

make a decision to grant or deny the charter based upon the criteria set forth in 24 P.S. §17-1717-A(e)(2).²

Additionally, a Petition to Intervene was filed with the CAB on September 13, 1999 by taxpayers and residents of the Harrisburg City School District who were seeking to intervene in the appeal. The CAB reviewed Petitioners' Petition and Brief in support thereof and, at both its September 15, 1999 meeting and its November 8, 1999 meeting, voted to deny the Petition to Intervene.

For the following reasons we conclude that the Charter School met the requirements of the Charter School Law. Therefore, the Charter School's appeal is granted and the School District will be ordered to sign the charter.

II. FINDINGS OF FACT

1. On or about November 15, 1997 a Charter School Application (hereinafter "original application") was submitted by the "Mosaica Charter School of Harrisburg". ("Mosaica"). (Cert. Record; Applicant's Exhibit A).

2. On December 22, 1997, pursuant to 24 P.S. §17-1717-A, the Board of School Directors of the Harrisburg City School District (hereinafter "School Board") held a public hearing regarding the original application.

3. On January 30, 1998 supplemental answers were provided by Mosaica to the President of the School Board addressing certain questions raised by the School Board at the December 22, 1997 public hearing. (Cert. Record; Applicant's Exhibit B).

² At its September 15, 1999 meeting, the CAB voted to remand the case to the Hearing Officer and ordered the Charter School to present to the Hearing Officer, within thirty (30) days of the date of the Order, the Charter School's evidence, if any, of demonstrated, sustainable community support for the Charter School plan. See the Remand Order dated September 16, 1999. The vote to remand the case was 5-0-1, with members Bunn, Ford-Williams, Hickok, Melnick and Shipula voting to remand and member Tait abstaining from the vote.

4. The original application submitted by Mosaica was amended to reflect a name change for the charter school to "The Ronald H. Brown Charter School" (hereinafter "Charter School"). (Cert. Record; Applicant's Exhibit E & F).

5. On February 9, 1998, Charter School representatives presented to the School Board the "By-Laws of Ronald H. Brown Charter School" and a "Management Agreement" between the Charter School and Mosaica Education, Inc., which was to provide educational and various other services to the Charter School. (Cert. Record; Applicant's Exhibit C & D).

6. The Charter School is a nonprofit corporation organized under the Nonprofit Corporation Law of 1988, as amended, and is organized and operated exclusively for charitable, scientific, literary and educational purposes permitted within the scope of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. (Cert. Record; Applicant's Exhibit C).

7. On February 19, 1998 representatives of the Charter School provided additional answers regarding the proposed Charter School during the public comment period of the School Board meeting.

8. On March 7, 1998 the School Board convened a special meeting to consider the Charter School's original application (School District Brief, p. 1). A motion was made that the School Board deny the Charter School's original application based upon factors set forth in Applicant's Exhibit G. The motion failed for lack of a majority vote. (Cert. Record; Applicant's Exhibit G).

9. During the same March 7, 1998 meeting, a subsequent motion was made that the School Board approve the original application of the Charter School. The motion failed for lack of a majority vote. (Cert. Record; Applicant's Petition to Appeal).

10. Section 17-1717-A(e)(5) of the Charter School Law requires that written notice of the school board's action be sent to the applicant, the Department of Education and the CAB. Section (e)(5) also requires that, 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 by the local board of school directors to the charter school applicant. (24 P.S. §17-1717-A(e)(5)).

11. The School Board, in effect, denied the original application by Mosaica on March 7, 1998, but failed to provide written notice of its action, including the reasons for the denial and deficiencies in the original application as required by the Charter School Law. (24 P.S. § 17-1717- A(e)(4) & (5)).

12. Section 17-1717-A(f) of the Charter School Law provides that at the option of the charter school applicant, a denied application may be revised and resubmitted to the local board of school directors. (24 P.S. §17-1717-A(f)).

13. On May 26, 1998 the Charter School properly submitted and the School Board reviewed a revised application for the Charter School to the School Board. (Cert. Record; Applicant Exhibit J; School District Brief, pp.2-3).

14. Section 17-1717-A(f) of the Charter School Law provides that the [school] board shall consider the revised and resubmitted application at the first board meeting occurring at least forty-five (45) days after receipt of the revised application by the board. (24 P.S. §17-1717-A(f)).

15. The record does not contain any evidence that the School Board considered the revised and resubmitted application within the 45-day statutory period.

16. The School Board determined that the resubmission was not a "revised" application in that it was identical to the previously submitted original application. It further

concluded that the resubmission did not meet the requirements of §1717-A(f) of the Charter School Law. (School District Brief, p. 3).

17. Section 17-1717-A(g) of the Charter School Law provides that failure by the local board of directors to hold a public hearing and to grant or deny the application for a charter school within the time periods specified in subsections (d), (e) and (f) shall permit the applicant for a charter to file its application as an appeal to the appeal board. In such a case, the appeal board shall review the application and make a decision to grant or deny a charter based on the criteria established in subsection (e)(2). (24 P.S. §17-1717-A(g)).

18. On July 1, 1999, the Charter School filed a Petition to Appeal pursuant to §17-1717-A(g) of the Charter School Law. (24 P.S. §17-1717-A(g)).

19. The Charter School proposes to use the "Paragon Curriculum" which is designed to prepare students to be creative, intuitive and analytical thinkers with a solid understanding of the history of ideas. (Revised Application, p. 3).

20. The Paragon Curriculum is purported to combine the pragmatism and rigors of classical education with the best teaching practices worldwide, including technology. (Revised Application, p.4).

21. The Charter School's objectives include higher standardized test scores, steady improvement in the quality of performance-based assessments, improved student attendance, higher graduation rates, superior teacher training, as well as enhanced motivation, satisfaction and morale on the part of students, teachers, parents and community members. (Revised Application, p. 4).

22. The Charter School's goal is to provide extensive access to computer technology as an authentic learning tool that will enable students to address unprecedented career challenges and global opportunities facing them in the 21st century. (Revised Application, p. 3 - 4).

23. The Charter School proposes to offer periodic Parent Seminars open to the community at large. (Revised Application, p. 5).

24. The Charter School proposes to divide the school day into two essential parts, a morning session including a "core" curriculum and afternoon session for the "Paragon" curriculum. (Revised Application, p. 16).

25. The Charter School proposes to increase the school day by one hour to seven and a half hours per day. (Transcript of CAB Hearing, July 30, 1999, p. 172).

26. The Charter School proposes to serve elementary and middle school grade levels with a proposed enrollment of 450 students for the 1st year. (Revised Application, p.1).

27. The Charter School will utilize various self-assessment or evaluation methods including: the Pennsylvania System of School Assessment (PSSA); the Iowa Test of Basic Skills; Parent Satisfaction Surveys; and Student Discipline Reports. (Revised Application, p.17).

28. Teachers will be employed under annual, at-will, performance-based contracts whereby compensation will be linked to student performance. The Principal will submit Individual and Summary Evaluation Reports of staff members to the Board of Trustees of the Charter School annually. (Revised Application, pp 17-18).

29. The revised application as submitted to the School District listed 909 Green Street, Harrisburg as the proposed physical facility in which the school would be located. An alternative location was also supplied. (Revised Application, p. 24).

30. The two properties listed as proposed physical facilities for the Charter School are no longer available to the Charter School.³ (Transcript of CAB Hearing, p. 169).

31. The Charter School will be governed by a Board of Trustees, which will provide policy-making functions, provide assurance of sound management and actively participate in the provision of necessary funds. The Board has the ultimate responsibility to determine general, academic, financial, personnel and related policies. (Revised Application, pp. 28-29).

32. The Charter School will meet the requirements of the Charter School Law for the enrollment of students. (Revised Application, pp. 36-37).

33. The Charter School will incorporate suspension and expulsion statutes into its proposed "Code of Student Conduct" including the due process rights to which a student is entitled under 22 Pa. Code §12.1 -12.14. (Revised Application, pp.42-43).

34. The Charter School proposes to establish procedures for complaints of parents regarding the operation of the Charter School by directing them to consult with their child's teacher, the principal and if the conflict persists they may proceed to address their complaint to the Board of Trustees. (Revised Application, p. 21).

35. The Charter School plans to offer extra-curricular activities through its Paragon Curriculum in art, music, dance and theatre and will work with the local school district to enable its students to participate in extra-curricular activities offered within the school district. (Revised Application, pp.21 -22).

36. The Charter School's revised application contains a description of a professional development plan and in-service plan for its staff and teachers. (Revised Application, p.40).

³ The Charter School applicant satisfied the facility requirement in the revised application but the facilities are now unavailable. This situation differs from the situation in the Phoenix Academy Charter School appeal because in that appeal, the charter school did not identify any facility to the school district prior to the school district's vote on the application. Obviously, the Ronald H. Brown Charter School must have a facility before it can begin operating.

37. The Charter School's revised application delineates the specific insurance coverage plans for the proposed Charter School. (Revised Application, p. 35).

38. The Charter School proposes to comply with all the statutory requirements regarding the criminal history record information and the Department of Public Welfare background checks once the charter has been granted.

39. The proposed interveners are residents and taxpayers of the Harrisburg City School District.

40. The School District, in response to a subpoena, provided minutes and notes of the School District's December 22, 1997 and March 7, 1998 meetings regarding the Charter School Application. (Supp.Rec. Exhibit B).

41. On October 18, 1999, a hearing was held at which several residents of the City of Harrisburg testified regarding community support for the Charter School, including George Luckette and Deborah Thorpe. (Supp.Rec. Transcript of Hearing, Exhibit C).

42. The Charter School submitted letters in support of the Charter School from Vera White-Reynolds, Member of the Harrisburg City Council and Richard K. House, President of the Harrisburg City Council. (Transcript of Hearing, p. 18).

43. Residents, including parents, grandparents and friends from the local community attended three informational meetings that were held regarding the proposed Charter School. (Transcript of Hearing, p. 19; 32-33; 47-48).

44. Approximately 50-60 adults attended the October 4, 1999 informational meeting held at the Allison Hill Community Center. Approximately 25-30 adults attended the October 5, 1999 informational meeting at the Boys and Girls Club and approximately 50-60 adults attended

the October 6, 1999 informational meeting at the Neighborhood Center. (Transcript of Hearing, p. 127-128; RHB Exhibit 14).

45. Edmund Dudley testified that he and Vicki Hill obtained 150 signatures on a petition for the proposed Ronald H. Brown Charter School from community members at the "Bridge the Gap" affair on the State Street Bridge. (Transcript of Hearing, p.72).

46. The petitions for signatures circulated by the Charter School have a statement on the top of the document which states: "I am a resident of the City of Harrisburg, 18 years of age or older, and support the establishment of the Ronald H. Brown Charter School, an elementary school that will offer full day kindergarten, foreign language instruction for all students, one to three computer/student ratio, phonics, no social promotion, secure building, high academic standards, longer school day and school year, and free to all students." (Transcript of Hearing, p.131).

47. James High testified that he gathered and tallied all the petitions and determined that 39 people participated in the petition effort, 99 petitions were turned in and contained 1,248 signatures from individuals within the local community. (Transcript of Hearing, pp.132-33; 144; RHB Exhibits 17 & 18).

48. The 1,248 individuals who signed the petitions represent approximately 1,800 children potentially interested in the Charter School. (Transcript of Hearing, p. 133).

49. No certification, attestation or verification of accuracy was submitted by the signature gatherers on behalf of the Charter School. (Transcript of Hearing, p. 145-46).

50. There is no statutory requirement in the Charter School Law that a certification, attestation or verification of the accuracy of the signatures must be presented.

III. CONCLUSIONS OF LAW

1. The Charter School Law, Act of June 19, 1997, P.L. 225, No.22, 24 P.S. 17-1717-A et seq., governs the application and approval processes and operation of charter schools in Pennsylvania.

2. The Charter School Law does not prohibit non-profit charter schools acting through their respective boards from contracting with for-profit entities to provide educational or various other services, so long as the ultimate control of the charter school remains in the hands of the charter school's board of trustees.

3. In accordance with §17-1717-A(g), this matter is properly before the CAB, which shall review the application and make a decision to grant or deny a charter based on the criteria established in subsection (e)(2) of the Charter School Law. (24 P.S. §17-1717-A(g)).

4. In accordance with §17-1717-A(g), the CAB will stand in the place of the School Board and render a decision based on the Charter School application as it was submitted to the School Board on May 26, 1998, and the information provided at the October 18, 1999 hearing regarding community support for the charter school.

5. The CAB had the authority to allow the Charter School to present evidence, if any, of demonstrated, sustainable community support because the School District's alleged failure to perform its duties under the Charter School Law may have affected the Charter School's ability to show demonstrated, sustainable community support to the CAB. Additionally, the School District failed to record the hearings held on the Charter School's original application, which may have evidenced community support, and the School District failed to act on the Charter School's revised application.

6. The October 18, 1999 hearing was held in accordance with the provisions of the General Rules of Administrative Practice and Procedure. (1 Pa. Code, Ch. 31-35).

7. The Charter School has the burden of proving that all of the enumerated requirements for the contents of the charter school application were satisfied, including introducing sufficient evidence of "demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students". (24 P.S. §17-1717-A(e)(2)(i)).

8. The indicia of demonstrated, sustainable support is to be measured in the aggregate and not by individual categories from which that support is to be measured. Failure to demonstrate strong support in any one category is not necessarily fatal to a charter application

9. The Charter School has demonstrated sustainable support from parents, community members and students, and has satisfied the other factors set forth in the Charter Law for evaluating a charter school application.

IV. DISCUSSION

Before addressing the merits of the appeal, two preliminary matters must be addressed: The jurisdiction of the CAB to hear the appeal and the status of the Petitioners as interveners.

A. The Appeal of the Ronald H. Brown Charter School is properly before the Charter School Appeal Board

This matter comes to the CAB pursuant to the Petition for Appeal filed by the Charter School on July 1, 1999 in accordance with Section 17-1717-A(g) of the Charter School Law.

The CAB has jurisdiction of this matter because the appeal is based upon the failure of the School Board to consider the revised charter school application within the statutory time period of forty-five (45) days as set forth in Section 17-1717-A(f) of the Charter School Law.

Accordingly, the CAB shall review the revised application and make a decision to grant or deny

the charter based on the criteria established in Section 17-1717-A(e)(2) in place of the School Board.⁴

If an application is denied, Section 17-1717-A(f) of the Charter School Law specifically provides the Charter School with the option of revising the application and resubmitting it to the board of school directors. The resubmission of the application triggers the statutory time period of forty-five (45) days in which the School District must take action. Section 17-1717-A(f) specifically provides that:

The [school] board **shall** consider the revised and resubmitted application at the first board meeting occurring at least forty-five (45) days after receipt of the revised application by the board. (Emphasis added)

In its brief, the School District asserts, among other things, that it reviewed and considered the "resubmission" of the Charter School application and determined that it was not a "revised" application. Additionally, it asserts that the School Board "concluded" that the "resubmission did not meet the requirements of §1717-A(f) of the Charter School Law...and took no action relative thereto." (School District Brief, pp.2-3). However, there is no evidence that the School District notified the Charter School, in any manner, that the revised application did not comply with statutory requirements. Furthermore, there is no evidence in the record

⁴ It is undisputed that on November 15, 1997 the original charter school application was submitted to the School District, which convened a public hearing on December 22, 1997 regarding that application pursuant to §17-1717-A of the Charter School Law. Unfortunately, none of the parties in this matter provided evidence, either in the form of minutes or public comments from the hearing regarding the proposed charter school. At its March 7, 1998 "special" meeting, the School District purportedly denied the original Charter School application. However, the School District failed to provide written notice of such denial, as well as the reasons for the denial to the Charter School as required by §17-1717-A(e)(5). The only documentation of record is Exhibit "G" of the Charter School's Petition to Appeal, which contains purported recommendations for "non-approval" of the proposed original application. Notwithstanding the School District's assertions in its brief (p.2-3), no evidence exists that the School District's reasons for denial were communicated to the Charter School or the Department of Education or the CAB. In their respective briefs, the parties question whether the School District actually denied the original charter school application on March 7, 1998 or whether a lack of majority vote was a "non-action." For purposes of this appeal, CAB hereby determines the issues regarding the "original" application to be moot.

upon which the CAB can rely to support the School District's assertions that it made certain "determinations".

CAB disagrees with the School District's assertions that "the only difference between the original and the resubmitted applications was a name change." (School District Brief, p. 5). In fact, the CAB concludes that there are substantial substantive, as well as administrative differences between the original application and the revised application, including, but not limited to the following: the modification of the school calendar (Cert. Record; Applicant's Exhibit J, p. 15); the location of the proposed facility (Cert. Record; Applicant's Exhibit J, p. 24); the admissions policy was revised to contain additional details on the admission of students who have been suspended from other schools (Cert. Record; Applicant's Exhibit J, p. 37); and the principal's duties were revised to demonstrate primary responsibility to the board of trustees (Cert. Record; Exhibit J, p.39-40). Accordingly, the CAB holds that this matter is properly before it for disposition in accordance with Section 17-1717-A(g) of the Charter School Law.

B. Petition to Intervene

Pursuant to the Rules of Administrative Practice and Procedure, "a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought" may file a petition to intervene. 22 Pa. Code §35.28(a). The right or interest may be (1) a right conferred by statute; (2) an interest that may be directly affected and which is not adequately represented by existing parties, and as to which petitioners may be bound by action of the agency; or (3) other interest of such nature that intervention may be in the public interest. 22 Pa. Code §35.28(1)(1-3). Petitioners argue that they have interests that will be directly affected by the action of the CAB, that their interests are not adequately represented by the School District and

that they will be bound by the CAB's decision. These issues are discussed below. First, however, it is important to understand the Charter Law as it relates to Petitioners' request to intervene. Therefore, whether the right to intervene is conferred by statute will be addressed although not raised by the Petitioners as a basis for their Petition.

1. Right Conferred by Statute

The Charter Law authorizes a charter school applicant to appeal, to the CAB, the denial of a charter by the local board of directors. 24 P.S. §17-1717-A. Additionally, failure by the local school board to hold a public hearing and grant or deny the charter school application within the time periods set forth in the Charter Law permits the applicant to file its application as an appeal to the CAB. 24 P.S. § 17-1717-A (g). When a local school board fails to grant or deny an application within the required time frames, the CAB reviews the application and decides whether to grant or deny a charter based on the criteria set forth in 24 P.S. § 17-1717-A (e)(2). Section 17-1717-A (g) authorizes the CAB to determine whether a charter should be granted. Section 17-1717-A (g) does not authorize anyone other than the charter school applicant to be involved in the appeal process when the local school board fails to act pursuant to the time frames set forth in the Charter Law. There are no other sections of the Charter Law that authorize anyone, other than the charter school applicant and the local board of directors, to participate in an appeal to the CAB. Therefore, the Charter Law does not confer upon the Petitioners, a statutory right to intervene in the appeal process.⁵ Furthermore, the Petitioners have not argued that their professed right to intervene has been conferred by any other statute,

⁵ Another important point to make regarding intervention is that Petitioners would not have any right to appeal to the CAB if the School District had granted a charter to the Charter School. The Charter Law only allows a charter applicant that has been denied a charter the right to appeal to that denial to the CAB. Therefore, there is no basis to support Petitioners' position that they now have the right to intervene in this matter because the CAB is ordering the School District to grant a charter to the Charter School.

and therefore, the Petitioners do not have a statutory right to intervene in the above-captioned appeals.

2. An Interest That May Be Directly Affected

There are no interests of the Petitioners that may be directly affected by the action of the CAB in these appeals. Petitioners argue that if the CAB requires the School District to grant a charter to the Charter School, the Petitioners' rights or interests will be directly affected because they will be subjected to higher taxes and/or a reduction in services. The higher taxes and/or reduction in services will occur, according to Petitioners, because the School District will have to pay subsidy money to the Charter School for any resident students who attend the Charter School.

Petitioners' arguments are based on mere speculation. Even though the School District will be required to pay subsidy money to the Charter School for the resident students attending the Charter School, there is no proof that taxes will be raised more quickly by the School District or that programs will be reduced or eliminated as a result. Additionally, the Legislature knew that school subsidy money would flow from the school districts to the charter schools. Nevertheless, the Legislature did not authorize persons such as Petitioners the right to intervene in the CAB appeal process.

Furthermore, Petitioners' rights or interests will not be directly affected even though the CAB will order the School District to grant a charter to the Charter School. The Board of Directors of the School District will determine whether taxes will be raised, or services will be reduced, or both. These decisions are not made by the CAB, and therefore, the CAB's decision in this appeal will not directly affect the Petitioners.

Petitioners will not be directly affected by the CAB's decision just as a teachers' association was found not to be directly affected by the decision of the Secretary of Education in Wilkinsburg Education Association v. Wilkinsburg School District, 690 A.2d 1252 (Pa. Commw. 1996). In Wilkinsburg, a school district asked the Secretary of Education to approve

the alteration of the school's elementary program. The teachers' association sought to intervene in the case, arguing that altering the elementary school program would require the furloughing of some teachers, and therefore, some of the association's members would be directly affected by the approval of the school district's request. The Court in Wilkinsburg affirmed the Department's denial of intervention on the ground that the interests of the teachers' association would not be directly affected by the Secretary's decision, and the association would not be bound by the Secretary's decision.

The Wilkinsburg Court noted that the association's interest was not directly affected by, or bound by, approval of the school district's request because the Secretary's approval only provided the school district with discretion to proceed or not proceed with the program alteration. The Secretary's approval did not authorize the furloughing of teachers. Any teacher furloughs would result directly from the actions of the school district, not the actions of the Secretary.

Just as in Wilkinsburg, the rights or interests of the Petitioners in this appeal will not be directly affected by the CAB ordering the School District to grant a charter to the Charter School. Petitioners' argue that they would be directly affected because their school board might increase taxes or might reduce services. When the CAB orders the grant of a charter, that is all it orders; it does not order or require the School District to raise taxes or reduce services. Therefore, just as in Wilkinsburg, a decision by the CAB to order the grant of a charter will not directly affect Petitioners. Any decision to raise taxes or reduce services will be the direct result of actions taken by the local board of school directors, not action taken by the CAB.

Petitioners also argue that they will be bound by the decision of the CAB. The General Rules of Administrative Practice and Procedure do not define "bound" and Pennsylvania law contains no analogous definition. Therefore, the term is to be given its common and approved usage. 1 Pa.C.S. § 1903(a). Webster's Ninth New Collegiate Dictionary (1988) defines "bound" as "placed under a legal or moral restraint or obligation." The Petitioners will not be bound by a determination in this matter because it will not restrain them or obligate them to do anything.

The CAB's decision only determines whether a charter will be granted. Since the CAB finds that a charter should be granted to the Charter School, the Board of Directors is obligated to grant a charter to the Charter School. The CAB's decision to grant a charter does not obligate the Petitioners to do anything and does not restrain them from doing anything. The CAB simply decides whether or not a school district must grant a charter to a charter applicant. Therefore, Petitioners are not bound by the CAB's decision.

3. Interest Not Adequately Represented

Petitioners argue that their interest is not adequately represented by the School District. In support of this position they argue, *inter alia*, that: the School District's Board of Directors may not have a majority to vote on whether to appeal the decision of the CAB; the School District's Board of Directors did not transcribe the public hearings on the charter application; and, the School District failed to participate in the July 30, 1999 hearing before the CAB. We must again point out that the Charter Law authorizes the local board of school directors to decide whether to grant a charter to a charter applicant. In the event the school board fails to act on the application in the time periods prescribed by the Charter Law, the CAB is authorized to decide whether to grant a charter to a charter applicant. There is no provision in the Charter Law that authorizes taxpayers of a school district to intervene in the charter appeal process. The local board of directors is elected by the taxpayers and if the local board of directors is not performing to the satisfaction of the taxpayers, then their recourse is through the ballot box. The failure of a local board of directors to perform its duties under the Charter Law does not authorize individual taxpayers to intervene in the appeal process to allegedly represent their interests. In such circumstance the General Assembly specifically authorized the CAB to stand in the shoes of the local board of school directors.

For the foregoing reasons, the Petition to Intervene is denied.

C. The Revised Charter School Application

Section 17-1717-A(e)(2) sets forth the factors to be used in the "evaluation" of the proposed application. Section 17-1717-A(e)(2)(i-iii) provides a list of factors to be considered and analyzed by the CAB in making its determination whether to grant or deny the charter.

The first factor addresses the "demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students...". (24 P.S. §17-1717-A(e)(2)(i)). Section 17-1717-A(e)(2) clearly requires that community support be shown in the application document or by comments received at the public hearings. In addition, Section 17-1719-A sets forth what is to be contained in the application, including information on the manner in which the community groups will be involved in the school planning process. Section 17-1715-A (2) provides that a charter school shall develop and implement strategies for meaningful parent and community involvement. While the legislature did not define what it meant by "community" or "community involvement" the CAB can rely upon other provisions of the Charter School Law for guidance in its evaluation of the revised application.

As the CAB held in its *Phoenix Academy*,⁶ *Hills Academy*⁷ and *Collegium*⁸ charter school decisions, the degree of support for the proposed charter school plan is relevant, not the size or vociferousness of the opposition. The CAB concludes that the term "sustainable support" means support sufficient to sustain and maintain the proposed charter school as an on-going entity.

Furthermore, the indicia of support is to be measured in the aggregate rather than by individual categories. The statutory listing of "teachers, parents, other community members and students" indicates the groups from which valid support for the charter school plan can be

⁶ Appeal of Phoenix Academy Charter School, Docket No. CAB 1999-10.

⁷ Appeal of Hills Academy Charter School, Docket No. CAB 1999-12.

⁸ Appeal of Collegium Charter School, Docket No. CAB 1999-9.

demonstrated. It does not appear that the General Assembly intended this list to be mutually exclusive or exhaustive. Failure to demonstrate strong support in any one category is not necessarily fatal to an application. Nevertheless, a reasonable amount of support in the aggregate must be demonstrated.

Since the School District failed to record the public hearing on December 22, 1998 and failed to act on the revised application, the CAB, by its Order of September 16, 1999, remanded the appeal of the revised application to the Hearing Officer with direction to the Charter School to present evidence, if any, of demonstrated, sustainable community support for the Charter School plan. Consequently, this was the only issue to be addressed at the hearing before the Hearing Officer.

In this present matter, the Charter School has clearly shown a reasonable amount of support from parents, students and other community members. There is no evidence in either the original record or the supplemental record to indicate support from "teachers." However, as the CAB has held, this is not fatal to the charter school application.

The Charter School presented several residents from the local community to testify at the October 18, 1999 administrative hearing regarding "demonstrated, sustainable support" for the establishment of the Charter School. The School District argued that the testimony of the members of the Board of Directors of the Charter School was at the very least self-serving and clearly not demonstrative of the opinions of the local community. The CAB disagrees. Nothing in the Charter School Law prohibits members of the Board of Directors of a proposed charter school from testifying.

The Charter School also presented evidence that three informational meetings were conducted on October 4, 5, & 6, 1999 within the local community regarding the proposed charter

school. These meetings were conducted by various Board members and/or representatives of Mosaica and attended by local residents. In fact, the record clearly demonstrates that approximately 50-60 adults attended the October 4, 1999 meeting; approximately 25-30 adults attended the October 5, 1999 meeting; and approximately 50-60 adults attended the October 6, 1999 meeting.

Several witnesses testified from their personal observation that the informational meetings regarding the Charter School were "enthusiastic." The record reveals that other members of the Community circulated petitions for signatures in support of the Charter School. James High testified that he gathered and tallied the petitions and determined that 39 people participated in the petition gathering effort. A total of 99 petitions were turned in to Mr. High. From those 99 petitions, there were 1,248 "net" signatures from individuals from the local community. Mr. High testified that he was careful to remove or not include any signature, which was not within the local community.

The School District objected to the petitions on the grounds that there was no certification, attestation or verification of accuracy by the actual signature gatherers. The Charter School Law does not require any such certification. These signatures were not gathered as part of the "appeal" process pursuant to Section 17-1717-A(h)(i)(2), which are subsequently reviewed by the local Court of Common Pleas. Nevertheless, the petitions signed by residents regarding the Charter School did in fact contain the very same type of information as required by the Charter School Law. At the top of each petition the following statement was printed: "I am a resident of the City of Harrisburg, 18 years of age or older, and support the establishment of the Ronald H. Brown Charter School, an elementary school that will offer full day kindergarten, foreign language instruction for all students, one to three computer/student ratio, phonics, no

social promotion, secure building, high academic standards, longer school day and school year, and free to all students."

The School District also argued that the CAB would be unable to determine the reasons for the individuals' support. In its *Collegium* determination, the CAB held that the Charter School Law does not require that persons who state their support for the charter school plan must also state the reasons why they are supporting such a choice.

Consequently, since demonstrated sustainable support is measured in the aggregate, there has been clear evidence that there is demonstrated, sustainable support for the Charter School by parents, community members and students.

The Charter School's revised application also satisfies the other three factors to be used in evaluating a charter application. The Charter School will utilize the Paragon Curriculum, which is designed to prepare students to be creative, intuitive and analytical thinkers with a solid understanding of the history of ideas. This curriculum combines the pragmatism and rigors of classical education with the best teaching practices worldwide, including technology. The school day is to be divided into two essential parts, with a morning session including a "core" curriculum and the afternoon session for the Paragon Curriculum.

Additionally, the school day is to be increased by one hour to seven and one-half hours per day. The Charter School will use various self-assessment or evaluation methods including: the Pennsylvania System of School Assessment (PSSA); the Iowa Test of Basic Skills; Parent Satisfaction Surveys; and Student Discipline Records. The teachers will be employed on an annual, at-will basis with compensation linked to student performance. The Revised Application also contains a description of a professional development plan and in-service plan for the Charter School's staff and teachers.

Based on information provided in the revised application, the CAB finds that, in terms of support and planning, the Charter School is capable of providing comprehensive learning experiences and of being a model for other public schools. Furthermore, the revised application provides the information required under Section 17-1719-A and conforms to the legislative intent set forth in Section 17-1702-A.

Therefore, the Charter School's revised application and the evidence provided at the hearing before the Hearing Officer on October 18, 1999, satisfy the requirements of the Charter Law and a charter shall be issued to the Charter School.

ORDER

AND NOW, this _____ day of December, 1999, based upon the foregoing and the vote of this Board:

(1) the July 1, 1999 appeal of the Ronald H. Brown Charter School is affirmed and the Harrisburg School District is hereby directed to grant the Revised Application and sign the Ronald H. Brown Charter School's charter pursuant to 24 P.S. §17-1720-A⁹; and,

(2) the Petition to Intervene is denied¹⁰.

In addition, prior to opening the charter school, the Ronald H. Brown Charter School shall provide the School District and the CAB with information regarding the facility to be used for the charter school.

For the State Charter School Appeal Board,

Eugene W. Hickok
Chairman

⁹ At the Board's November 8, 1999 meeting, the appeal was granted by a vote of 6-0-1, with members Aliota, Bunn, Ford-Williams, Hickok, Melnick and Shipula voting to grant the appeal and Reeves abstaining.

¹⁰ At the Board's September 15, 1999 meeting, the Petition to Intervene was denied by a vote of 5-0-1, with members Bunn, Ford-Williams, Hickok, Melnick and Shipula voting to deny the Petition and member Tait abstaining from the vote. At the Board's November 8, 1999 meeting, the Board again denied the Petition to Intervene by a vote of 6-0-1, with members Aliota, Bunn, Ford-Williams, Hickok, Melnick and Shipula voting to deny the Petition and Reeves abstaining from the vote.