ICS has demonstrated sustainable support for its charter school, and CDSB has improperly denied ICS's charter application on this basis.
11. A school district must consider the extent to which the application considers the information that the Law requires it to include. 24 P.S. §17-1717-A(e)(2)(iii).
12. The Charter School Law sets forth the requirements for the contents of the charter application, which is to include a description and address of the physical facility for the location of the charter school, as well as a description of any ownership interest or lease arrangement that the school may have in the site. 24 P.S. §17-1719-A(11).
13. The Charter School Law does not require that a charter applicant actually secure the proposed property or provide the school district with a lease or sales agreement, site development plan or a list of alternative sites. In re:

Environmental Charter School, Docket No. CAB 1999-14; In re: Leadership Learning Partners Charter School, Docket No. CAB 2000-8.

14. CDSO improperly denied ICS's charter on the basis that it failed to provide sufficient information relating to its proposed facility and site for its charter school.
15. In considering a charter application, a school district must evaluate whether the charter school will be capable of providing the comprehensive learning experience that it proposes in the application. 24 P.S. §17-1717-A(e)(2)(ii).
16. As part of that evaluation, a charter applicant must submit a financial plan, which reasonably demonstrates such capability.
17. The Law requires that a charter school submit a financial plan as part of its application. 24 P.S. §17-1719-A(9).
18. CDSO improperly denied ICS's application on the basis that it provided an insufficient financial plan for the operation of its charter school.
19. A charter school may be established either by seeking a charter from a single school district or a regional charter from more than one school district. 24 P.S. §§17-1717-A(a), 17-1718-A(a).
20. There is no requirement in the Charter School Law that a school must seek a regional charter when students might be drawn from other districts.
21. Students from another district are able to attend a charter school if there is available classroom space, regardless of whether the school is chartered by a singly or regionally. 24 P.S. §17-1723-A(c).
22. Application as a regional charter school is a discretionary and voluntary decision that is to be made by the charter school. Phoenix Academy Charter School, Docket No. CAB 1999-10; West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa.Cmwlt. 2000).
23. CDSO's denial of ICS's charter because the application should have been

regionally was erroneous.

24. A school district must evaluate a charter application by considering the extent to which the charter school would serve as a model for other public schools. 24 P.S. §17-1717-A(e)(2)(iv).
25. 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. Shenango Valley Charter School, Docket No. CAB 1999-1.
26. CDSB improperly denied ICS's charter on the grounds that the charter school would not offer educational opportunities that are not readily available to students in the school district.
27. The approach taken by ICS in its application with regard to proposed faculty and staff and the required reports and clearances for such staff was appropriate and compliant with the Charter School Law.
28. ICS's failure to provide specific names and clearances for the school's faculty and staff is not a proper basis for CDSB's denial of its charter application.
29. Should any of these Conclusions of Law be deemed to be Findings of Fact, the ones so found are incorporated therein.

V. DISCUSSION

The Pennsylvania General Assembly enacted the Charter School Law to provide school children with additional opportunities to attend public schools that offer diverse and innovative educational techniques, operating independently of the traditional state public school system. See 24 P.S. §17-1702-A. Section 1717(e)(2) of the Charter School Law (24 P.S. §17-1717-A(e)(2)) sets forth the criteria under which a school district is to evaluate an application for a charter. Those criteria include:

- (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including

comments received at a public hearing on the charter application.

- (ii) The capability of a charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the charter.
- (iii) The extent to which the application considers the information requested in Section 1719 of the Charter School Law (24 P.S. §17-1719-A) and conforms to the legislative intent outlined in Section 1702 of the Charter School Law (24 P.S. §17-1702-A).
- (iv) The extent to which the charter school may serve as a model for other public schools.

See 24 P.S. §17-1717-A(e)(2). In order to have proper legal authority to deny a charter application, a school district must demonstrate that the application and other information submitted by the charter school application is deficient under at least one of the criterion enumerated above.

Pursuant to these criteria, CDS D denied ICS's application for a charter on the following grounds: (A) the proposed charter school would impermissibly discriminate on the basis of intellectual ability, measures of achievement or aptitude; (B) ICS failed to demonstrate sustainable support for the charter school; (C) ICS failed to provide sufficient information describing its proposed site and physical location for the charter school; (D) ICS failed to establish a satisfactory plan or demonstrate any ability to meet the financial needs of the charter school; (E) the application should have been filed as a regional charter school; (F) ICS failed to establish that it will provide opportunities not readily available to students in the school district; and (G) ICS failed to identify proposed faculty and staff or to include required reports and clearances with its application materials. In accord with the discussion below, the CAB hereby finds that, based upon its review of the record below and the supplemental information submitted to the CAB by stipulation of the parties, CDS D improperly denied ICS's application for a charter.

Standard of Review

Before addressing the merits of this appeal, it is first necessary to discern the proper standard of review to be applied by the CAB in this matter. Section 1729(d) of the Charter School Law states that the Appeal Board must give “due consideration” to the findings of the local school board, but the Appeal Board is also free to agree or disagree with those findings. 24 P.S. §17-1729(d). In determining whether the denial of a charter school application was appropriate, the CAB is required to review the record made in the proceedings below. Id. The CAB may also supplement the record at its discretion with information that was previously unavailable. Id. The Commonwealth Court in West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa.Cmwlt. 2000), discusses the proper standard that is to be applied by the Appeal Board in its review of a school district’s denial of a charter school application:

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 to be “*de novo*.” Based upon this standard, while giving due consideration to the findings of the CDSB, the CAB will make an independent review on each of the bases cited by CDSB for the denial of ICS’s charter application.

ICS’s Proposed Charter School Would Not Impermissibly Discriminate in Its Admission Policies or Practices

The first grounds on which CDSB relies for its denial of ICS’s charter application is CDSB’s belief that the charter school would impermissibly discriminate in its admission

policies and practices in violation of Section 1723-A(b)(1) of the Charter School Law. 24

P.S. §17-1723-A(b)(1). That provision of the Law states that:

[a] charter school shall not discriminate in its admission policies or practices on the basis of intellectual ability, [. . .] or athletic ability, or measures of achievement or aptitude, status as a person with a disability, proficiency in the English language or any other basis that would be illegal if used by a school district.

Id.³ The Charter School Law does allow a school to limit admission to a particular grade level, a targeted population group composed of at-risk students, or areas of concentration of the school such as mathematics, science or the arts. 24 P.S. §17-1723-A(b)(2). A charter school may also establish reasonable criteria to evaluate prospective students, and those criteria are to be outlined in the school's charter. Id. CDSO asserts that ICS would be solely and exclusively for mentally gifted students in violation of Section 1723-A of the Charter School Law, and CDSO therefore denied ICS's charter application.

Although the clear language of the Charter School Law prohibits charter schools from using intellectual ability as an admission criteria (unless otherwise permitted by Section 17-1723-A(b)(2) (24 P.S. §17-1723-A(b)(2))), ICS's marketing of its charter school towards, and focus on, mentally gifted students is not necessarily a violation of Section 1723-A(b)(1) of the Law. ICS employs no screening devices in the enrollment of its students, and it will accept any student, regardless of the student's intellectual ability or mental aptitude. R. 1, p. IX. 7. In fact, part of ICS's proposed budget includes funding for a learning specialist who would address the uneven development of students who would attend the school. Moreover, the school appears to anticipate having special need students or students with learning disabilities because it has consulted with the Capital Area Intermediate Unit regarding contracting for services for such students. Therefore, because students are to be enrolled into ICS without regard to intellectual ability, there does not appear to be any "de jure" intellectual ability discrimination, which would violate Section 1723-A(b)(1).

³ Section 1717-A of the Law also states that a charter school shall not unlawfully discriminate in admissions. 24 P.S. §17-1715-A(3).

Nor does there appear to be any “de facto” discrimination in ICS’s enrollment policies and practices. The fact that ICS would be suited for students of a higher intellectual ability does not run afoul of Section 1723-A(b)(1). Although ICS would focus its curriculum on gifted student programs and, as a consequence, gifted students might more likely be attracted to ICS than students of a lower academic ability, this does not amount to de facto discrimination. Any student is permitted to attend ICS, and ICS seems to be more than adequately prepared to address the needs of non-gifted students. R. 1, pp. V.29-30. Therefore, the CAB finds that there would be no violation of Section 1723-A(b)(1) in ICS’s proposed operation of its charter school.

Furthermore, ICS’s goals are consistent with the stated legislative intent of the Charter School Law, which is to increase learning opportunities for all pupils, encourage the use of different and innovative teaching methods, and to provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system. 24 P.S. §17-1702-A. The unique educational opportunities offered by ICS would be available to all students without consideration of their intellectual ability in the enrollment process, even though not all such students would thrive at the charter school. The fact that all students would not thrive at ICS does not constitute discrimination as envisioned by Section 1723-A(b)(2). Therefore, the CAB finds that CDSB improperly denied ICS’s application for a charter pursuant to that provision of the Charter School Law.

ICS Has Demonstrated Sustainable Support for Its Charter School

In addition to basing its denial on the anti-discrimination provision found in Section 1723-A(b)(1) of the Charter School Law, CDSB also denied ICS’s charter application on the ground that it failed to demonstrate sustainable support for the charter school. As mentioned above, Section 1717-A(e) of the Law requires that a school district evaluate a charter application in order to ensure that there is demonstrated, sustainable support for the charter school by teachers, parents, other community members and students. 24 P.S. §

17-1717-A(e)(2)(i). The CAB has previously and consistently ruled that evidence of support is to be measured in the aggregate. See e.g. In re: Ronald Brown Charter School, Docket No. CAB 1999-1 at p. 18; In re: Souderton Charter School Collaborative, Docket No. CAB 1999-2 at p. 12; In re: Leadership Learning Partners Charter School, Docket No. CAB 2000-8 at p. 9. Furthermore, it is the degree of support for a proposed school that is relevant to the consideration of whether demonstrated, sustainable support exists, as opposed to the extent of the opposition against the creation of a charter school. See e.g. In re: Phoenix Academy Charter School, Docket No. CAB 1999-10 at p. 24; In re: Hills Academy Charter School, Docket No. CAB 1999-12; In re: Collegium Charter School, Docket No. CAB 1999-9.

In this case, the demonstrated support for ICS, when considered in the aggregate, is sufficient to reverse the CDSD's denial of the charter application. Although there is some dispute between the parties relating to the exact number of letters of support, letters of intent to enroll, or speakers at the hearings below, the record below demonstrates that substantial support has been exhibited for the charter school. R. 1, 2, 12. At the very least, the parents of more than ninety children have expressed a direct interest in enrolling their children in ICS. Additionally, there were more than twenty separate and unique persons that spoke at the public hearings below offering support for ICS, and these speakers represented parents, students and teachers. R. 2. Although the record does contain letters opposing the charter school, they are irrelevant to the CAB's consideration of whether there is sustainable support for ICS. See Phoenix Academy Charter School, Hills Academy Charter School and Collegium Charter School, supra. Taken as a whole, the record below and the supplemental information submitted by stipulation of the parties clearly demonstrate that there is sufficient sustainable support for ICS pursuant to Section 1717-A(e) of the Charter School Law. 24 P.S. §17-1717-A(e)(2)(i). Accordingly, the CAB reverses the CDSD's denial of ICS's charter application because of a lack of demonstrated, sustainable community support.

***ICS Provided Sufficient Information Describing its Proposed
Physical Location for the Charter School***

Besides denying ICS's charter application on the grounds that it discriminates on the basis of intellectual ability and the school lacks sustainable support, CDSD also denied the application because it believed that ICS has failed to provide sufficient information relating to its proposed physical site for the charter school. One of the criteria that Section 1717-A(e) requires a school district evaluate a charter application against is the extent to which the application considers the information that the Law requires it to include. 24 P.S. §17-1717-A(e)(2)(iii). Section 1719-A of the Law sets forth the requirements for the contents of the charter application, which is to include a description and address of the physical facility for the location of the charter school, as well as a description of any ownership interest or lease arrangement that the school may have in the site. 24 P.S. §17-1719-A(11).

The Charter School Law does not require that a charter applicant actually secure the proposed property or provide the school district with a lease or sales agreement, site development plan or a list of alternative sites. See In re: Environmental Charter School, Docket No. CAB 1999-14; In re: Leadership Learning Partners Charter School, *supra*. In fact, the CAB has previously approved a charter where all that was available was a street address and drawing of the proposed facility, and the applicant needed to secure a zoning variance in order to operate a school in the proposed facility. See In re: Legacy Charter School, Docket No. CAB 2000-14.

ICS included in its charter application a detailed description of the potential site for the school, including the site's address and an expression of its intent to lease the site from its current owner. R. 1, pp. VII.3, Appendix XX.2. In addition, on November 21, 2001, the landlord for the proposed site provided ICS with a detailed letter relating its intent to lease the physical facility to ICS. R. 11. Although the letter is not binding on either the landlord or ICS, it does state unequivocally, that the premises would not be offered to other potential lessees until after May 31, 2002, provided that CDSD awards a charter to ICS. Id. Based

upon this information, the record contains sufficient information relating to ICS's proposed facility for the charter school, thereby warranting the CAB's reversal of CDS's decision to deny ICS's charter application under Sections 1717-A(e)(2) and 1719-A(11) of the Charter School Law.

***ICS Established a Satisfactory Plan to Meet
the Financial Needs of the Charter School***

In addition to the reasons discussed above, CDS also denied ICS's application for a charter because the district believed that ICS failed to establish a satisfactory budgetary plan or demonstrate any ability to meet the financial needs of the charter school. In considering a charter application, a school district must evaluate whether the charter school will be capable of providing the comprehensive learning experience that it proposes in the application. 24 P.S. §17-1717-A(e)(2)(ii). As part of that evaluation, a charter applicant must submit a financial plan that reasonably demonstrates such capability. In addition, Section 1719-A(9) of the Law requires that a charter school submit a financial plan as part of its application. 24 P.S. §17-1719-A(9).

As part of its application, ICS submitted a financial plan for consideration by CDS. The financial plan was developed by the interim business manager for the charter school, who has over 25 years of experience in project management, budget preparation and financial accounting for large construction projects. R. 1, Appendix VIII. This information includes a detailed summary of the revenue that would be generated by the school and expenditures that the school would make. Id. Additional budgetary information was submitted to CDS on September 13, 2001, which included cash flow projections and additional financial information. R. 6. CDS denied ICS's application on the basis of this information, but gave no specific reasons for its denial. Instead, the denial merely states general reasons for the denial including that there is "insufficient financial support for the school" and that "the anticipated revenues are insufficient to meet the financial requirements reasonably anticipated for the school."

Where a charter school applicant presents a budget that contains an itemized projection of income and expenses for the first five years of operation, and the district does not specify how the financial plan is insufficient, the financial plan meets the requirements of the Charter School Law. See In re: Eloise and Edith Academy Charter School, Docket No. CAB 1999-13, p. 15. In this case, the CDSD's denial provided no specific reasons for its finding that the ICS financial plan was inadequate. Instead, CDSD made only general comments in its denial that the budget information is insufficient to demonstrate that the school can successfully fund its operations. Based upon the CAB's review of ICS's financial plan and budget information submitted to CDSD, it appears that the financial plan provides a sufficient basis from which the CAB can conclude that ICS has considered fundamental budgeting issues and sufficient funds will be available to operate the charter school. See Lincoln-Edison Charter School, supra at p. 17. The financial plan, therefore, satisfies the requirements of the Charter School Law. Accordingly, the CAB finds that CDSD erroneously denied ICS's charter application on the basis of an insufficient financial plan.

***ICS Was Not Required to File Its Application
as a Regional Charter***

Another ground identified by CDSD for the denial of ICS's application for a charter was its belief that the application should have been filed with various school districts as a regional charter as opposed to only with CDSD. CDSD asserts that the application should have been submitted as a regional charter because some of the parents that have expressed an interest in enrolling their children reside outside of the school district. The Law provides that a charter school may be established by seeking either a charter from a single school district or a regional charter from more than one school district. 24 P.S. §§ 17-1717-A(a), 17-1718-A(a). However, there is no requirement in the Charter School Law that a school must seek a regional charter when students might be drawn from other districts. In fact, the Law expressly provides that nonresident students are able to attend a charter school if there is available classroom space, regardless of whether the school is

chartered singly or regionally. 24 P.S. §17-1723-A(c). Furthermore, both the CAB and the Commonwealth Court have held that application as a regional charter school is a discretionary and voluntary decision that is to be made by the charter school. See Phoenix Academy Charter School, supra; West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa.Cmwlt. 2000). Accordingly, CDS D's denial of ICS's charter because the application should have been regionally was erroneous.

***CDS D Improperly Denied ICS's Charter Application Because
the Charter School Will Not Provide Opportunities Not Readily
Available to Students in the School District***

In addition to the denial bases discussed above, CDS D also denied ICS's charter application because it believed that the charter school would not provide educational opportunities that are not already available within the school district. This basis for denial, however, was improper. The Law requires a school district to evaluate a charter application by considering the extent to which the charter school would serve as a model for other public schools. 24 P.S. §17-1717-A(e)(2)(iv). However, the CAB has 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 Law. See Shenango Valley Charter School, Docket No. CAB 1999-1. Therefore, the fact that CDS D already has a program for gifted students is irrelevant to the consideration of whether ICS would serve as a model for other public schools. Further, ICS would provide an educational program for gifted students that is innovative and distinctive from CDS D. The record is replete with differences between the program offered by ICS and CDS D's existing gifted student program. See e.g. R. 1, p. V.7. Therefore, the CAB finds that CDS D improperly denied ICS's charter on the grounds that the charter school would not offer educational opportunities that are not readily available to students in the school district.

ICS Did Not Fail to Sufficiently Identify Proposed Faculty and Staff or Include Required Reports and Clearances With Its Application Materials

The final basis for CDS D's denial of ICS's charter application was the district's assertion that ICS failed to sufficiently identify proposed faculty and staff for the charter school, and failed to include the required reports and clearances for such faculty and staff with its application materials. However, although ICS's application did not include the specific names and clearance for the charter school faculty staff, it did include an identification of the job qualifications for the various staff positions for the proposed school. See R. 1., Appendix IX.3.A.1.1. Because a charter school has not yet been established when an applicant seeks a charter, it is unreasonable and unrealistic to expect the charter application to contain the specific names and clearances for all proposed faculty and staff positions. This issue was previously addressed by the CAB in Vitalistic Therapeutic Center Charter School, Docket No. CAB 1999-6:

The Charter School Law requires that a criminal history and background check be conducted on Charter School employees. In its Revised Application, the Charter states that it will comply with federal, state and local laws and includes an application for a Criminal Check and Pennsylvania Child Abuse History Clearance. Given that a charter school is not established and does not have employees until it has been granted a charter, the approach taken by the Charter School is reasonably and pragmatic and we find it to satisfy the Charter School Law.

Id. at 8. Similarly, the approach taken by ICS in its application was appropriate and compliant with the Law. Therefore, ICS's failure to provide specific names and clearances for the school's faculty and staff was not a proper basis for CDS D's denial of its charter application.

VI. CONCLUSION

In sum, the CAB finds that CDS D had insufficient grounds to deny ICS's charter application. First, ICS's proposed charter school would not impermissibly discriminate in its admission policies or practices solely because the school program focuses on the education of mentally gifted students. The record clearly demonstrates that ICS will accept any

student regardless of intellectual ability, which is compliant with the Charter School Law. Second, ICS did not fail to demonstrate sustainable support for the charter school. The record contains ample evidence of sustainable support for the charter school, and the Law has been satisfied in that regard. Third, ICS did not fail to provide sufficient information describing its proposed site and physical location for the charter school. The Charter School Law does not require that an applicant produce an actual lease or sales agreement of the facility, and ICS has provided sufficient information relating to the proposed facility for the charter school.

Fourth, CDSD improperly found that ICS failed to establish a satisfactory plan or demonstrate any ability to meet the financial needs of the charter school. CDSD's denial provided only general reasons for its disapproval of ICS's financial plan, and the CAB's independent review of the financial plan reveals that it is sufficient to satisfy the requirements of the Charter School Law. Fifth, ICS's application did not have to be filed as a regional charter. There is no such requirement in the Law, and the decision to file a regional charter is a voluntary and discretionary decision of the charter school applicant. Sixth, ICS did not fail to establish that it will act as a model for other public schools, and it will provide educational opportunities that are unique and distinctive from those offered by CDSD. Finally, ICS provided sufficient information relating to its proposed faculty and staff in its application for a charter. Accordingly, based upon these conclusions, the following Order is entered:

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION**

STATE CHARTER SCHOOL APPEAL BOARD

In Re: Infinity Charter School :
Appeal from denial of charter by : **Docket No. CAB 2002-4**
Central Dauphin School District :

ORDER

AND NOW, this _____ 16th _____ day of December, 2002, based upon the foregoing and the vote of this Board⁴, the following is ORDERED:

- (1) The appeal of Infinity Charter School of Central Dauphin School District's denial of its charter application is SUSTAINED.
- (2) The decision of the Central Dauphin School District to deny the charter application filed by Infinity Charter School is REVERSED.
- (3) Central Dauphin School District is hereby ORDERED to grant Infinity Charter School's application for a charter by executing such charter pursuant to Section 1720 of the Charter School Law. 24 P.S. §17-1720-A.

For the State Charter School Appeal Board:

_____/s/_____
Charles B. Zogby,
Chairman

Date Mailed: December 16, 2002

⁴ At the Board's November 21, 2002 meeting, the appeal was granted by a vote of 5-0, with members Aliota, Bunn, Reeves, Shipula and Zogby voting to grant the appeal.