

COMMONWEALTH OF PENNSYLVANIA
STATE BOARD OF EDUCATION

IN Re: Application of Erie County to : Docket No. 2019-001
Establish a Community College

Background and Undisputed Facts:

On June 27, 2017, Erie County Council voted to approve a Plan to establish a new community college to serve the county and to have the county support the proposed institution as its local sponsor. The Plan was submitted to the State Board of Education (Board) on July 3, 2017.

On July 12, 2017, the Board adopted a resolution appointing a Special Committee on the Erie County Community College Plan (Special Committee). The Special Committee was tasked with conducting proceedings as might be appropriate under Section 1902-A of the Public School Code and taking any action (except final action) that may or must be taken under the rules by the agency head. The Special Committee further was tasked with providing a report to the Board recommending the proper disposition of the Plan. Per the resolution, Karen Farmer White, Chair of the Board, appointed three members to serve on the Special Committee. The Special Committee was comprised of Dr. Lee Williams (Special Committee Chair), Dr. Pamela Gunter-Smith, and Dr. Nicole Carnicella.

The Special Committee held its first meeting on September 13, 2017. At that time, it acted to request that Governor Tom Wolf provide information on the number of community colleges that can be approved for participation in the ensuing fiscal period as consultation with the Governor on that matter is required of the Board by Section 1902-A(e) of the Public School Code. The Special Committee further requested that the Department of Education provide a report of its findings on Erie County's Community College Plan. Finally, the Special Committee determined that it would convene a public hearing on the Plan in Erie County to provide an opportunity for members of the community to have their voices heard on the Plan.

On October 10, 2017, the Special Committee conducted a public hearing on the Plan at the Raymond M. Blasco, M.D. Memorial Library in Erie, Pa. All members of the public were afforded the opportunity to register in advance of the hearing to address the Committee.

On November 8, 2017, Karen Molchanow, the Board's Executive Director, reported on the work of the Special Committee at the public meeting of the Board's Council of Higher Education to keep Board members informed of activity related to the Plan.

The Special Committee met again on December 19, 2017, at which time it discussed its intention to afford Erie County an opportunity to supplement its plan to establish a new community college. During the meeting, the Committee developed a supplemental information request seeking clarifications and additional information from the County in order to ensure that the

Committee had sufficient information to assess the Plan using the standard of review set forth in the Public School Code. Erie County submitted supplemental information in response to the Special Committee's request on February 16, 2018.

On December 21, 2018, Erie County submitted additional information to supplement its Plan to establish a community college to the Department of Education.

On October 29, 2019, the Special Committee met to receive a presentation from the Department of Education on its findings on Erie County's Community College Plan. At that same time, the Special Committee reviewed a communication from Governor Wolf in response to the Committee's request for consultation with the Governor as required by the School Code. Governor Wolf advised that fifteen community colleges can be approved for participation in the upcoming fiscal year. The Committee also determined to submit a supplementary information request to Erie County seeking information about the curriculum offered by the Regional Career and Technical Center. A response to the supplemental information request was submitted by the County on November 8, 2019.

The Special Committee met again on November 13, 2019. At that time, the Committee adopted a report to present to the Board that included a Majority Opinion finding that Erie County's Plan met the standards established in the School Code for establishing a community college and a Dissenting Opinion arguing that the Plan did not meet the standards set forth in the Code. The Committee recommended that the Board consider holding an evidentiary hearing as its next step in consideration of the Plan.

On November 14, 2019, the Board voted to hold an evidentiary hearing on the Erie County Community College Plan. The hearing was to be held in Erie County within the next six months. A hearing was set for March 18, 2020, at the Raymond M. Blasco, M.D. Memorial Library.

The Board published notice of its intent to convene a hearing under the applicable provisions of the General Rules for Administrative Practice and Procedure. The Board received five petitions to intervene in hearing on the Erie County Community College Plan from the following parties: the Northern Pennsylvania Regional College (NPRC), Sen. Joseph Scarnati, III, Empower Erie, Brent Davis, and Charles Bennett.

The Board considered all petitions to intervene at its public meeting on January 8, 2020. At that time, the Board acted to approve the petitions submitted by the NPRC, Sen. Joseph Scarnati, III, and Empower Erie, and acted to deny the petitions submitted by Brent Davis and Charles Bennett.

At that same meeting on January 8, 2020, the Board directed its Chair to appoint a Committee to develop procedural rules for the hearing on the Erie County Community College Plan, subject to the General Rules of Administrative Practice and Procedure. The Ad Hoc Committee on the Erie County Community College Plan Hearing was comprised of the following five members: Dr. Jonathan Peri, Hon. Maureen Lally-Green, Dr. Lee Williams, Dr. Pamela Gunter-Smith, and Dr. Nicole Carnicella.

The Ad Hoc Committee met on January 27, 2020. The Committee selected Dr. Peri from among its membership to serve as its Chair. The Committee discussed limitations for parties participating in the hearing and timeframes for the submission of pre-hearing filings, expert reports, and documentary evidence. The Ad Hoc Committee adopted an Order defining such limitations and establishing deadlines for submission of pre-hearing filings, expert reports, and documentary evidence. The Order of the Committee was transmitted to all parties to the hearing, and required that expert reports be exchanged and provided to the Committee by February 7, 2020. NPRC and Senator Scarnati did not provide such reports by February 7, 2020.

The Ad Hoc Committee met again on February 11, 2020, at which time it reviewed pre-hearing filings submitted by parties to the hearing. The Committee discussed time allocations and other matters related to hearing procedures and adopted another Order of the Committee defining procedures for the hearing. The Committee ordered that the untimely expert report precluded such expert from offering opinion testimony at the scheduled hearing. That Order was transmitted to all parties to the hearing.

On March 12, 2020, the Board postponed the evidentiary hearing scheduled for March 18, 2020, in response to concerns over large gatherings due to the COVID-19 pandemic. The Board discussed alternative constructs for conducting a hearing at its public meeting on May 6, 2020, and took action to reschedule the hearing for June 2020 using a virtual format.

The Board conducted an evidentiary hearing on Erie County's Community College Plan on June 10-11, 2020, using a Zoom webinar platform. The Board received evidence presented by Erie County, Empower Erie, the Northern Pennsylvania Regional College, and Sen. Joseph Scarnati. At the conclusion of the hearing, the Board adopted an interlocutory order to approve the Erie County Community College Plan by a vote of 9-6.

The following members of the State Board participated in the hearing:

KAREN FARMER WHITE, Chair
The Honorable CAROL AICHELE, Member
JAMES AGRAS, Member
JAMES BARKER, Member
NATHAN BARRETT, Member
JAMIE BRACEY-GREEN, Member
NICOLE CARNICELLA, Member
SANDRA DUNGEE GLENN, Member
PAMELA GUNTER-SMITH, Member
JEFFREY KEELING, Member
MAUREEN LALLY-GREEN, Member
The Honorable WAYNE LANGERHOLC, Member
JONATHAN PERI, Member
The Honorable CURTIS SONNEY, Member
A. LEE WILLIAMS, Member

Exhibits:

For Erie County:

E-1 Authorization
E-2 Document
E-3 Document
E-4 Document
E-5 Document
E-6 Document
E-7 Document
E-8 Document
E-9 Document
E-10 Reaffirmation
E-11 Governor Letter
E-12 Governor Letter
E-13 Certified Report
E-16 Document
E-17 Document
E-19 Document
E-25 Full Report
E-26 Report
E-27 Summary
E-28 Expert Report
E-31 Resolution
E-32 Resolution
E-33 Letter Email

For Empower Erie:

EE-1 Document
EE-2 Document
EE-3 Document
EE-4 Document
EE-5 Document
EE-6 Document
EE-7 Document
EE-8 Document
EE-9 Document
EE-10 Document
EE-11 Document
EE-12 Document
EE-13 Document

For Senator Scarnati:

S-1 Meeting Minutes

S-2 Senate Resolution
S-3 December 2011 Report
S-4 House Bill 278
S-5 House Bill 1606
S-6 Second Report
S-7 Guidelines
S-8 Letter to Nairn
S-9 July 2014 Letter
S-10 Series of Letters
S-12 August 2017 Letter
S-13 October 2019 Letter
S-14 Curriculum Vitae
S-15 Links Report

For NPRC:

N-1 2017 Plan
N-2 Student Catalogue
N-4 MOA
N-5 Revised MOA
N-7 Course List
N-8 Plan Approval
N-9 Status Approval
N-10 Taskforce Letter

Witnesses:

KATHY DAHLKEMPER
ROY CHURCH
JOSEPH MALONEY
NICHOLE PARKER
DWANE BROCK
MICHAEL BATCHELOR
JAMES GRUNKE
JAMES LINKSZ
LINDA FLEMING
GREG MAHON

Findings of Fact:

- 1) Erie County resolved to establish, and submitted to this Board a Plan to Establish the Erie County Community College, and provided supplements and amendments to that plan to both this Board and the Pennsylvania Department of Education (Department). *Dahlkemper Testimony at 28, Exh. E2-10, E16, 17, 19.*

- 2) As permitted by 24 P.S. § 19-1902-A, this Board requested that the Department review the plan and provide recommendations. E-13.
- 3) Upon review, the Department opined that the plan appeared to meet the criteria of the School Code. In particular, the Department observed that:
 - a. Erie's adult population exceeded that of other counties that support successful community colleges. E-13 at 2
 - b. Erie's plan contained reasonable estimates of funding and capital investments. E-13 at 6
 - c. Erie is not currently served by any institution of higher learning that is analogous to the services proposed by the Erie plan, even considering the nascent operations of the Northern Pennsylvania Regional College (NPRC, established in the School Code as the "Rural Regional College"). Notably, the (unaccredited) NPRC's tuition and fees are approximately \$2000 per year higher than those proposed by the Erie plan, based on a thirty-credit year. Analogous regions, such as Northampton County, are served by even more institutions yet still need, and adequately support, a local community college. E-13 at 7-9
- 4) This Board conferred with the Office of the Governor regarding the number of community colleges that can be supported, as required by the School Code. E-11
- 5) Upon so conferring, the Office of the Governor indicated that 15 community colleges could be supported, and reaffirmed support for Erie County Community College as recently as October 2019. E-11, E12.
- 6) Erie is in need of accessible, affordable and attainable higher education. *Testimony of Dahlkemper at 33.*
- 7) Erie County is not presently served by any Community College within 100 miles of Erie. *Dahlkemper Testimony at 36.*
- 8) While NPRC does provide services to a small number of Erie residents, it is not a community college, as it was established and operates *sui generis*, under Article XIX-G of the School Code. 24 P.S. §§ 19-1901.1-G thru 19-1917-G.
- 9) Distance learning does not adequately serve Erie's population, and in particular is less effective in educating low income students who lack K-12 achievement, a population that is numerous in Erie. *Testimony of Parker at 55.*
- 10) Erie's proposed funding structure, including local and state contributions, and gaming revenues, are sufficient to support the plan. *Testimony of Maloney at 64.*

- 11) Erie's plan will provide a community college that will markedly assist in filling gaps in post-secondary education in Erie, and by extension the Commonwealth. *Testimony of Church at 77-78.*
- 12) Fifty-three percent of Erie County residents (93,000) are within the "target population" for community college candidates from which the proposed Erie County Community College would draw enrollment. *Testimony of Church at 80-81.*
- 13) Empower Erie presented the Testimony of James Grunke; however, as Empower Erie did not timely name Mr. Grunke as a witness, the Board disregards his testimony.
- 14) The Erie County Community College would enjoy broad community support, and has secured funding commitments from at least one charitable foundation to assist its operations. *Testimony of Batchelor at 104.*
- 15) NPRC serves a nine-county region, including Cameron, Crawford, Elk, Erie, McKean, Forest, Potter, Venango and Warren. *Testimony of Fleming at 134.*
- 16) As of date of the hearing in this matter, 20% of NPRC's students have been in a classroom with a faculty member. *Testimony of Fleming at 146.*
- 17) NPRC does not have a physical brick-and-mortar "hub" location in Erie County, but plans on providing one. *Testimony of Fleming at 147.*
- 18) NPRC offers five degree granting programs. *Testimony of Fleming at 154.*
- 19) NPRC indicated that it provides five physical locations in Erie County, but it is unclear whether those are actual facilities, or courses offered in conjunction with high school classes. *Testimony of Dahlkemper at 235.*
- 20) Senator Scarnati offered the testimony of his Chief of Staff, Greg Mahon. *Testimony of Mahon at 164.*
- 21) Mr. Mahon's testimony appears to be offered for the purpose of establishing the "intention of the General Assembly" in establishing the NPRC. *Statement of Counsel at p 170, ln. 3-5.*
- 22) Mr. Mahon's testimony is accepted solely as to the recorded legislative history of the NPRC, rather than any perceived intention of the legislative body.

- 23) The NPRC was designed to provide an avenue for education that is distinct from that provided by community colleges, as evidenced by its separate article in the School Code. *Testimony of Mahon of 173.*
- 24) In contrast to community colleges, NPRC does not have a local sponsor and does not receive required local funding. *Testimony of Mahon at 263.*
- 25) NPRC does not have a long-term lease in Erie. *Fleming Testimony at 268.*
- 26) NPRC was providing full-time (at least 12 credit) education to only *five* residents of Erie County in Spring 2020. *Fleming Testimony at 271-272.*
- 27) Notwithstanding that the Committee precluded NPRC and Senator Scarnati from offering expert evidence, given their untimely submission, NPRC and Senator Scarnati presented the testimony of Dr. James Links. *Testimony of Links at 189.*
- 28) Dr. Links was ostensibly offered to provide lay testimony, but instead was asked for his “perception” of the NPRC, the needs of Erie County, and his understanding of “how community colleges are to be funded.” *Testimony of Links at 203,207.* Such testimony is not within his personal factual knowledge, but is rather offered as his opinion, and as such was not considered by this Board.

Conclusions of Law:

- 1) The testimony of Ms. Dahlkemper, Mr. Church, Mr. Maloney, Mr. Batchelor, Bishop Brock and Dr. Parker are accepted as credible and convincing, except where otherwise indicated in this Opinion.
- 2) The testimony of Dr. Links is accepted only for those limited facts within his personal knowledge, which are accepted as credible. Mr. Links’ testimony articulating his opinions are not competent and are not accepted by the Board.
- 3) The testimony of Dr. Fleming and Mr. Mahon are accepted as credible and convincing only to the extent consistent with the testimony of Dahlkemper, Church, Maloney, Batchelor, Brock and Parker.
- 4) The testimony of Mr. Grunke is disregarded.
- 5) The parties’ documentary submissions are accepted and weighed in accordance with the foregoing.

- 6) The Pennsylvania Public School Code authorizes this Board to approve or disapprove plans for Community Colleges. 24 P.S. Sec. 1902-A (a)(2).
- 7) Section 1902 -A of the Public School Code, 24 P.S. Sec 19-1902-A, requires that, if an application to establish a new community college is to be approved, the State Board must examine the needs of areas adjacent to the areas to be served by the community college and of the State with respect to higher education and long range plans established by the Board to determine whether the local sponsor, here, Erie County, has sufficient population to sustain a minimum enrollment; whether Erie County has sufficient wealth to financially support the college; and whether the County is not adequately served by established institutions of higher learning and whether the plan contains estimates of costs and proposed capital investments.
- 8) The School Code requires this Board to confer with and obtain the approval of the Governor's Office as to the number of community colleges which can be approved for participation during the ensuing fiscal period. 24 P.S. Sec 19-1902-A(e).
- 9) This Board has adopted a regulation stating that its policy "is to encourage and facilitate the development of community colleges within reasonable commuting distances of every citizen of this Commonwealth. These colleges may be developed in various forms and by various organizations provided they are consistent with the act and this chapter." 22 Pa. Code § 35.1a.
- 10) After consideration of each of these factors, and the findings set forth above, this Board concludes that Erie County has met its burden of establishing that the needs of Erie County, the surrounding Community, and the State's long range plans for higher education, including the expressed regulatory policy of this Board, would be served best by approving the plan.
- 11) Based upon the findings set forth above, this Board concludes that the local sponsor has sufficient population and wealth to sustain a minimum enrollment and financially support the college.
- 12) Based upon the findings set forth above, this Board concludes that the plan sets forth estimates of costs and proposed capital investments.
- 13) Based upon the findings set forth above, this Board concludes that Erie County is not adequately served by established institutions of higher education.


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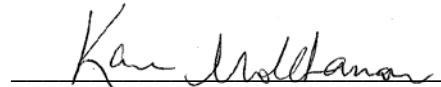
ORDER

AND NOW, Therefore, in light of the Foregoing, this Board therefore ORDERS that the Plan of Erie County to Establish a Community College is HEREBY APPROVED.

Given under my hand and
our seal this 8th day
of July, 2020



Karen Farmer White
Chair

Attest: 

Karen Molchanow
Executive Director