

**COMMONWEALTH OF PENNSYLVANIA  
STATE CHARTER SCHOOL APPEAL BOARD**

In Re: Collegium Charter School :  
Appeal from Denial of Charter : **Docket No. CAB 1999-9**  
School Application by West Chester :  
Area School District :  
:

**OPINION AND ORDER**

**I. HISTORY**

On November 13, 1998, pursuant to the Charter School Law, 24 P.S. §17-1701 to 1732, Collegium Charter School ("Collegium") submitted a charter school application to the Board of Directors (the "Directors") of the West Chester Area School District (the "District"). The Directors held public hearings on December 14, 1998, January 5, 1999 and February 1, 1999. At its February 16, 1999 meeting, the Board received additional documents related to the application, deliberated and voted six to one to deny the application. The Directors issued their decision on February 22, 1999, with findings of fact, conclusions of law and reasons for denying the application.

Pursuant to Section 17-1717-A (i)(2) of the Charter Law, Collegium obtained the requisite number (1258) of signatures on petitions and presented the petitions to the Court of Common Pleas of Chester County on April 19, 1999. The Court held a hearing on June 4, 1999 and issued a Decree establishing the sufficiency of the petitions.

By letter dated June 15, 1999, counsel for the State Charter School Appeal Board ("CAB") acknowledged receipt of the court Decree, docketed it and indicated it would be held in abeyance until all members of the CAB were appointed. Applicant filed its appeal with the CAB on July 1, 1999. At the CAB's first meeting on July 1, 1999, the appeal was accepted, the

District was advised to file an Answer to the appeal within ten days, and Spencer A. Manthorpe, Esquire was appointed Hearing Officer for the appeal.

A Petition to Intervene was filed on behalf of taxpayers residing in districts adjoining the district in which Collegium was proposed to be located. Collegium filed a response to the Petition to Intervene. After a telephone conference, the Hearing Officer, on July 14, 1999, issued a Pre-Hearing Order denying the Petition to Intervene.

## **II. FINDINGS OF FACT**

1. Collegium is a Pennsylvania nonprofit corporation, which applied to the District to operate a charter school under the Charter Law.

2. Collegium intends to enter into a management agreement with Mosaica Education, Inc. ("Mosaica") to provide educational and administrative services for the school.

3. A model agreement is in the record (Ex. A-5), but the final agreement will be negotiated between the parties when a charter is granted.

4. Mosaica is a for-profit corporation providing educational and administrative services to schools elsewhere in Pennsylvania and the country.

5. Mosaica is able to purchase or lease the former Bishop Shanahan High School which, in turn, would be leased by separate agreement to Collegium.

6. Collegium will use the Paragon Curriculum Program developed by Mosaica.

7. Collegium will provide a 7 \_ hour school day which is a longer school day than the District provides.

8. Collegium intends to provide a school year consisting of approximately 200 days which is a longer school year than the District provides.

9. At Collegium, there will be one computer for every three children.

10. At Collegium, the first 3 \_ hours of the day will be spent on the basics: math, phonics, science and literature.

11. In the afternoon at Collegium, the Paragon Curriculum provides a multi-disciplinary approach that integrates all those subjects in the curriculum not studied in the morning, such as geography, drama, music, art, social studies, anthropology and history.

12. The afternoon curriculum at Collegium is built around the study of ideas and tracks the history of the world with each grade level studying the same period at the same time in an age appropriate way, all grade levels being in the same school and not segregated.

13. At Collegium, Spanish will be taught beginning in kindergarten, which is a full day kindergarten.

14. At Collegium, a second language will be started in seventh grade.

15. Mosaica presented evidence that the Paragon Curriculum has produced an 18% improvement at an established Mosaica managed school.

16. The District offers a more comprehensive program of courses and activities than will Collegium.

17. Collegium has not determined the extent of its extracurricular program.

18. The District has an extensive extra-curricular program.

19. Collegium held informational meetings attended by over fifty people.

20. As of December 14, 1998, Collegium already had enrollments from 14 students.

21. As of February 1, 1999, 43 parents had submitted enrollment applications for their children.

22. Eight parents and residents of the district spoke in favor of Collegium before the Directors.

23. No District teachers have shown support for Collegium, and 380 signed a petition to deny the application.

24. The teachers' union president testified against Collegium, repeating nine times "we don't need charter schools"; however, he also testified to a Pennsylvania Department of Education survey that 88% of parents surveyed indicated a powerful attraction to a charter school.

25. Collegium teachers will receive merit pay based on student performance and parental satisfaction.

26. Other Mosaica managed schools have attracted sufficient numbers of qualified teachers.

27. One member of the public spoke against the school in particular and charter schools in general.

28. Collegium's application under §17-1719-A is complete.

29. Collegium is capable of and prepared to accommodate special education students and implement any necessary Individualized Education Program ("IEP").

30. Bernard R. Miller and Harry I. Shreiner seek to intervene.

31. Bernard R. Miller and Harry I. Shreiner are not residents of the West Chester Area School District.

32. Bernard R. Miller and Harry I. Shreiner are residents of school districts located within ten (10) miles of the West Chester Area School District.

### **III. CONCLUSIONS OF LAW**

1. The Charter Law governs the application and approval processes and the operation of charter schools in Pennsylvania.

2. The Charter Law requires that the application be evaluated based on certain criteria including, "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).

3. Collegium has demonstrated sustainable support from parents, community members and students.

4. Collegium has not demonstrated sustainable support from teachers of the District, but this is not fatal to the application.

5. Another criterion for evaluating the application is the capability of the applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter. 24 P.S. §17-1717-A(e)(2)(ii).

6. Collegium is capable of providing comprehensive learning experiences to students through the Paragon Curriculum.

7. A third criterion against which a charter application must be measured is the "extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A." 24 P.S. §17-1717-A(e)(2)(iii).

8. The contents of the application consider the information requested in section 17-1719-A, and conform to the legislative intent outlined in section 17-1702-A.

9. The fourth criterion against which a charter application must be measured is "the extent to which the charter school may serve as a model to other public schools." 24 P.S. §17-1717-A(e)(2)(iv).

10. Collegium will serve as a model for other schools because of its extended schedule and different and innovative curriculum.

11. Collegium's appeal was timely filed and not barred by the Act.

12. Collegium's appeal document is satisfactory under the Charter Law and the General Rules of Administrative Practices and Procedure.

13. The Directors were not denied due process by the contents of the appeal documents or by the appeal process.

14. The applicable standard of review is not the standard used by appellate courts because the CAB has the authority, under the Charter Law, to agree or disagree with the findings of the District, and to allow the charter school and/or the local board of directors to supplement the record if supplemental information was previously unavailable.

15. Collegium is an independent nonprofit corporation and its relationship with Mosaica does not violate the Charter Law.

16. Collegium properly applied for a single district charter.

17. Bernard R. Miller and Harry I. Sheiner lack standing to intervene.

#### **IV. DISCUSSION**

The Directors denied Collegium's application based on its evaluation of the criteria set forth in section 17-1717-A(e)(2), as well as other criteria considered by the Directors. The findings of the Directors will be discussed in the order they appear in the District's brief.

##### **A. Curricular and General Issues**

In its first finding of fact, the Directors adopted and agreed with the Administration's "Responses to the Mosaica Charter School Application", which concluded that the application did not meet the legislative intent set forth in section 17-1702-A of the Charter Law. However, the Administration's "Responses" from the Assistant Superintendent for Curriculum and Staff Development are not findings of fact but comparisons, using the categories of the legislative intent section of the Charter Law, between proposals in Collegium's application and the school

district's program, which has been in existence for years. The Assistant Superintendent does not conclude that Collegium's application does not meet the legislative intent set forth in section 17-1702-A, but concludes that the District, in his opinion, has a better educational program. This is a conclusion, not a fact; it is also not relevant.

The Directors' second finding of fact is that a comparison between the educational opportunities provided by the District and the educational opportunities of Collegium demonstrates that pupils will not be provided with an expanded choice of educational opportunities by Collegium, but, in fact, that the District offers more educational opportunities. Although the District may offer more educational opportunities, Collegium's curriculum is innovative, the school day and school year are longer, and Spanish is taught beginning in kindergarten, which is a full-day kindergarten. This provides students with an expanded choice of educational opportunities because it provides educational opportunities different from those provided by the District. Therefore, we disagree with the Directors' finding of fact.

Finding of fact number 3 contains a series of conclusions again relating to Collegium's curriculum and assessments. The Directors simply conclude that the curriculum and assessments are unacceptable and/or unclear. We have reviewed this information and find it to be both clear and acceptable.

Finding of fact number four states "there is no documentary or definitive evidence that pupil learning will be improved and that any testimony in that regard was speculative." Finding of fact number five states that "there is no documentary and definitive evidence that learning opportunities for pupils will be increased and testimony in that regard was speculative." Since Collegium is a new school, there cannot yet be any demonstrative evidence that pupil learning *will* improve. Without a prior history, evidence that pupil learning will improve *will* be

speculative. However, in this case, there was evidence from another charter school that uses the Mosaica curriculum that pupil learning did improve. Therefore, there is some basis to believe Collegium will improve pupil learning. Additionally, the legislative intent section of the Charter Law sets forth what it intends for the charter schools to accomplish. It does not provide that a charter school must prove to the District, unequivocally, that the charter school will improve student learning. Nevertheless, the very purpose of the Paragon Curriculum, together with the longer kindergarten, school day, and school year is to improve pupil learning. In addition, Collegium will have a computer for every three students, teach Spanish beginning in kindergarten and a second language beginning in seventh grade. All of the above convince the CAB that pupil learning opportunities will be increased.

In finding of fact number six, the Directors state there is no evidence of new professional opportunities for teachers or that there will be opportunities for teachers to be responsible for the learning program. The finding ignores the eighteen positions being made available to teachers, the chance to teach and learn a different and innovative curriculum, the use of computers and the opportunity for a limited number of non-certified teachers to teach while they work toward obtaining their certification.

Finding of fact number seven sets forth the distinguishing features in Collegium's application, which include the Paragon Curriculum, the full day kindergarten, the longer school day, the longer school year, the promise of more computers per student, Spanish taught in kindergarten, and a fee based after school childcare on site. We agree with this finding.

In finding of fact number eight, the Directors find that all-day kindergarten, one extra hour per day of instruction, twenty extra days per year of instruction and daycare at the end of school do not necessarily improve learning and that there is no testimony to demonstrate that would be

the case. As stated above, there was testimony that pupil learning did improve in another school using Mosaica's services. Collegium does not have to prove, unequivocally, that its program will improve learning.

The Directors' finding of fact number nine states that even though the Paragon Curriculum may be different from the District's curriculum, the Directors do not believe that mere choice warrants the cost to the District without a showing of clear benefits to the District population. The Directors found no clear benefits. However, part of the legislative intent in enacting the Charter Law, was to provide parents and students with expanded choices in the types of educational opportunities available within the public school system. 24 P.S. § 17-1702-A (5). We find that the Paragon Curriculum provides parents and students with an expanded choice in the type of educational opportunities available, and this choice fulfills part of the legislative intent of the Charter Law. Therefore, we disagree with the Directors that there is no clear benefit to the population in having the choice of a different curriculum.

In finding of fact number ten, the Directors note that all substantive testimony, particularly regarding curriculum and operations, came from Mosaica employees. This appears reasonable and proper in that Mosaica is proposed to be the contractor for these services. We also note that all of the District's substantive testimony came from District employees. Thus, the District's observation is irrelevant.

Finding of fact number eleven says, in effect, that the Directors are not satisfied that Collegium fully understands and is capable of addressing the needs of special education students. This finding was made in spite of Collegium's testimony that it would meet all legal requirements in this regard. How can it provide more evidence when it does not yet exist and has no idea what its special education enrollment will be? The Mosaica Charter School in Bensalem Township

School District had 10% special education enrollment and fulfilled its obligations to these students. Just as the District works out its special education challenges and provides an IEP for such students, Collegium has said it will do likewise. Additionally, Collegium was asked to provide information about the number of special needs students who left either of the charter schools currently run by Mosaica, and Collegium responded that none of the special needs students had returned to their previous schools.

Likewise, in finding of fact number twelve, the Directors find that it is unclear how Collegium will meet the needs of at-risk students with disabilities or bilingual challenges. Just as the District meets these challenges when they arise, so it can be presumed Collegium will meet these challenges and do what the law requires.

Finding of fact number thirteen is difficult to understand; the Directors state "there is no evidence that Collegium will meet the needs of students whose needs are supposedly now not being met in the existing public school environment." Not knowing who these students are with unmet needs, it would be difficult for Collegium to respond with any evidence. In fact there is no evidence on record that there are any students in the District with unmet needs. Therefore, this finding of fact is irrelevant.

In finding of fact number fourteen, the Directors find that Collegium is not proposing any extracurricular activities. There is no requirement in the Charter Law that it do so. The only reference in the Charter Law to extracurricular activities is that a charter school can agree with the District to coordinate its efforts regarding extracurricular activities. Collegium has offered to coordinate such efforts. If students from the charter school want to participate in the District's extracurricular activities it must allow them to do so if the student is able to fulfill the requirements of participation and the charter school does not provide the same extracurricular

activity. This finding of fact is not relevant.

Finding of fact number fifteen is not a completely accurate statement of the Charter Law because it states that the Charter Law requires professional employees to demonstrate satisfactorily a combination of experience, achievement and qualifications in basic skills, general knowledge and practice and subject matter knowledge in the subject area the employee will teach. The Charter Law requires that at least 75 % of the charter school's professional staff must hold appropriate State certification. Only professional employees that do not hold appropriate State certification must demonstrate their experience, qualifications, etc. Therefore, Collegium can use specialists in music, physical education and Spanish to teach reading and language arts if they meet the above qualifications.

In finding of fact number sixteen, the Directors state that Collegium did not address how it would segregate age groups in the school. That is true. Collegium said it would not segregate age groups and found this to be a benefit. Instead junior and senior high students would mentor and tutor the younger students. The finding of fact is irrelevant under the Charter Law.

In finding of fact number seventeen, the Directors find that parent surveys are not an appropriate means of assessing student learning and academic performance. The Directors may not believe such surveys to be effective or accurate, but they are appropriate, especially if they are being used to evaluate the parent's perception of the school and its teachers. The record shows that Collegium expects to use other delineated methods to assess student learning; therefore, finding of fact number seventeen is not relevant.

The Directors state in finding of fact number eighteen that it "occurs" to the Directors that Collegium's application should have been for a regional charter school, because it anticipates enrolling students from other districts. Under the Charter Law, charter schools are permitted to

enroll students from any district located within the Commonwealth. The fact that a charter school intends to enroll students from other districts does not require the applicant to apply for a regional charter. Therefore, this finding is irrelevant.

### **B. Demonstrate Sustainable Support**

The Charter Law requires the applicant to show demonstrated sustainable support for the planned school by teachers, parents, community members and students, including through comments made at the public hearing. The Directors found there was no support from teachers. This is understandable given the vehement opposition by the president of the teachers' union who spoke at a public hearing and made the union's position clear that there is no need for a charter school in the District. A petition from 380 teachers was also presented in opposition to Collegium. The lack of teacher support is also understandable when one considers the opposition of the administration, which is apparent on the record from the superintendent and assistant superintendent for curriculum.

The record shows, however, that at a year-old charter school operated by Mosaica in the Bensalem Township School District there was no problem acquiring qualified teachers. Only two were non-certified, and they will be certified within the year. The antagonism and ill will apparent on the record from the union, administration and the Directors, against Collegium, Mosaica and their proponents could very well have chilled any prospects of a teacher speaking out in favor of Collegium. The missing teachers are only a small part of the criteria.

There were 14 students already enrolled in Collegium at the time of the first hearing. That number had grown to 43 by the last hearing, which was one and one-half months later. Eight parents and residents testified at the hearings and showed support for charter schools.

The Directors made certain findings concerning the criterion of sustainable support. The

first finding is that the record does not contain a marketing study or demographic study. However, there is no requirement for such formal studies in the Charter Law. Next, the Directors note the 43 enrollments and the “handful” of residents who spoke in favor of the school and found them “not significant” in a school district of 35,000 residents. This is a conclusion and based on a “test of significance” not found in the Charter Law. Although not conclusive evidence of support, the fact that another Mosaica run charter school has a waiting list after being open only one year, provides some additional evidence of support.

Additionally, the District attempts to defuse any notion that it is anti-charter schools by noting it already granted a charter to another charter school. However, that charter school is operating with fewer pupils than Collegium's forty-three advance enrollments, and in any event, whether a charter was granted to another entity is not relevant to Collegium's application.

In finding of fact number four for this criterion, the Directors found the comments of parents in support of the charter school to be “general in nature”, indicating they wanted a “choice”; but they did not explain how the “choice” would increase learning opportunities. This again, while mostly true, is not relevant to demonstrate sustainable support. Section 17-1717-A(e)(2)(i) of the Charter Law provides that the application shall be evaluated, inter alia, on the demonstrable sustainable support for the charter school plan. The Charter 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.

In their fifth finding of fact under sustainable support, the Directors stated they were unclear whether the supporters were attracted to Collegium because it had an extended school day or an improved curriculum. The only finding of fact here is that the Directors were unclear. The rest of the finding is irrelevant because the Charter Law does not require that supporters

identify why they support the school, nor does it require them to show whether it is a preference for curriculum over length of day, or for some other reason. Both are supportable under the intent provisions of the Charter Law because both are for the purpose of accomplishing an increase in learning opportunities.

In finding of fact number six, the Directors again stated they were unclear whether “the marketing efforts are aimed at all segments of the community or are targeted only to certain segments of the community”. This again only establishes that the Directors were unclear. The rest of this finding is suspicion or innuendo or even innocent curiosity, none of which is relevant to the criteria.

In summary, the Directors ask many questions and give many opinions and conclusions but do not explicitly state that there is insufficient sustainable support. We find, on the record as a whole, that there is sustainable support.

### **C. Financial Issues**

The Directors also set forth findings of fact on financial issues. In finding of fact number one, the Directors state that the Management Agreement between Mosaica and Mosaica Academy Charter School in Bensalem represents what would be the management agreement between Mosaica and Collegium. First, this is only speculation because the President of the Collegium trustees said the actual agreement had not yet been negotiated. Second, even if the agreements are the same, this finding of fact is not relevant to this inquiry.

In finding of fact number two, the Directors state that the Charter Law requires charter schools to be non-profit entities. This finding is correct.

In finding of fact number three, the Directors state that Mosaica is a for-profit business. This is a correct finding.

Finding of fact number four states that Collegium's Board of Directors will control the operation of the charter school in name only. This is not correct in that it presumes a management agreement that is not in existence, and even if the model agreement becomes the actual agreement between Mosaica and Collegium, the Directors make generalizations and conclusions that do not necessarily follow. The Charter Law does not prohibit a charter school from contracting with a for-profit entity to provide services to the charter school as long as the trustees of the charter school maintain ultimate control of the charter school. There is no evidence that the contract with Mosaica, if implemented, will deprive the trustees of ultimate control of Collegium.<sup>1</sup>

Findings of fact numbers five and six constitute conclusions of law rather than findings of fact. The Directors concluded that Collegium is a non-profit shell with an organizational structure meant to circumvent the intent of the Legislature that charter schools are to be nonprofit entities. As stated above, Collegium may contract with for-profit entities and, in fact, may be established by for-profit entities, but ultimate control must remain with the charter school's board of trustess. Therefore, these conclusions by the Directors are ones with which we do not agree.

The Directors state, in finding of fact number seven, that they were promised an opinion from the Department of Education approving Collegium's organizational structure, but that no such opinion was forthcoming. Even if true, this is not relevant.

Finding of fact number eight, that Mosaica will purchase and lease a facility to Collegium, is true but not relevant. It is also true, as stated in finding of fact number nine, that Mosaica is providing financial investment for the purchase and modification of the facility. Again, this is

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<sup>1</sup> If in fact, the contract ultimately executed with Mosaica does not reserve ultimate control of the charter school

irrelevant.

Finding of fact number ten states that a proposed lease between Mosaica and Collegium for the facility was not presented. This is a correct finding of fact. However, the Charter Law only requires that the charter school application include information concerning “lease arrangements.” 24 P.S. § 17-1719-A(11).

In finding of fact number eleven, the Directors state that, even though Mosaica stated it would renovate the proposed facility to comply with all laws, rules and regulations, it did not show that it had a clear understanding of what needed to be done to comply and make the school available for the 1999-2000 school year. This is true in part, but not relevant because the facility must be properly renovated before the school can open.

In finding of fact number twelve, the Directors state that Mosaica is unwilling to provide its long-range business plan. This is a true finding of fact, but irrelevant, because Mosaica is not the charter applicant.

Finding of fact number thirteen states that Mosaica's fee is based upon the percentage of money Collegium receives through the Charter Law. This conclusion is based on Mosaica's contract with another entity, not Collegium, and, in any event, is irrelevant to this inquiry.

In finding of fact number fourteen, the Directors state that Mosaica anticipates that, with the growth of each charter school and the addition of new charter schools, the charter school business will yield sufficient profits to justify Mosaica's up-front investments and risks. The Directors conclude that it does not believe the Legislature intended to create this type of private enterprise with tax dollars. However, the Charter Law clearly allows charter schools to contract with for-profit entities for the provision of services. The Charter Law also allows for-profit

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with Collegium's Trustees, then the Directors can move to revoke the charter.

entities to establish charter schools, although the ultimate control must remain with the charter school's board of trustees. Therefore, this conclusion is neither accurate nor relevant.

The Directors state in finding of fact number fifteen that, because the Legislature imposed funding of charter schools upon the local school district, the local district could inquire into the costs and benefits of the charter school in order to be certain tax dollars were prudently spent. This is a conclusion, not a finding of fact.

In findings of fact numbers sixteen through twenty-two, the Directors continue to set forth conclusions regarding its cost/benefit analysis of a charter school. The Directors speculate that the reduction in costs to the District will be minor in comparison to the increase in costs because it is unlikely the District will be able to reduce staff or facilities but will have less subsidy money for expenditures. We conclude that the District's cost/benefit inquiry is not a proper inquiry for the District, nor is it a proper basis upon which to deny a charter, because a cost/benefit analysis has already been performed by the Legislature. When the Legislature passed the Charter Law it knew that the funding mechanism set forth therein required school districts to pay subsidy money to charter schools attended by a school district's resident students. Obviously, by passing the Charter Law with this funding mechanism for charter schools, the Legislature decided that the cost to school districts was outweighed by the benefit of having charter schools. Therefore, the District's cost/benefit analysis is not relevant.

#### **D. Collegium As a Model for Other Public Schools**

The Directors find that Collegium will not serve as a model for other schools because the District offers a greater range of opportunities than will Collegium, and the areas in which Collegium distinguishes itself from other schools are not significant enough to serve as a model. However, Collegium's Paragon Curriculum, its increased hours and days of operation, its full-day

kindergarten and beginning Spanish in kindergarten, evidence a significant difference that will allow Collegium to serve as a model for other schools.

The Directors state in finding of fact number two that they found that another charter school located within the District met the criteria of the Charter Law and would serve as a model, but found that Collegium did not meet the Charter Law criteria and would not serve as a model for other schools. This is a conclusion, and simply because the Directors found another charter applicant eligible for a charter does not evidence that Collegium has not met the Charter Law criteria.

#### **E. Governing**

In finding of fact number one, the District states that Mosaica found the District to be a good place for a charter school and marketed its proposal. This finding presumes a sinister intent on the part of Mosaica. The Charter Law does not prohibit an entity from determining that a particular area may be a good location for a charter school and attempting to determine the support for such an undertaking. Therefore, even if the finding of fact is true, it does not violate the intent or spirit of the Charter Law.

The second finding of fact is in the same vein as finding of fact number one. The Directors stated that because successful businesspersons run Mosaica, the Directors are not surprised that Mosaica could generate some support for a charter school within the District. Generating support for a charter school does not violate the Charter Law's purpose or intent.

In finding of fact number three, the Directors set forth the names of the proposed directors for Collegium. Finding of fact number four states that no potential applicants for the principal's position or for the teaching positions were presented. These are accurate findings.

The Directors state in finding of fact number five, that Mosaica may terminate the

agreement with the charter school if there is substantial variation from the Paragon Curriculum and if the charter school fails to discipline teachers who cannot or will not teach the Paragon Curriculum. This is an accurate finding. The Directors further state that, in the event the agreement would be terminated by Mosaica, the Directors are not clear how Collegium would continue.

In the event a charter is granted to Collegium on the basis of the Paragon Curriculum being taught at Collegium, failure to use the Paragon Curriculum would violate the charter. Any substantive change in curriculum would have to be approved by the District. Therefore, if there was an agreement with Mosaica to use the Paragon Curriculum, and Mosaica, for cause, terminated the agreement, Collegium would have to have another curriculum approved by the District or close the charter school. However, this potential "problem" exists no matter what curriculum is set forth in the charter application.

In addition to their findings of fact, the District provided argument on a number of legal issues. These arguments are addressed below.

## **F. Legal Arguments of the District**

### **1. The Petition to Appeal Should be Quashed/Dismissed**

The Directors argue that Collegium's appeal was filed within the two-year prohibition of the Charter Law, and should be quashed or dismissed because it is premature and prohibited by the Charter Law. This argument is based on the Directors' position that the appeal began when Collegium filed a document entitled "Petition to Appeal" with the Court of Common Pleas of Chester County. The filing and the title of the document have apparently misled the Directors. Collegium did what the Charter Law requires in Section 17-1717-A (i)(2)-(5) in order to be *eligible* to appeal to the CAB. Collegium secured the required signatures, appended them to a

petition with the necessary averments and filed the petition with the Court of Common Pleas.

A reading of that petition shows that it is not the kind of petition one would use to appeal the denial of the charter application. In fact the Appeal document filed with the CAB on July 1, 1999, which the Directors attack as insufficient, is the type of appeal document one would expect to be required in order to appeal the local decision. Additionally, as stated above, the Charter Law clearly states that the "Petition to Appeal" filed with the Court of Common Pleas is merely a step that is required in order for the applicant to be *eligible* to appeal. Furthermore, the Court of Common Pleas does not hear the actual appeal and does not decide the outcome of the appeal, but merely determines the sufficiency of the petition. If the Court finds the Petition sufficient, the charter applicant may file its appeal to the CAB; if the Court finds the Petition insufficient, the charter applicant cannot file an appeal with the CAB. The Court is not, as implied by the Directors, a court of competent jurisdiction to hear the charter applicant's appeal on the merits.

It is clear from the Charter Law that appeals on the merits are filed with, and heard by, the CAB, not the Court of Common Pleas. Section 17-1717-A(i)(1) provides "[t]he appeal board shall have exclusive review of an appeal by a charter school applicant . . ." Therefore, it is only when the applicant files his appeal with the CAB that the appeal process begins. Furthermore, Section 17-1717-A(i)(7), provides that the CAB must meet and review an appeal within thirty (30) days of the "notice of acceptance of the appeal". This "notice of acceptance of the appeal" occurs after the Court of Common Pleas makes its determination about the sufficiency of the petition. The notice of the acceptance of the appeal comes from the CAB, not from the Court of Common Pleas.

The appeal of Collegium was not premature and not prohibited by the Charter Law. The

appeal was filed with the CAB on July 1, 1999, as permitted by the Charter Law.

**2. Collegium's Appeal Issues Should be Waived and Its Appeal Dismissed for Failure to Preserve the Issues.**

The District argues that, under the Rules of Civil Procedure, the petition filed by Collegium with the Court of Common Pleas had to "specify the relief sought and state the material facts which constitute the grounds therefor." Pa. R.C.P. 206.1(a). According to the District, failure of Collegium to provide such information in the petition to the Court requires the CAB to consider Collegium's appeal issues to be waived and the appeal dismissed.

As stated in the previous section, the petition filed with the Court of Common Pleas was not an appeal on the merits. An appeal on the merits is filed with the CAB. Collegium's July 1, 1999, appeal filed with the CAB is sufficient in its contents to inform the Directors of the basis for appeal. The appeal complies with the requirements of §35.17 in that it states clearly and concisely, in the procedural history, Collegium's interests. It states the facts relied upon concerning each category of finding used by the Directors in their decision. The relief sought, overruling the Directors' decision, is clearly set forth.

The Directors argue that their due process rights have been denied and the appeal period extended by the failure of Collegium to properly present the appeal issues. The CAB does not agree and specifically notes that through the pre-hearing order, a pre-hearing conference was scheduled and the parties were afforded the opportunity to identify the issues, submit admissions and stipulations and seek a hearing, if necessary. Not having taken advantage of the opportunity to clarify the issues, if needed, the Directors have waived any rights to complain.

**3. Standard of Review Limited to Abuse of Discretion and Error of Law**

The Directors argue that the standard of review for the Appeal Board is that of an appellate court. It is their position that the Directors' decision cannot be reversed unless they abused their discretion and/or made an error of law. This interpretation conflicts with the

language of the Charter Law.

The standard of review set forth in Section 17-1717-A(6) is more liberal and relaxed than the standard generally used by appellate courts. While giving the Directors' findings "due consideration", the CAB is to review the Directors' findings and articulate its reasons for agreeing or disagreeing with the Directors. Therefore, only if the CAB capriciously disregards the Directors' findings can it be said that the CAB did not give due consideration to the Directors' findings. Additionally, in its discretion, the CAB may allow the charter applicant and the school district to supplement the record with information that was previously unavailable. The standard of review cannot be exactly the same as an appellate court's standard of review because the CAB can obtain and review information not available to the local board of directors, whose decision the CAB is reviewing. Finally the CAB, since it has to agree or disagree with the findings of the Directors, can of necessity, determine the weight of the evidence behind each finding and draw its own conclusions thereon. Therefore, the CAB's standard of review is not limited to that of an appellate court.

#### **4. District Neither Abused its Discretion Nor Committed an Error of Law**

The Directors argue that the CAB cannot "overturn" their findings because the Directors did not abuse their discretion or commit an error of law since all of their findings of fact are supported, in their opinion, by substantial evidence. That is not the case. Most of their findings are opinions and conclusions and supported only by speculation and implication. Insofar as this is true, even using a traditional appellate court standard, the Directors' decision would be overturned. Additionally, as stated above, the Directors state the incorrect standard of review for the CAB.

## **5. Collegium is Not an Independent Nonprofit School**

This is a theme that has swirled around this application from the first instance. The CAB has reviewed the application, supporting materials, and the legal arguments. The Charter Law provides that a charter may only be granted to a nonprofit entity. 24 P.S. § 17-1703-A. The Charter Law also provides that a charter school may be established by a for-profit corporation, association or partnership. 24 P.S. § 17-1717-A (a). A charter school may also enter contracts for services, equipment and supplies, and may acquire real property. 24 P.S. §17-1714-A (a)(3),(5). The CAB finds that nothing in the Charter Law prohibits the involvement of for-profit entities in the establishment and operation of a charter school, so long as the school itself is not for-profit, the charter school's trustees have real and substantial authority and responsibility for the educational decisions, and the teachers are employees of the charter school itself.

The CAB has carefully reviewed the application, supporting materials and legal arguments regarding this issue. Collegium does intend to contract out certain management and administrative responsibilities to a profit-making corporation, which is permitted by the Charter Law. The CAB concludes that it is unrealistic to expect individuals who wish to provide alternate educational opportunities in their local school districts to themselves be professional educators or experts in the field of education. For a charter school founder and trustees to contract with commercial educational service providers for the expertise and skills needed to operate a school, as well as for propriety curriculum and educational materials and methods that match the trustees' visions and goals, is reasonable and well within the structure of the Charter Law. The model agreement, which will be the basis for an agreement to be negotiated between Collegium and Mosaica, allows either party to terminate the agreement if there is a material breach of the agreement that is not remedied within thirty (30) days. The model agreement also

provides that educational services are to be provided in accordance with the educational goals adopted by the charter school's trustees, and any substantial modification of the educational services will be subject to prior approval of the charter school's trustees.

The CAB finds, contrary to the smoke and mirrors set forth by the Directors, that Collegium is a nonprofit corporation and is not a mere shell for a for-profit entity. The CAB concludes that the arrangement between Mosaica and Collegium is within the bounds envisioned and permitted by the Charter Law. Therefore, the Directors' arguments that Collegium is not an independent nonprofit school are not supported by the facts.

#### **6. Petition to Intervene and Collegium as a Regional Charter School**

Bernard R. Miller and Harry I. Shreiner filed a Petition to Intervene in this matter. The Hearing Officer denied the Petition and we affirm the denial.

Mr. Miller and Mr. Shreiner ("Petitioners") do not reside in the West Chester Area School District but reside in school districts located within ten (10) miles of the West Chester Area School District. Petitioners assert standing based upon Collegium's statement, in its application, that Collegium would solicit students from areas within ten (10) miles of the West Chester Area School District. Petitioners allege that Collegium will admit students from their home schools, and that those students will take public funding with them to the charter school, thereby reducing the public funds available to their respective home school district. According to Petitioners, this reduction in public funds will force their home districts to cut programs, raise taxes, or do both. The speculated program cuts and/or tax increases will allegedly harm the Petitioners individually. Consequently, because of the alleged impact to residents of neighboring districts, Petitioners argue that Collegium is a de facto regional charter school and should have sought a regional charter. 24 P.S. § 17-1718-A. Since Collegium did not seek a regional charter,

Petitioners argue that the application should be denied as contrary to law. Petitioners make no claim that they have any right or authority to intervene in the appeal if the charter application is properly a single district application made to the District. Therefore, the regional charter issue will be examined before the more general issue of intervention.

**(a)        Charter School v. Regional Charter School**

Petitioners have misread the Charter Law. The Charter Law provides that "a charter school may be established..." 24 P.S. §17-1717-A(a), and "[a]n application to establish a charter school shall be submitted to the local board of school directors of the district where the charter school will be located ...." 24 P.S. §17-1717-A(c). In addition, "a regional charter school may be established....", 24 P.S. §17-1718-A(a) , and "[t]he boards of school directors of one or more school districts may act jointly to receive and consider an application for a regional charter school ...." 24 P.S. §17-1718-A(b). The applicant shall apply for a charter to the board of directors of any school district in which the charter school will be located." 24 P.S. §17-1718-A(b).

The CAB is persuaded by the arguments of Collegium that applicants for charter schools may select whether they are seeking a regional or a single district charter. The CAB concludes that this ability exists regardless of the anticipated geographical make-up of the student body. Nothing in the Charter Law leads to the conclusion that simply because applicants intend to draw students from more than one school district they are obligated to seek a regional charter.

The Charter Law is very clear that a charter school applicant must submit an application to the board of directors of the school district in which the charter school is to be located. The Charter Law also clearly states that any resident of the Commonwealth is qualified for admission to any charter school, except under certain provisions set forth therein, which are not applicable in this appeal. Furthermore, the Charter Law provides that the boards of directors of one or

more districts may act jointly to receive and consider an application for a regional charter school.

Sections 17-1717-A and 17-1718-A set forth the application processes for single district "charter schools" and multi-district "regional charter schools" respectively. They contain no substantive requirements compelling an applicant to proceed as either a single district or as a regional charter school. Significantly, "All resident children in this Commonwealth qualify for admission to a charter school within the provisions of subsection (b)." 24 P.S. §17-1723-A(a). If more students apply to the charter school than the number of places available in the school, then students must be selected on a random basis. "First preference shall be given to students who reside in the district or districts." 24 P.S. §17-1723-A(a). "If available classroom space permits, a charter school may enroll nonresident students on a space-available basis, and the student's district of residence shall permit the student to attend the charter school." 24 P.S. §17-1723-A(c).

While the Charter Law structure allows applicants to select whether or not to apply for a regional charter, it does not authorize the board of directors of the district in which the charter school is to be located to determine whether an applicant must apply for a regional charter. The Charter Law does not provide that a board of directors or residents of a school district from which students are recruited to attend a charter school located outside their resident district can require an applicant to submit an application for a regional charter school. The Charter Law only authorizes that one or more school districts may act jointly to receive and consider an application for a regional charter school. The authority to receive and consider an application for a regional charter school is not the authority to decide the type of application the charter applicant must submit. The Charter Law is clear that the charter applicant decides whether to submit an application for a regional charter school.

Additionally, if a charter applicant states in its application that it intends to hold enrollment meetings only within the district in which the charter school is to be located, then, according to Petitioners' position, the applicant would not have to apply for a regional charter. However, students residing in districts other than the charter school district could still enroll in the charter school if spaces were available. In that event, residents and taxpayers of districts outside the charter school district would have no more "control" over the charter school or the speculated tax increases or the speculated reduction in services than they would have if students enrolled from districts outside the charter school district because enrollment meetings were held within a ten mile radius of the district in which the charter school is located.

The consequences of increased taxes and/or reduction in services that Petitioners speculate will occur if a charter is granted to Collegium, could also occur regardless of whether a charter applicant held enrollment meetings only in the charter school district but then had students from other districts enroll in the charter school anyway. This again shows the lack of support for Petitioners' position that they have a right to intervene in this appeal before the CAB.

The desire to seek a single district charter is not without its consequences to the applicant. Single district charter schools must be physically in the district granting the charter. Electing to apply for a single district charter could restrict the school's choice of facility sites. Similarly, if an applicant intended to operate a school in more than one building (for instance, a series of small neighborhood schools), the applicant might find it advantageous to apply for a regional charter.

Single district charter schools must also give preference to qualified students from the chartering district. Schools that are designed to attract a multi-cultural student body or draw

students from across socio-economic barriers by drawing from multiple school districts may be thwarted in their desire if the student demand is sufficient from the chartering school. Thus, the CAB can envision reasons why applicants would want to seek a regional charter instead of always applying for a single district charter.

Therefore, in concluding that Collegium's application need not be regional, the claimed basis for Petitioners' alleged rights of intervention disappear, and their petition must be, and is dismissed.

**(b)        General Right To Intervene**

Even if Petitioners' petition can be read as claiming that they have a right to intervene in a single district charter school application properly submitted to a neighboring district, they have not established any right to so 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) another interest of such nature that intervention may be in the public interest. 22 Pa. Code §35.28(1)(1-3). These three criteria, as related to the Petitioners' request for intervention, are discussed in seriatim.

**(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. Pursuant to the statute, the CAB reviews the record as certified by the local board of directors. 24 P.S. §17-1717-A(i)(6).

The statute also grants the CAB discretion to allow the local board of directors and the charter applicant to supplement the record submitted to the CAB, if the supplemental information was previously unavailable. 24 P.S. §17-1717A(i)(6). The Charter Law does not authorize any parties, other than the charter school applicant and the local board of directors, to be involved in the appeal process.<sup>2</sup>

Therefore, the Charter Law does not confer upon the Petitioners, a statutory right to intervene in the appeal process. Furthermore, the Petitioners have not argued that their professed right to intervene has been conferred by any other statute. Thus, the Petitioners do not have a statutory right to intervene in this appeal.

Petitioners argue that the Court of Common Pleas established their right to intervene in the appeal because the Court allowed the Petitioners to intervene in the sufficiency petition proceedings before the Court. Even though the Court of Common Pleas allowed the Petitioners to intervene in the proceedings before it, the CAB is not bound by the Court's decision. Under the Charter Law, filing a petition with the Court of Common Pleas is merely a procedural requirement with which the charter school applicant must comply to be eligible to appeal the denial of the charter by the local board of directors. 24 P.S. §17-1717-A(i)(2). The petitions filed with the Court of Common Pleas cannot be considered "the appeals" of the denial of the charters because the CAB, not the Court of Common Pleas, "has exclusive review of an appeal by a charter school applicant . . ." 24 P.S. §17-1717-A(i)(1). Therefore, allowing the Petitioners to intervene in procedural proceedings before the Court does not require the CAB to allow the

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<sup>2</sup> The appeal is by the applicant, disagreeing with the decision of the District. If the District would have granted Collegium a charter, there is no statutory right for anyone else to appeal that decision. Because Petitioners do not have the ability to challenge a successful application before the CAB, they do not have the standing to participate in the appeal of an unsuccessful application. The District defends its own decision, without the participation

Petitioners to intervene in the appeals on the merits before the CAB.<sup>3</sup>

**(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 District to grant a charter to Collegium, 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 their school districts will have to pay subsidy money to Collegium if any students residing in their school districts attend Collegium.

Petitioners' arguments are based on mere speculation. Even though the Collegium intends to hold enrollment meetings in districts within ten miles of the District, there is only speculation about the number of students, if any, who may actually attend Collegium. Even if students residing in districts outside the District attend Collegium, there is no proof that taxes in the Petitioners' districts will be raised or that there will be a reduction in services in Petitioners' districts as a result. Furthermore, there is no recognition in Petitioners' arguments of the savings that will presumably occur as their school districts are relieved of the need to educate former students who would be attending Collegium.

The Charter Law specifically provides that "money follows the student." The General Assembly knew that school subsidy money would flow from the school districts to the charter schools. Nevertheless, the General Assembly did not grant persons such as Petitioners the right to intervene in the CAB appeal process.

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of its own, or other district's taxpayers.

<sup>3</sup> This conclusion does not mean that the intervention in the sufficiency petition proceedings was worthless to Petitioners. They were able to contest the validity and sufficiency of the appeal petition. But once the Court approved the petition, any alleged defects in the petition and Petitioners' right to contest them ended.

Petitioners' rights or interests will not be directly affected by any action that the CAB may take. The CAB will either agree with the District that a charter should not be granted, or it will disagree with the local board of directors and order that a charter be granted. Ordering a school district to grant a charter to a charter school will not directly affect Petitioners. The local board of directors in each school district determines whether taxes will be raised or whether there will be a reduction in services, 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. The Petitioners cry of "taxation without representation" is not valid. They presumably participate in their districts' political process and as taxpayers have voted and will continue to vote in elections for their respective Boards of School Directors.

Petitioners will not be directly affected by the CAB's decisions 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. Arguably as a result, 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 or the association bound by the Secretary's decision.

The Wilkinsburg Court noted that the association's interest was not directly affected or bound by approval of the school district's request because the Secretary's approval only provided the school district with discretion to alter the program. 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 Petitioners' rights or interests in this appeal will not be directly affected by the CAB ordering the District to grant a charter to Collegium. Petitioners argue that they would be directly affected because their school boards might increase taxes or reduce services. Ordering the grant of the charter would not require Petitioners' school districts to raise taxes or reduce services. Rather, 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 would thus be the direct result of actions taken by the local board of school directors, not action taken by the CAB.

Additionally, an order by the CAB to grant a charter binds only the school district in which the charter school is to be located. Such an order does not bind any other school districts. Hence, said order would not bind the Petitioners, who are taxpayers and residents of districts adjoining the District.

### (3) Intervention And The Public Interest

Petitioners argue that the decision of the CAB on the issue of whether Collegium should have applied for a "regional charter school" will set a precedent, and therefore, Petitioners must participate in order to assure that the regional charter school issue will be fully developed and aggressively advocated. However, simply because the regional charter school issue may be an issue of first impression does not mean that Petitioners have a right to intervene in these appeals.

In addition, Petitioners' argument that they will be subjected to increased taxes or a reduction in services does not evidence an interest of such a nature that intervention may be in the public interest. Therefore, Petitioners have not shown that their intervention would be in the

public interest.

Having concluded that Petitioners may not intervene in this case, no further consideration will be given to the legal arguments that they raise.

## **V. SUMMARY**

We believe Collegium has demonstrated sufficient sustainable support for the charter school plan by parents, community members, and students. Although there was no demonstrated support from teachers, this is understandable considering the vehement opposition stated by the president of the teachers' union. This alone does not provide a basis to deny the charter.

The only challenge to Collegium's ability to deliver comprehensive learning experiences is the Directors' belief that their district could do it better. That is not a valid basis for denial. We believe that Collegium can deliver a comprehensive learning experience.

Collegium's application is complete in all material respects and is not challenged by the Directors. The Directors may feel that Collegium cannot deliver on some items, but that is opinion not supported by fact. The application also conforms to the intent of the legislature and is, in this regard, not challenged directly by the Directors.

Finally Collegium will serve as a model school because of its innovative curriculum and school schedule. The Directors' only challenge to Collegium meeting this criterion is to say that the District can do it better and questioning why anyone would want to attend Collegium.

After reviewing the record as certified by the local board of directors and giving due consideration to the findings of the local board of directors, the CAB reverses the decision of the West Chester Area School District, and hereby Orders the District to grant a charter to Collegium.

## **ORDER**

And now this 27th day of August, 1999 based upon the foregoing and the vote of this Board:

- (1) the July 1, 1999 appeal of Collegium Charter School is affirmed, the West Chester Area School District's February 22, 1999 decision denying the charter application is reversed, and the Board of School Directors of the district is hereby directed to grant the application and sign Collegium Charter School's charter pursuant to 24 P.S. § 17-1720-A<sup>4</sup>;
- (2) the Petition to Intervene is denied;<sup>5</sup> and,
- (3) West Chester Area School District's Petition for Stay/Supersedeas is denied.<sup>6</sup>

For the State Charter School Appeal Board,

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Eugene W. Hickok  
Chairman

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<sup>4</sup> At the Board's August 27, 1999 meeting, the appeal was granted by a vote of 4-1, with members Aliota, Bunn, Tait and Hickok voting to grant the appeal and member Shipula voting to deny the appeal.

<sup>5</sup> At the Board's August 27, 1999 meeting, the Petition to Intervene was denied by a vote of 4-1, with members Aliota, Bunn, Tait and Hickok voting to deny the Petition and member Shipula voting to grant the Petition.

<sup>6</sup> At the Board's August 27, 1999 meeting, the Petition for Stay/Supersedeas was denied by a vote of 5-0, with members Aliota, Bunn, Tait, Hickok and Shipula voting to deny the Petition.