

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
CHARTER SCHOOL APPEAL BOARD**

IN RE:

Vitalistic Therapeutic Center Charter School	:	
Appeal from Denial of Charter School	:	Docket No. CAB 1999-6
Application by Bethlehem Area School District	:	

Synopsis

The Bethlehem Area School District (“School District”) denied both the original application and the revised application of the Vitalistic Therapeutic Center Charter School (“Charter School”) for various reasons. Relying on the findings of fact, the conclusions of law and the discussion set forth below, the Charter School Appeal Board (“Appeal Board”) concludes that the School District’s denial of the charter was proper.

In approving the action of the School District, the Appeal Board concurred with the School District that the Charter School’s application lacked necessary information as required by the Charter School Law in Section 17-1717-A(e)(2). Specifically, the Appeal Board found that the Charter School did not adequately demonstrate sustainable support for the Charter School from parents and the community members. See 24 P.S. § 17-1717-A(e)(2)(i). Additionally, the Appeal Board concluded that the Charter School failed to demonstrate sufficiently its capability, in terms of support and planning, to provide a comprehensive learning experience to children enrolled in the Charter School. See 24 P.S. § 17-1717-A(e)(2)(ii). Thus, the Appeal Board concluded that the School District’s action denying the Charter School’s applications was proper notwithstanding the Appeal Board’s rejection of the other three grounds for denial.

FINDINGS OF FACT

1. For twenty-seven years, Vitalistic Therapeutic Center, Inc. (“Vitalistic Center”) has provided educational and therapeutic services to children of the Lehigh Valley community who have various disabilities, development delays and social/emotional needs. Certified Record, Item A, Executive Summary.
2. Vitalistic Center has been licensed as a partial hospital program for fifteen years and has a treatment team of a board certified psychiatrist, human services professionals and direct-care counselors who design and maintain individual treatment plans for the children. Certified Record, Item A, p. 5.
3. To continue to provide these services and to secure a stable funding stream, Vitalistic Center proposed to establish a charter school, the Vitalistic Therapeutic Charter School of the Lehigh Valley (the “Charter School”). Certified Record, Item A, Executive Summary.

4. On or about November 12, 1997, Naomi Grossman, Executive Director of Vitalistic Center submitted to the Bethlehem Area School District ("School District") a charter school application (the "Original Application") on behalf of the Charter School. See Certified Record, Item A.
5. The Charter School's philosophy integrates expressive therapies, developmental services, and educational curriculum. Certified Record, Item A, p. 2. The goal of the Charter School is to prepare these "at risk" children to function and succeed at a later point in the public school system. Id. "At risk" children are children needing individualized education plans and therapeutic interventions due to exposure to poverty, substance abuse, family instability, or developmental disabilities. Certified Record, Item A, p. 3.
6. Vitalistic Center will provide therapeutic services to the Charter School as well as other services and materials such as leasing of space for the school and securing employee background checks. Certified Record, Item A, p. 19. An interdependent relationship is envisioned for these two entities. Id.
7. The educational program of the Charter School follows the traditional model with curricula similar to those adopted by the Lehigh Valley public schools. Certified Record, Item A, p. 3. However, the proposed classroom size is twelve children, a teacher, counselor and an assistant teacher. A Personal Development Achievement Plan will be developed for each child based upon the results of "curriculum-based educational tests, as well as social and psychiatric screening." Id at p. 4. Additionally, a mental health program will be implemented and designed for each child. Id.
8. As a means of evaluating "at risk" children, the Charter School will perform an in-depth interview prior to enrollment as a means of ascertaining the internal construct and dynamics of the child and his or her family. Certified Record, Item A, p. 5. Although the child will be the focus of the educational/therapeutic program to be offered, the family component will be a critical part of the Charter School's program. Id. There will be an attempt to improve parenting skills and support families in managing family stressors. Id.
9. The Charter School intends to be a model in assisting public schools in assessing the following issues affecting children: specific disabilities, temporary reactive responses to changes, recurrent aberrant thinking and behavior and expected reactions and future problems for children exposed to ongoing antisocial family behaviors. Certified Record, Item A, p. 7.
10. The majority of the members of the Charter School's Board of Directors are residents of Allentown rather than Bethlehem. Certified Record, Item E, p. 3; Item K, p. 1. However, several Board members own businesses or property in Bethlehem and the majority of Vitalistic Center employees are residents of Bethlehem. Certified Record, Item K, p. 1.
11. Several letters supporting the Charter School, from individuals associated with various educational, civic and professional organizations throughout the Lehigh Valley community but

not specific to the Bethlehem community, were appended to the Original Application¹. Certified Record, Item A, Attachment II 3-B-4.

12. The Charter School provided insurance coverage information for Vitalistic Center as part of its Original Application. Certified Record, Item A, Attachment IV.

13. The School District developed "Hurdle and Additional Criteria" for the Charter School to meet in addition to the statutory requirements set forth in the Charter School Law. 24 P.S. Sections 15-1504 et seq., P.L. 30, No.14, art. XVII-A added June 19, 1997, P.L. 225, No.22, Sec. 1. Certified Record, Item B.²

14. A public meeting of the School District's Board of Directors ("School Board") was held on January 20, 1998. Certified Record, Item E, p. 1. At the meeting, Ms. Grossman made a presentation concerning the Charter School and its application. Certified Record, Item E, p. 1-2; Item F.

15. At the next public meeting on January 26, 1998, the School Board heard public comments concerning the Original Application. Certified Record, Item E, p. 1-2; Item I, p. 1. Twelve people spoke in favor of the Original Application. *Id.* at p. 2. All twelve speakers were

¹ The organizations offering letters of support included Cedar Crest College, Kutztown University, Muhlenberg University, the United Way of the Greater Lehigh Valley, Lehigh Valley Child Care Inc. (Allentown), Corestates Bank (Allentown) and France & Anderson, P.C. (Allentown). Certified Record, Item A, Attachment II 3-B-4.

² The Charter School Law enumerates certain criteria to be considered by a school district when evaluating a charter school application but does not limit the school district to those criteria alone. 24 P.S. Section 17-1717-A(e)(2). Therefore, a school board may develop additional criteria, which are consistent with the intent and the requirements of the Charter School Law. The School District developed "Hurdle and Additional Criteria" which included the following:

- (a) Does the proposal include the information required by Section 1719-A of the Charter School Law?
- (b) How does the proposal provide education which is significantly different from that which is currently available in the Bethlehem Area School District and satisfy applicable state curriculum requirements?
- (c) What are the unique qualifications of your professional staff which will allow you to accomplish an educational program which is significantly different from that which is currently available in the Bethlehem Area School District?
- (d) Does the proposed charter school have the appropriate physical facilities to accomplish an educational program which is significantly different from that which is currently available in the Bethlehem Area School District?
- (e) How does the proposal demonstrate evidence of sustainable support for the charter school plan from teachers, parents, local community members and students?
- (f) Is there a plan to evaluate and report the attainment of student performance? and
- (g) Is there a five year financial plan for the charter school? *Certified Record, Item B.*

The "Hurdle and Additional Criteria" present a mixture of items that restate or expand upon the statutory criteria as well as others which clearly exceed the bounds of the law. For example, we note that requiring the Charter School to show how its program is "significantly different from that offered by the district" is contrary to both the legislative intent and the language of the Charter School Law. Notwithstanding these distinctions, Ms. Grossman submitted written responses to the District's Hurdle and Additional Criteria on December 11, 1997. *Certified Record, Item B.*

Because the School District's denial letter dated September 29, 1998 does not cite a failure of the Charter School to meet these additional criteria as any basis for denying the Charter School Application, we find that the School District's ultimate denial of the Charter School Application was not based upon these additional criteria. *See Certified Record, Item E.* Thus, we need not make a finding with respect to the individual items included in "Hurdle and Additional Criteria."

residents of the School District. Id. Of these speakers, six were parents of school-aged children and the others were teachers of Vitalistic Center. Id. The teachers spoke in favor of the Charter School and also signed a petition in the Original Application as a sign of their commitment to the Charter School. Certified Record, Item A, Attachment I, 4.B-2.

16. On March 16, 1998, at a public meeting, the Board denied approving the Original Application by a nine to zero vote. Certified Record, Item J. By letter dated March 19, 1998, the Board notified the Charter School of its decision to deny the Original Application (First Denial Letter). Id. The following areas were cited as being deficient: (1) demonstrated and sustainable support for the charter school by teachers, parents, other community members and students, (2) capability of the Charter School, in terms of support and planning, to provide comprehensive learning experiences to students; (3) mission and education goals of the Charter School, the curriculum to be offered and the methods of assessing whether students are meeting the educational goals, (4) admission policy and criteria for evaluating the admission of students, (5) financial plan and audit provisions, (6) adequate liability and other appropriate insurance for the Charter School, its employees and the Board of Trustees of the Charter School and (7) the extent to which the Charter School may serve as a model for other schools. Id.

17. On or about April 30, 1998, Ms. Grossman submitted to the School District a revised charter school application (the "Revised Application"). Certified Record, Item A, Item E, p. 2.

18. The Revised Application included additional testing and detailed curriculum materials as well as a more detailed fiscal budget. Certified Record, Item A, Item B, item C and Item D.

19. The Revised Application also included a list of sixty-six school-aged children whose parents were committed to enrolling the children at the Charter School. Certified Record, Item A, p. 9-15. For each child on the list, the Charter School had a parental signature acknowledging the enrollment commitment. Id. Of these sixty-six children, twenty-eight were residents of Bethlehem. Certified Record, Item A, p. 9-15, Item E p. 3.

20. The Charter School anticipates that nineteen of the seventy-two enrollment slots for the 1999-2000 school year will be filled by children from Bethlehem. Certified Record, Item A, Item K, p. 2. In subsequent years, the Charter School projects that Bethlehem children will comprise twenty-percent of the Charter School's enrollment. Certified Record, Item K, p. 2.

21. The Revised Application did not include any proposed contracts or agreements addressing the provision of services, including therapeutic services, by Vitalistic Center to the Charter School.

22. The Revised Application indicates that children will be referred for enrollment at the Charter School by parents, "local social agencies," and school districts as well as through other means. Certified Record, Item A, p. 23. Additionally, enrollment priority will be given to Bethlehem residents, if Bethlehem grants the charter. Certified Record, Item K, p. 2.

24. The Revised Application provides the names of local insurance firms with whom the Charter School has engaged in preliminary discussions concerning insurance coverage. Based upon these preliminary discussions, insurance estimates are included within the Revised Application. Certified Record, Item A, Attachment IV; Item K, p. 5.

25. There is no indication in either the Original Application or the Revised Application that the Charter School applied as or intended to be a "regional charter school" as defined in the Charter School Law.³ Rather, the Charter School represented that it applied to the School District as a local charter school. Certified Record, Item K, p. 2.

26. On May 13, 1998, the Charter School submitted a written rebuttal dated April 27, 1998 (the "Rebuttal") to the District's First Denial Letter. Certified Record, Item K, p. 2

27. The Board declined to hold an additional public meeting regarding the revised Application. On July 6, 1998, Ms. Grossman submitted a written summary of what would have been the Charter School's presentation if another public meeting had been scheduled.

28. On July 30, 1998, the School Board by a seven to zero vote, denied the Revised Application. Certified Record, Item E, p. 3.

29. By letter dated September 29, 1998, the School District notified the Charter School in writing of the reasons for its denial of the Revised Application ("Second Denial Letter"). Certified Record, Item E.

30. The second denial letter lists the following as the reasons for the School District's denial of the Revised Application: (1) lack of demonstrated sustainable support for the charter school plan by teachers, parents, other community members and students; (2) lack of capability of the Charter School, in terms of support and planning, to provide comprehensive learning experiences to students; (3) failure to establish an admission policy and criteria for evaluating the admission of students as required by Section 1723-A; (4) lack of adequate liability and other appropriate insurance for the Charter School, its employees and its Board of Trustees, and (5) the extent to which the Charter School may serve as a model for other schools. Certified Record, Item E.

31. In accordance with the Charter School Law, the Charter School filed a Petition to Certify Signatures pursuant to the Charter School Law ("Signature Petition"). The Signature Petition was filed with the Northampton County Court of Common Pleas (the "Court") and certified by the Court pursuant to a decree dated April 23, 1999.⁴

³ During the Charter School Appeals Board Meeting held on July 30, 1999, under questioning from Board members, Ms. Grossman affirmed that the Charter School was not intended as a regional charter school. *Hearing Transcript, p. 105-107.*

⁴ The School District objected to the timeliness of the Signature Petition. The Court found it "uncontested that the necessary signatures were obtained within the 60 days of the denial" as specified by Section 1717-A(i)(2) of the Charter School Law. See Petition. In its Response to the Charter School's Petition to Appeal, the School District challenges the Signature Petition on several grounds including: (1) failure to file the Signature Petition with the Court within 60 days of the School District's written denial, (2) failure to give the School District timely notice of the Charter School's intention to file the Signature Petition and (3) untimeliness of the appeal. See Certified Record, Item CC, Bethlehem Area School District's Response to Vitalistic Charter School's Petition to Appeal, paragraph 4 and Memorandum of Law in Support of Respondent Bethlehem Area School District, Section 4(A). First, contrary to the School Board's representations, the Charter School Law contains no time limit for the filing of the Signature Petition with the Court. The statute only requires that the signatures be obtained within 60 days, not that the signatures be obtained and the petition be filed within that time. 24 P.S. §17-1717-A(i)(2)&(5). The appeal process here is governed exclusively by the Charter School Law, not by the Local Agency Law. Moreover, the proceeding in the Court of Common Pleas is not an appeal from a decision of the School District, as a local agency,

32. An amendment to the Charter School Law, Act 1999-36 enacted on June 26, 1999, specifically permits a charter school to limit admission to a "targeted populations composed of at-risk students." The Amendment defines "at-risk student" as "a student at risk of educational failure because of limited English proficiency, poverty, community factors, truancy, academic difficulties or economic disadvantage."

33. On July 1, 1999, the Charter School filed an appeal with the Charter School Appeals Board in accordance with the Charter School Law. Such appeal was accepted by the Charter School Appeals Board at its first meeting on July 1, 1999 and a hearing officer was assigned.

34. At the July 30, 1999 meeting of the Charter School Appeals Board, the certified record, including certain supplemental materials agreed upon by the parties, was presented by the hearing officer to the Charter School Appeals Board. Legal counsel for both parties, presented oral argument.⁵

CONCLUSIONS OF LAW

1. The Original Application, Revised Application, Rebuttal and Hearing Transcript clearly establish that the Charter School sought to be established as a local, as opposed to regional, charter school.

2. Because the Charter School sought a charter as a local charter school, the relevant community for purposes of the School District's analysis was Bethlehem.

3. The Charter School Appeals Board must give due consideration to the findings of the School District.

4. Giving due consideration to the School District's finding, the Charter School Appeals Board finds that the certified record supports the District's conclusion that there was a lack of demonstrated sustainable support for the Charter School plan from parents and community members within Bethlehem as required by Section 1717-A(e)(2)(I).

5. Giving due consideration to the School District's finding, the Charter School Appeals Board finds that the certified record supports the District's conclusion that the Charter School did not sufficiently demonstrate its capability, in terms of support and planning, to provide

but rather is for the purpose of establishing the Charter School's eligibility to appeal. The role of the Court is to "hold a hearing solely on the sufficiency of the application." 24 P.S. §17-1717-A(I)(5). The Court did this and specifically found that the signatures were obtained in a timely manner. Second, the lack of an appeal deadline before this Board does not create an unreasonable and absurd result. It is certainly reasonable not to insert an appeal deadline within a statutory scheme which prohibited the filing of an appeal with us until July 1, 1999. For these reasons these arguments of the School District are rejected.

⁵ In addition to legal counsel, representatives of the School District and the Charter School were requested to attend the July 30, 1999 meeting to be available to answer questions from members of the State Charter School Appeal Board. Ms. Grossman attended on behalf of the Charter School and answered questions. *See Hearing Transcript*. No representative of the School District was in attendance.

comprehensive learning experience to children because the specifics concerning the working relationship between Vitalistic Center and the Charter School were never established.

6. An Amendment to the Charter School Law, Act 1999-36 enacted on June 26, 1999, specifically permits a charter school to limit admission to "targeted populations composed of at-risk students." The Amendment defines "at-risk student" as "a student at risk of educational failure because of limited English proficiency, poverty, community factors, truancy, academic difficulties or economic disadvantage." "At-risk" students as defined by the Amendment are the "at-risk students" which the Charter School proposes to serve.

7. The Charter School made a reasonable showing of proposed liability and other appropriate insurance for itself, its employees and Board members as required by Section 1719-A(17) of the Charter School Law.

8. The Charter School demonstrated that it would serve as a model for other public schools as required by Section 1717-A(e)(2)(iv).

DISCUSSION

The School District denied the Original Application at its board meeting held on March 16, 1998 and listed the deficiencies of the Original Application in the First Denial Letter. Certified Record, Item J. The Charter School, in an effort to remedy the deficiencies delineated in the First Denial Letter, submitted the Revised Application and a Rebuttal to the School District's First Denial Letter. Certified Record, Item K. The School District denied the Revised Application at its Board meeting held on July 28, 1998 and listed the deficiencies of the Revised Application in its Second Denial Letter. Certified Record, Item E. For purposes of this appeal, the Charter School Appeals Board has assumed that any deficiencies which were not specifically listed in the Second Denial Letter, even though they were listed in the First Denial Letter, were remedied to the Board's satisfaction by the Revised Application.⁶ Therefore, this analysis focuses upon the deficiencies cited in the Second Denial Letter which are as follows: (1) lack of demonstrated sustainable support for the charter school plan by teachers, parents, other community members and students; (2) lack of capability of Charter School, in terms of support and planning, to provide comprehensive learning experiences to students; (3) failure to establish an admission policy and criteria for evaluating the admission of students as required by Section 1723-A; (4) lack of adequate liability and other appropriate insurance for the Charter School, its employees and its Board of Trustees; (5) the extent to which the Charter School may serve as a model for other schools.

⁶ The Second Denial Letter states that the reasons set forth in that letter, as well as "the additional criteria outlined" in the First Denial Letter constitute the basis for the denial. *Certified Record, Item E, p 9*. However, all of the reasons cited in the Second Denial Letter were cited in the First Denial Letter. Absent a specific acknowledgement by the School Board in the Second Denial Letter that a deficiency cited in the First Denial Letter was not remedied, the Charter School Appeals Board has assumed that such deficiency was remedied by the Revised Application.

1. Demonstrated and Sustainable Support for the Charter School Plan by Teachers, Parents, Other Community Members and Students as Required.

Section 17-1717A-(e)(2)(i) of the Charter School Law requires that an applicant for a charter school demonstrate sustainable support for the charter school plan by teachers, parents, other community members and students. As noted in the Rebuttal to the First Denial Letter, the Charter School applied to the School District as a local, as opposed to, a regional charter school.⁷ Certified Record, Item K, p. 2. Given the fact that the Charter School has requested that its Original Application and Revised Application be considered local charter school applications, the relevant community for purposes of the School District's review is the City of Bethlehem as noted by the School District in its Denial Letters. Although the Charter School emphasizes its twenty-five years of service to the Lehigh Valley community, the relevant community for purposes of establishing a local charter school within Bethlehem must be Bethlehem.

The School District found that the Charter School's Original Application and Revised Application failed to demonstrate sustainable support for the charter school plan by teachers, parents, other community members and students within the Bethlehem area. The School District found that the Charter School's Board of Directors consists mainly of individuals who are residents of Allentown, not Bethlehem. Certified Record, Item E, p.3. The Charter School countered this by noting that "several board members own businesses within the Bethlehem area and are property owners" and that "the majority of [Vitalistic Center] employees.... have been residents of Bethlehem." Certified Record, Item K, p. 1. The School District further acknowledged "letters of support from individuals associated with various educational, civic or professional organizations" contained in the Original and Revised Applications. Certified Record, Item E, p. 3. However, the School District found that these letters, although praising Vitalistic Center, did not contain evidence of support "to provide educational expertise, instructional support or funds to help defray start-up and/or operational expenses other than training/internship programs which are currently in place." Id.

Additionally, the School District found that of the twelve individuals speaking at the public meeting held on January 26, 1998, only six were parents of school-age children in Bethlehem. Furthermore, the Charter School anticipates that only nineteen of the seventy-two enrollment slots for the 1999-2000 school year would be filled by children from Bethlehem. Certified Record, Item E, p. 2. In subsequent years, the Charter School projects that Bethlehem children will comprise only twenty-percent of the Charter School's enrollment⁸. Certified Record, Item E, p. 3, Item K, p. 2. Although the Revised Application contains a list of sixty-six children committed to enrolling at the Charter School, only twenty-eight of the sixty-six children are from Bethlehem. Certified Record, Item E, p. 4.⁹ The School District did acknowledge that

⁷ The Charter School also submitted an application to the Allentown School District and sought approval as a local, not regional, charter school.

⁸ The Original Application and the Revised Application suggest that the Charter School will play a large role in the Allentown community. The Charter School also applied for a charter from Allentown and the certified record seems to suggest that Allentown is the community where there is stronger community and parental support of the Charter School.

⁹ The School District also questioned the "level of commitment" shown by the sixty-six children and their families listed in the revised Application. *Certified Record, Item E, p.4* . However, the Revised Application does not merely list potential enrollees; it has a parental signature beside each potential enrollee. Without evidence to the contrary, the School District should accept that the parents who permitted their children to be listed in the Revised

teachers signed a pledge to support the Charter School as set forth in the Original Application and that these teachers spoke in support of the Charter School during the public hearing held on January 26, 1998. Certified Record, Item E, p.3-4. The Board, however, questioned the teachers' commitment because they were current employees of Vitalistic Center and they might gain personally through increased job security if the Charter School was established. *Id.* Given the pledge signed by the teachers and the support shown by the teachers at the public meeting, the School District cannot legitimately question the motivation of these teachers who support the Charter School.

Giving "due consideration" to the findings of the School District as set forth in the Denial Letters, the Charter School Appeal Board finds that the School District's determination that the Charter School failed to demonstrate sustainable support for the charter school plan by parents, other community members and students within the Bethlehem area is supported by the record.¹⁰

2. The Capability of the Charter School, in terms of Support and Planning, to Provide Comprehensive Learning Experiences to Students.

One of the criticisms of the Charter School set forth by the School District in its First Denial Letter is a lack of specificity with respect to the proposed curriculum, including whether the curriculum meets the student performance requirements set forth in 22 Pa. Code Sections 5.1 *et seq.* In its Second Denial Letter, the School Board acknowledges that the Revised Application provides a "detailed package of materials setting forth its proposed curriculum and testing models." Certified Record, Item E, p. 5-6. Because the School Board makes this acknowledgement and does not note any curriculum deficiencies with respect to the curriculum of the Revised Application, the Charter School Appeal Board assumes that the revised curriculum was acceptable to the School Board.

Application and who signed their names are committed to sending their children to the Charter School. The Charter School made an attempt in its Revised Application to address the concern regarding student commitment raised by the School District in its First Denial Letter. The School District cannot simply "question" the level of commitment of these families without providing a basis for such skepticism.

¹⁰ The Original Application and the Revised Application suggest that the Charter School will play a large role in the Allentown community. The Charter School also applied for a charter from Allentown and the certified record seems to suggest that Allentown is the community where there is stronger community and parental support of the Charter School.

The School District also questioned the "level of commitment" shown by the sixty-six children and their families listed in the revised Application. *Certified Record, Item E, p.4* . However, the Revised Application does not merely list potential enrollees, it has a parental signature beside each potential enrollee. Without evidence to the contrary, the School District should accept that the parents who permitted their children to be listed in the Revised Application and who signed their names are committed to sending their children to the Charter School. The Charter School made an attempt in its Revised Application to address the concern regarding student commitment raised by the School District in its First Denial Letter. The School District cannot simply "question" the level of commitment of these families without providing a basis for such skepticism.

Ms. Grossman submitted a rebuttal to the hearing officer, dated July 9, 1999, which was directed towards the School District's Denial Letter of September 29, 1998. This rebuttal was also attached to the Charter School's brief. The School District, on August 11, 1999, submitted exceptions to this Board objecting, *inter alia*, to the acceptance of this document as supplemental evidence. We grant the School District's exception on this specific point. We find that Ms. Grossman presented written testimony to the Board subsequent to submission of the Revised Application. Moreover, we agree that the information contained in the rebuttal was not "previously unavailable" at the time of the School District's consideration of the Revised Application. Thus, it is not within our discretion to accept this as "supplemental information" under the law and it is rejected. 24 P.S. §17-1717-A(I)(6).

However, like the First Denial Letter, the Second Denial Letter questions how the curriculum can be implemented under the Charter School's proposed budget. Certified Record, Item E, p. 6. The School District determined that the "budget outlays for curriculum materials appear to be inadequate." *Id.* In apparent reaction to this criticism, the Revised Application contains a more detailed budget than that set forth in the Original Application. The School Board acknowledges that the Revised Application delineates anticipated funding from "Free and Reduced Lunch Programs" and Federal "Start Up Funds." Certified Record, Item E, p. 5, footnote 1. The School District criticizes the Charter School for not specifying why the "Charter School will be eligible for those funds and what steps, if any, have or will be taken to apply for those funds." *Id.* However, the Charter School's Rebuttal to the First Denial Letter states that applications for funding will be submitted upon approval of the charter and suggests that these figures are "realistic" based upon the experience of Vitalistic Center. Certified Record, Item K, p. 3. The School District fails to take into consideration the working relationship between Vitalistic Center and the Charter School and the twenty-seven years of experience of Vitalistic Center as set forth in the Applications even though the focus of its next criticism is the interplay between the two entities.

In both its First and Second Denial Letters, the School District expressed concerns about the ability of the Charter School and Vitalistic Center "to work together while coexisting separately." Certified Record, Item E, p. 6. The School District further noted that the Charter School has not provided "any proposed contracts or agreements delineating the rights and responsibilities of the Vitalistic Therapeutic Center and the proposed Charter School regarding the lease on the present facility, insurance, employee background checks, the providing of psychiatric and/or psychological services, etc." *Id.* Given the fact that the relationship between Vitalistic Center and the Charter School is integral to the provision of services by the Charter School, the Board's inquiry is appropriate. Neither the Original nor the Revised Application give any level of specificity concerning this working relationship. No proposed contracts or agreements were included in the Applications despite the heavy reliance of the Charter School on Vitalistic Center to provide the therapeutic services to the Charter School students. In Rebuttal, Ms Grossman simply states that Vitalistic Center and the Charter School "will enter into an agreement" but gives no particulars as to the content or parameters of such an agreement. Certified Record, Item K, p. 3. The School District's concerns regarding the scope and particulars of such an important agreement are valid.

We have given "due consideration" to the finding of the School District, as set forth in the Denial Letters, that the Charter School failed to demonstrate its capability to provide comprehensive learning experiences to students. We concur in this finding based upon our above discussion and, most particularly, because of the issues concerning the relationship between the Charter School and the Vitalistic Center and the services to be provided to the Charter School.

3. The Admission Policy and Criteria for Evaluating the Admission of Students Which Shall Comply with the Requirements of Section 1723-A.

The Denial letter dated September 29, 1998 focuses upon the Charter School's admission policy as stated in its Original Application. As the School District notes, the Original Application states that "since this school addresses the special needs of at risk children, admission is based on

identification through local social agencies and participating school districts." Certified Record, Item E, p. 7. The School District expresses concern that focusing admission on "at risk" children violates the Charter School Law which prohibits basing admission upon "measures of achievement or aptitude" or "status of a person with a disability." *Id.* The School District also expressed concern about what standards the "local social agencies" would use to evaluate the potential charter school students and the inaccessibility to the Charter School of those not associated with "local social agencies." *Id.*¹¹

The Revised Application, however, states that admission identification will be accomplished through "parents/guardians, local social agencies and participating school districts." Certified Record, Item A, p. 23. The School District's concern regarding the use of social service agencies is misplaced given that this is only one avenue of referral and given that parents and school districts will also be referring students. Ultimately, it is the Charter School which is responsible for evaluating potential students for admission into its program. It will perform such evaluation by means of an in-depth interview with the potential students and their families prior to enrollment. Certified Record, Item K, p. 4. The Revised Application further states, consistent with the Original Application, that the Charter School will address the special needs of "at-risk children, students needing support services and special education children." "At-risk" children as described throughout the Applications encompass a broad spectrum of children and does not focus upon "children with disabilities" or "measures of achievement or aptitude." Certified Record, Item A, p.3. Ms. Grossman in the Rebuttal Letter emphasizes that the Charter School is not intended to be a "special education program" but seeks to utilize an " educational setting to provide all children with interventions that are necessary for learning achievement." Certified Record, Item K, p.4. Additionally, as noted by Charter School counsel in his brief, an amendment to the Charter School Law, Act 1999-36 enacted on June 26, 1999, specifically permits a charter school to limit admission to "targeted populations composed of at-risk students."¹² The Amendment defines "at-risk student" as "a student at risk of educational failure because of limited English proficiency, poverty, community factors, truancy, academic difficulties or economic disadvantage." "At-risk" students as defined by the Amendment are the "at-risk students" which the Charter School proposes to serve.

Giving "due consideration" to the School District, the Charter School Appeal Board nevertheless finds that the School District's concerns regarding admission criteria are unfounded

¹¹ The School District also expressed concern that the Charter School is designed to serve primarily the Allentown area and does not have a strong base of support in Bethlehem. This is the same argument addressed under subheading 1 above and as such will not be readdressed here. The School District also expresses concern that, if it were to grant the charter, Bethlehem children would not be given priority of enrollment as required by the Charter School law. *Certified Record, Item E, p7.* The District ignores however, Ms. Grossman's representation in the Rebuttal that "the regulations of Act 22 regarding priority of admission for students from the local school district granting the charter will be in effect." *Certified Record, Item K, p.5.*

¹² Although we recognize that this amendment did not become effective until after the School District's decision on the application, the fact that this Charter School proposed to serve "at risk" students was not, in and of itself, a ground relied upon to disapprove the application. Even had it been, however, we can certainly take notice of this change in the law and, moreover, find this to be information that was "previously unavailable."

when evaluated against the Revised Application, the Charter School's rebuttal to the First Denial Letter, and the recent amendment to the Charter School Law.

4. How the Charter School Will Provide Adequate Liability and Other Appropriate Insurance for the Charter School, Its Employees and the Board of Trustees.

The School District found the Original Application deficient because it provided proof of insurance coverage for Vitalistic Center but did not include an insurance plan for the Charter School, did not show that the insurance covering the Vitalistic Center would cover the Charter School at no additional cost, and did not include a budgetary category for insurance coverage. Certified Record, Item E, p. 8. As noted by the School District, the Revised Application states that the Charter School will carry its own insurance coverage from local insurance firms and that preliminary discussions will be solidified once the charter is approved. Certified Record, Item E, p. 8, Item A, p. 20-21. The School District concluded that because the discussions were preliminary, the revised budget numbers "will not necessarily reflect the actual costs of insurance." Certified Record, Item E, p. 8. By presenting the Board with the insurance coverage currently in place for Vitalistic Center, the Charter School made a good faith attempt to provide the School District with some sense of the coverage that would be sought for the Charter School. Additionally, it is unrealistic to expect the Charter School to pay for insurance coverage, thereby providing the School District with "actual costs," for a Charter School which does not yet have a charter. The Charter School took reasonable steps to satisfy this criterion by providing the insurance coverage for Vitalistic Center, by engaging in preliminary discussions with named local insurance firms, and by providing the School District with budget estimates based on those discussions.

We, thus, find that the School District erred in denying the Revised Application for this reason. As discussed above, the Charter School clearly reacted to the School District's concerns about insurance and provided information to the district which meets the application requirement of the Charter School Law. 24 P.S. §17-1719(17).

5. The Extent to Which the Charter School May Serve as a Model for Other Schools

The Charter School intends to be a model in assisting public schools in assessing the following issues affecting children: specific disabilities, temporary reactive responses to changes, recurrent aberrant thinking and behavior and expected reactions and future problems for children exposed to ongoing antisocial family behaviors. Certified Record, Item A, p. 7. Although the educational program of the Charter School follows the traditional model with curricula similar to that adopted by the Lehigh Valley public schools, the proposed classroom size is twelve children, a teacher, counselor and an assistant teacher. Certified Record, Item A, p. 3-4. A Personal Development Achievement Plan will be developed for each child based upon the results of "curriculum-based educational tests, as well as social and psychiatric screening." Id at p. 4. Additionally, a mental health program will be implemented and designed for each child. As a means of evaluating "at risk" children, the Charter School will perform an in-depth interview prior to enrollment as a means of ascertaining the internal construct and dynamics of the child and his or her family. Id. at p. 4-5. Although the child is the focus of the educational/therapeutic program to be offered, the family component is a critical part of the Charter School's program. Id. There will be an attempt to improve parenting skills and support families in managing family stressors. Id.

The School District believes that the Charter School offers little if nothing more than programs the District already offers to “at-risk” students. Certified Record, Item E, p. 8.. However, the School District does not explain or analyze the similarities between its programs for at risk children and the program proposed by the Charter School. The School District finds that the Charter School’s only unique aspect is its smaller class size, which the District asserts to be a feature that cannot serve as a model for other schools because of fiscal realities. Id.

Giving "due consideration" to the School District, the Charter School Appeals Board nevertheless finds that the certified record does not support the School District's finding that the Charter School will not serve as a model for other schools. Even assuming, arguendo, that the only distinctive feature of the Charter School is smaller classes, that approach, if successful, could serve as a model that other public schools might wish to emulate, notwithstanding the cost thereof.

ORDER

AND NOW, this 18th day of August 1999, based upon the foregoing and the vote of this Board¹³, the September 29, 1998 decision of the Bethlehem Area School District denying the Revised Charter School Application of the Vitalistic Therapeutic Center Charter School is affirmed and the July 1, 1999 appeal of the Charter School is denied.

For the State Charter School Appeal Board,

Eugene W. Hickok
Chairman

¹³ At the Board's August 18, 1999 meeting, the appeal was denied by a vote of 5-1, with members Aliota, Bunn, Melnick and Hickok voting to deny the appeal and member Tait voting to grant the appeal.