

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION**

**STATE CHARTER SCHOOL APPEAL BOARD**

**In Re: Bear Creek Community Charter School :**

<b>Appeal from denial of charter by</b>	:	
<b>Wilkes-Barre Area School District</b>	:	<b>Docket No. CAB 2004-2</b>
	:	

**I. INTRODUCTION**

This matter is before the Pennsylvania State Charter School Appeal Board (CAB) on appeal by the Bear Creek Community Charter School (Charter School) from the denial of its second Charter School Application submitted to the Wilkes-Barre Area School District (School District).

**II. FINDINGS OF FACT**

1. The Charter School submitted its first application for grant of a charter to the School District on or about November 14, 2002. (Exhibit 5 of the Certified Record.)
2. Thereafter, the School District Board of School Directors, pursuant to 24 P.S. §17-1717-A(d) of the CSL, held public hearings concerning the Charter School's first application on December 19, 2002. (Exhibit 5 of the Certified Record.)
3. The School District denied the Charter School's first application at a meeting on March 3, 2003 by a seven (7) to two (2) public vote. (Exhibit 5 of the Certified Record.)
4. Thereafter, the Charter School obtained signed Petitions and submitted them to the Court of Common Pleas of Luzerne County pursuant to Section 1717-A(h)(2) of the CSL. (Exhibit 5 of the Certified Record.)

5. The Court of Common Pleas of Luzerne County determined that the Petitions were valid and otherwise satisfied the requirements of Section 1717-A(h)(5) of the CSL. (Exhibit 5 of the Certified Record.)
6. Thereafter, the Charter School timely filed a Petition for Appeal with CAB on or about May 8, 2003, which was docketed at CAB 2003-3. (Exhibit 5 of the Certified Record.)
7. By Order dated October 8, 2003, the Charter School's first appeal docketed at CAB 2003-3 was denied. (Exhibit 5 of the Certified Record.)
8. Thereafter, the Charter School submitted a second application to the School District on or about October 31, 2003, which is the subject of this appeal. (Certified Record at Exhibit 3.)
9. The School District's Board of Directors, pursuant to 24 P.S. §17-1717A(d) of the CSL, held a public hearing on December 15, 2003, concerning the Charter School's second application. (Exhibit 6 of the Certified Record.)
10. On February 25, 2004, a second public hearing was held by the School District concerning the Charter School's second application. (Exhibit A of the Certified Record.)
11. On February 27, 2004, the School District's Board of Directors voted eight (8) to one (1) in favor of denying the Charter School's second application. (Exhibit 44 of the Certified Record.)
12. Thereafter, the School District provided the Charter School with a letter of deficiencies outlining the School District's reasons for denying the second application, as required under Section 1717-A(e)(5) of the CSL. (Exhibit 42 of the Certified Record.)
13. Specifically, the School District found various deficiencies in the Charter School's second application, which included but are not limited to:

- the Charter School failed to describe a curriculum and instructional plan reasonably probable of providing comprehensive learning opportunities for pupils, as required by Sections 1719-A(5) and 1717-A(e)(2)(ii);
- the Charter School failed to articulate how it would serve as a model for other public schools, as required by Section 17-1717-A(e)(2)(iv);
- the Charter School failed to demonstrate sustainable support for the Charter School plan by teachers, parents, other community members and students, as required by Section 17-1717-A(e)(2)(i);
- the Charter School failed to provide sufficient information about the ownership of the physical facility and any lease arrangements thereof in the Charter School's second application, as required by Section 17-1719-A(11);
- the Charter School failed to provide a financial plan with reasonable revenue and cost projections that would support or sustain the proposed program, as required by Section 1719-A(9).

(Exhibit 42 of the Certified Record.)

14. By Court Decree dated May 17, 2004, the Luzerne County Court of Common Pleas decreed that the Charter School's Signature Petitions were in accordance with Section 17-1717A(h)(i)(5) of the CSL and were therefore sufficient. (Exhibit 43 of the Certified Record.)
15. On or about May 25, 2004, the Charter School filed a Petition of Appeal with CAB, which was docketed at CAB 2004-2. (Exhibit 1 of the Certified Record.)
16. Thereafter, on or about June 14, 2004, the School District filed its response to the Petition of Appeal. (Exhibit 2 of the Certified Record.)

17. By letter dated June 16, 2004, CAB informed both the School District and the Charter School counsel that CAB had accepted the Charter School's Petition to Appeal.
18. Thereafter, a Pre-Hearing Conference was held between counsel for the School District, counsel for the Charter School and the Hearing Officer on July 9, 2004 at 10:30 a.m. via telephone conference. (Exhibit 47 of the Certified Record.)
19. The Charter School and the School District waived their rights to have a hearing pursuant to 2 Pa.C.S. §§501-508 and 1 Pa.Code Chapters 31-35, pertaining to the Charter School's Appeal. (Exhibit 45 and Exhibit 46 of the Certified Record.)
20. Oral arguments were made before CAB on July 27, 2004, wherein the Charter School and the School District were each given an opportunity to verbally articulate their respective positions concerning the Charter School's Appeal.

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

1. The Charter School Law, (CSL) Act of June 19, 1997, P.L. 225, No. 22, 24 P.S. § 17-1701-A, et seq., governs the application and approval process for Charter Schools in Pennsylvania.
2. Section 17-1717-A(e)(2) of the CSL, 24 P.S. § 17-1717-A(e)(2), sets forth the factors to be used in the evaluation of the proposed Charter School Application:
  - (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing under subsection (d).
  - (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.

- (iii) The extent to which the application considers the information requested in Section 17-1719-A and conforms to the legislative intent outlined in Section 1702-A.
  - (iv) The extent to which the charter school may serve as a model for other public schools.
- 3. The Charter School has demonstrated that there is sustainable support for the Charter School program by teachers, parents, other community members and students as mandated by Section 17-1717-A(e)(2)(i).
- 4. The Charter School has shown that it is capable in terms of support and planning to provide a comprehensive learning experience to students who would enroll in the Charter School, as mandated by Section 17-17-A(e)(2)(ii).
- 5. The Charter School has demonstrated that it will serve as a model for other public schools, as mandated by Section 17-1717-A(e)(2)(iv).
- 6. The Charter School has submitted a viable financial plan and auditing process for the Charter School, as mandated by Section 17-1719-A(9).
- 7. The Charter School identified the address of the Charter School building and that the Charter School is the owner of the building, which satisfies the requirements of Section 17-1719-A (11).

#### **IV. DISCUSSION**

The School District based its decision to deny the Charter School's second application for a charter primarily upon four (4) deficiencies.<sup>1</sup> In reviewing the School District's decision and the Charter School's objections to the decision, CAB concludes that the School District improperly rejected the Charter School's second application. As such, CAB grants the Charter School's Petition of Appeal.

---

<sup>1</sup> For purposes of the discussion of its decision, CAB has combined the numerous deficiencies articulated by the School District in its letter dated April 5, 2004, into four (4) distinct issues.

**A. Demonstrated, Sustainable Support for the Charter School Plan**

The School District, in denying the Charter School's second application, concluded that it failed to demonstrate that there is sustainable support for the Charter School by teachers, parents, other community members and students. To reach this conclusion, the School District found that the Charter School failed to demonstrate that it "will be capable of attracting 350 to 525 students as proposed in the application."<sup>2</sup>

Section 17-1717-A(e)(2)(i) of the CSL, mandates that a Charter School Application must be evaluated by the local board of School Directors based upon criteria which include:

"The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d).

24 P.S. § 17-1717-A(e)(2)(i)

The Charter School argues that the Certified Record is replete with evidence of demonstrated, sustainable support for the Charter School plan by teachers, parents, other community members and students. The Charter School, to support its claim, specifically identifies petition signatures, letters of support, volunteer signatures and letters of intent to enroll potential students. CAB has thoroughly reviewed the record in this case and agrees with the Charter School that the record contains sufficient documentary evidence to demonstrate that there is a broad level of community support for the Charter School.

The School District does concede, in its deficiency letter, that there is sustainable support for a Charter School that would serve approximately two hundred (200) students. However, the School District denied the Charter School's second application as the School District, "does not believe that sustainable support exists for BCCCS to serve 350 students, let alone 525 students as proposed in the application."<sup>3</sup>

CAB has reviewed the Certified Record and, specifically, the Charter School's second application and has determined that the Charter School intends to enroll 250 students for its

---

<sup>2</sup> Exhibit 42 at pages 9-10 of the Certified Record.

<sup>3</sup> Exhibit 42 at page 8 of the Certified Record.

first year of operation, and then projects increasing its enrollment by between 50 to 75 students each year. The School District argues that sustainable support does not exist for the Charter School's plans for expansion after its initial opening. CAB rejects this argument and the corresponding interpretation of the CSL, which would require a Charter School applicant to provide sustainable support for not only the initial opening and operation of the Charter School, but for all expansion plans for the Charter School. CAB finds no basis in the CSL for such a broad interpretation of this criterion.

The Commonwealth Court has held that when determining whether an applicant has established demonstrated, sustainable support, that such support is measured in the aggregate and not by individual categories. Carbondale Area v. Fell Charter School, 829 A.2d 400, 405 (Pa. Cmwlth. 2003). As such, CAB concludes that the Charter School has successfully demonstrated that, in the aggregate, there is demonstrated sustainable support for the Charter School plan as presented by the Charter School's second application.

**B. The Charter School's Association with Mosaica Education, Inc.**

Next, the School District focuses on the Charter School's partnering with Mosaica Education, Inc. (Mosaica). The School District argues that, because Mosaica allegedly failed in other Pennsylvania Charter Schools and because other Mosaica managed schools possess statewide testing results lower than that of Pennsylvania public schools, the Charter School's partnering with Mosaica provides grounds to deny the Charter School's second application. Specifically, the School District alleges that the Charter School, through its association with Mosaica, will not provide a comprehensive learning experience nor will the Charter School serve as a model for other public schools.

The School District, in its deficiency letter of April 5, 2004, thoroughly outlines its allegation that Mosaica's contract has been terminated by three (3) of seven (7) Pennsylvania Charter Schools and concludes that these contract terminations provide evidence that Mosaica will be unable to provide the proper support to the Charter School in

this case.<sup>4</sup> To further illustrate its argument as to Mosaica's inadequacies, the School District articulates a comprehensive analysis of State Assessment results of Mosaica Charter Schools when compared with Pennsylvania public schools.<sup>5</sup>

The School District then posits that CAB, in the past, has relied upon the prior success of a particular "for profit" charter school management company to support the approval of a Charter School Application. As a result, the District now seeks to apply the reverse logic. CAB, however, rejects this argument and asserts that the School District is not properly articulating CAB's position concerning the partnering of Charter Schools with "for profit" charter school management companies.<sup>6</sup> CAB, in the past, has addressed whether the CSL prohibits a Charter School applicant from hiring a "for profit" school management company. See, e.g., Collegium Charter School v. West Chester Area School District, CAB 1999-9. The CSL would not allow CAB or a Board of The School Directors to approve or reject a charter application solely on the basis of the prior track record of the chosen management company.

In addition, as properly articulated in the Charter School's Brief, it is the Charter School's Board that has the full power over every aspect of the Charter School's operation and not Mosaica. If the Charter School's Board believes that Mosaica is failing in its duties then the Charter School can terminate the contract.

Based upon all of the above, CAB concludes that the School District improperly denied the Charter School's Application based upon its partnering with Mosaica.

---

<sup>4</sup> Exhibit 42 at pages 10-12 of the Certified Record.

<sup>5</sup> Exhibit 42 at pages 13-18 of the Certified Record.

<sup>6</sup> At oral argument, the School District's counsel referenced the case of Lehigh Valley Academy Regional Charter School v. Bethlehem Area School District and Saucon Valley School District, CAB 2000-12 & 13, to support the School District's argument that CAB has used the prior successes of a management company to support the approval of a charter application. In Lehigh, CAB stated that it was familiar with the Paragon Curriculum used by Mosaica and that it was "designed to prepare students to be creative, intuitive and analytical thinkers with a solid understanding of the history of ideas." Lehigh, at p. 11. CAB also noted that Lehigh had presented evidence that this curriculum was successful in other Mosaica managed schools. Although CAB noted Lehigh's evidence that the curriculum was successful in other schools, CAB found that Lehigh showed it was capable of providing a comprehensive learning experience based on all the evidence in the certified record.

**1. Capability to Provide a Comprehensive Learning Experience**

Section 17-1717-A(e)(2)(ii) mandates that a Charter School Application must be evaluated based upon criteria that include the applicant's capabilities, in terms of support and planning, to provide a comprehensive learning experience to students pursuant to the adopted charter. 24 P.S. §17-1717-A(e)(2)(ii).

The School District, in denying the Charter School's second application, concluded that the Charter School's association with Mosaica prevents the Charter School from providing a comprehensive learning experience to students. As articulated above, the School District points to Mosaica's terminated contracts in Pennsylvania and to statewide testing results of other Mosaica managed schools to support the School District's denial of the Charter School's second application.

The Charter School argues that, to the contrary, the School District's objections to the Charter School's agreement with Mosaica are not proper nor are they supported by the CLS. We agree.

As articulated above, CAB disagrees with the School District that the Certified Record supports the School District's denial because of the Charter School's association with Mosaica. CAB has reviewed the evidence contained in the Certified Record and introduced by the School District to support its position that Mosaica has failed in Pennsylvania. CAB concludes that there is no compelling evidence to support the School District's contention that the Charter School, through its association with Mosaica, is unable to provide a comprehensive learning experience to students. To the contrary, CAB's review of the record supports the finding that the Charter School is capable of providing comprehensive learning experiences to students.

## **2. Serving as a Model for other Public Schools**

The School District, in denying the Charter School's second application, also contends that the Charter School's partnership with Mosaica renders the Charter School unable to serve as a model for other public schools. To support this assertion in its deficiency letter, the School District again points to Mosaica's terminated contracts in other Pennsylvania Charter Schools and that statewide testing results of other Mosaica managed schools are lower than Pennsylvania public schools.

Section 17-1717-A(e)(2)(iv) of the CSL requires that a Charter School Application shall be evaluated by various criteria including, but not limited to:

"The extent to which the charter school may serve as model for other public schools."

24 P.S. § 17-1717-A(e)(2)(iv).

CAB concludes that the School District erred in denying the Charter School's second application based upon Mosaica's terminated contracts in Pennsylvania and the test assessment scores of other Mosaica managed schools. CAB agrees with the Charter School's position that because the Board of Directors has the full power over every aspect of the Charter School's operation, it has and retains the ability to terminate its association with Mosaica if the management company fails to provide adequate services to the Charter School.

The Charter School, at this juncture of the proceedings, now knows Mosaica's alleged shortcomings through the Exhibits presented by the School Board and made a part of the Certified Record. However, the Charter School has chosen to continue its business relationship with Mosaica. Neither the School District nor CAB can substitute its judgment for that of the Charter School concerning its relationship with Mosaica. As long as the Charter School applicant fulfills the requirements of the CSL concerning an application for a charter, then the School District has no choice but to grant the application. In this case,

CAB concludes that the School District improperly denied the Charter School's second application on the basis of its association with Mosaica.

**C. The Ownership and Lease Arrangements of the Physical Facility**

The School District, in its consideration of the Charter School's first application, articulated numerous concerns about the use of the former Bear Creek Elementary School as the facility to be utilized by the Charter School. However, in its letter of deficiencies in this case, the School District concedes that the Charter School, in its second application, responded to these concerns relating to, "zoning issues, school renovations and occupancy permits."<sup>7</sup> However, the School District objected to the Charter School's plan to transfer ownership of the school site to another entity in an alleged attempt to increase revenue.

The Charter School, in its second application, set forth clear ownership of the physical facility that is to be used for the Charter School.<sup>8</sup> However, the Charter School in its second application then sets forth its intention to transfer ownership of the physical facility and asserts:

"The Board of Trustees has set up the Bear Creek Foundation. The Foundation will receive transferred ownership of the facility and will lease the building to the charter school. The lease funds will be maintained by the foundation and used for purposes of building expansion and ongoing renovations that will accommodate the projected enrollment growth of the school. This arrangement allows the charter to receive a 30% return of the lease cost through the State in accordance with Act 35, which provides for, 'charter school facility lease reimbursement' funds. See Appendix (2)."<sup>9</sup>

Based on this alleged transfer to the Bear Creek Foundation, the School District objected to the Charter School's intention to transfer ownership. The School District's objections to this proposed transfer are: (1) there is no information regarding the Bear Creek Foundation; (2) the proposed lease was not included in the application; (3) there is no evidence that the proposed lease would qualify for lease reimbursements; and (4) there

---

<sup>7</sup> Exhibit 42 at page 19 of the Certified Record.

<sup>8</sup> The Application set forth that, "the Bear Creek Community Charter School has been the recipient of a gift in the form of the former Bear Creek Elementary School facility. The deed has been signed and the transfer is finalized." Exhibit 3 at page 77 of the Certified Record.

<sup>9</sup> Exhibit 3 at page 78 of the Certified Record.

is no evidence that the Department of Education would approve the proposed lease. Based on these objections, the School District concluded that the Charter School has failed to adequately describe ownership of the physical facility and any lease arrangements as required by the CSL.

Section 17-1719-A(11) of the CSL, requires that an application must include:

"A description of an address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements."

24 P.S. §17-1719-A(11).

CAB disagrees with the School District's position that the Charter School's intention to change ownership of the physical facility and the lack of specificity concerning the Foundation and the lease arrangements do not satisfy the requirements of the CSL. The Charter School currently owns the facility of the proposed Charter School. Since the Charter School owns the facility, there would not be, at this point, any lease arrangements to be provided.<sup>10</sup> Simply because the Charter School asserts that it will transfer ownership of the facility to a foundation in the future does not support the School District's position that the Charter School failed to meet the requirements of Section 1719-A(11) of the CSL. All the law requires is the address of the facility, the ownership and any lease arrangements. The Charter School has complied with these requirements – there are currently no lease arrangements because the Charter School owns the facility.

The Charter School states that it will transfer ownership to a foundation and seek reimbursement of lease payments from the Department of Education. Whether the Charter School will be entitled to such lease reimbursement is a decision for the Department of Education. Moreover, approval of any lease ultimately developed and provision of reimbursement for rent are not considerations in the charter application approval process.

---

<sup>10</sup> In other decisions, CAB has not required that a signed lease be provided in the application. CAB has only required charter schools to identify the location of the facility, the ownership, and any lease arrangements in a general way. See, Phoenix Academy Charter School, CAB No.199-10.

CAB's authority is to determine if the Charter School met the requirements of the CSL, which it has done.

Thus, CAB concludes that the School District improperly rejected the Charter School's second application based on alleged deficiencies concerning the ownership and lease arrangements of the physical facility. The Charter School's second application is found to satisfy the requirements of section 1719-A(11) of the CSL.

**D. Ability to Provide a Financial Plan to Support/Sustain the Proposed Charter School**

The School District, in denying the Charter School's second application, finally objected to the Charter School's financial plan. To support its argument that the Charter School's second application fails to present a sound financial plan, the School District articulates three areas of concern contained in the Charter School's budget. The School District asserts that the Charter School's budget: (1) overestimates revenues; (2) underestimates expenses; and (3) contains over inflated Per Pupil Costs. CAB has thoroughly reviewed the budget as submitted by the Charter School in its second application and disagrees with the School District's position that the budget fails to comply with the mandates of law.

**1. Overestimated Revenues**

The School District contends that three specific items contained in the Charter School's 2004-2005 budget are "inconsistent with the law and [that the budget] heavily relies upon borrowing to 'balance' its budget ..." <sup>11</sup>

The first alleged overestimated revenue item is \$448,900 in revenues from, "proceeds from extended term financing." The School District asserts that, "The source of that line item is only vaguely explained, with \$149,350 of that amount to be provided by unspecified local vendors." <sup>12</sup> In essence, the School District is requiring the Charter School to explain in detail the source of each and every loan that the Charter School plans to utilize

---

<sup>11</sup> Exhibit 1 at page 20 of the Certified Record.

<sup>12</sup> Exhibit 1 at page 20 of the Certified Record.

in order to open and successfully operate the Charter School during its first year of existence. CAB disagrees that such a requirement is mandated by the CSL. CAB has carefully reviewed the budget as it pertains to the \$448,900 loan and has concluded that the budget as to this issue complies with the law's requirements. CAB believes that the source of a line item in the budget concerning the identify of a lender is too broad an inquiry for the School District to make when considering the adequacy of a financial plan of a proposed Charter School.

The second and third objections concerning overestimated revenues concern a \$40,000 anticipated line item in revenue from payments under Act 35 of 2001 and a \$20,000 line item in revenue from "State Share of Retirement Contributions."<sup>13</sup> As previously articulated, CAB has reviewed the budget in detail and finds that it conforms to all of the requirements of the law. Two line items, which total only 3% of the overall first year proposed budget of the Charter School, are not considered by CAB to constitute evidence of inadequate financial planning nor do they run afoul of the CSL. On this basis, the CAB rejects the School District's analysis as it applies to alleged overestimated revenues in the Charter School's second application.

## **2. Underestimated Expenses**

The School District, in concluding that the Charter School's proposed financial plan is inadequate, highlighted three areas where the Charter School allegedly underestimated expenses. The School District, in two of these instances, compares the budget of the proposed Charter School with that of the School District itself.

CAB disagrees with the School District's analysis concerning the comparison between budgetary items of the School District and the same budgetary items pertaining to the proposed Charter School. CAB finds that there is no basis in law for the School District to deny a Charter School Application based on such an analysis.

---

<sup>13</sup> Exhibit 42 at page 21 of the Certified Record.

The School District also claims that the Charter School has underestimated expenses, as the Charter School's budget does not thoroughly explain how the teacher bonuses will be financed. Again, the School District has imposed a requirement upon the Charter School that is not required by the law. As previously articulated, CAB has thoroughly reviewed the budget that is contained in the Charter School's second application and finds that it complies with the mandates as set forth in the CSL.

**3. The Charter School's Per Pupil Costs**

The last aspect of the School District's argument that the Charter School has failed to provide a sound financial plan concerns a comparison of the Charter School's Per Pupil Costs with those of the School District's Per Pupil Costs. CAB disagrees with this analysis, as previously articulated, and finds that the CSL contains no such basis for the School District to deny an application based upon a comparison between the Per Pupil Costs of the School District and that of the Charter School. As such, CAB rejects the School District's analysis as it applies to alleged underestimated expenses and per pupil costs in the Charter School's second application.

**ORDER**

**AND NOW**, this 4th day of September, 2004, based upon the foregoing and the vote of this Board<sup>14</sup>, the Appeal of the Bear Creek Community Charter School is **GRANTED** and the Board of Directors of the Wilkes-Barre School District is hereby directed to grant the application and sign Bear Creek Community Charter School's charter pursuant to Section 1720-A of the Charter School Law.

For the State Charter School Appeal Board,

\_\_\_\_\_/s/\_\_\_\_\_  
Gerald L. Zahorchak  
Chairperson

Date Mailed: September 7, 2004

---

<sup>14</sup> At the Board's August 31, 2004 meeting, the appeal was granted by a vote of 5-0, with members Bunn, Giorno, Reeves, Shipula, and Zahorchak voting to grant the appeal. Members Melnick and Salinger-Lerner were absent.