

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

**In Re: Bucks County Montessori Charter School:**  
**Appeal from Denial of Charter** :  
**School Application by** : **Docket No. CAB 1999-7**  
**Pennsbury School District** :

**DRAFT ADJUDICATION**

**I. Findings of Fact**

1. Petitioner is the Bucks County Montessori Charter School (“BCMCS”), a nonprofit corporation incorporated under the laws of the Commonwealth of Pennsylvania and recognized as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986. (Exhibit 4, p. 44; Exhibit 5, Appendix L)<sup>1</sup>.

2. Respondent is the Pennsbury School District (“Pennsbury” or “School District”).

3. On November 17, 1997, the founding coalition of the BCMCS submitted a charter application to Pennsbury. Following public hearings, the Pennsbury Board of School Directors (“Board”) denied the application on February 9, 1998. (Exhibits 14, 15).

4. BCMCS submitted a revised charter application (“Application”) to Pennsbury on November 12, 1998, utilizing Pennsbury’s 1999-2000 Charter School Application Package (“Application Package”). (Exhibits 4, 5, 6).

5. BCMCS proposes to commence operation in the 2000-2001 school year as a school for kindergarten through sixth grade. Projected enrollment for the first year of operation

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<sup>1</sup> All exhibits referenced in this adjudication are contained in the Certified Record of Proceedings before the Board of School Directors of Pennsbury School District. If the exhibit includes attachments, references to specific pages within an attachment, as opposed to the entire attachment, consist of the letter that designates the attachment followed by the page number.

is 88 students; by the fifth year enrollment is projected to double to 176 students. (BCMCS Prehearing Statement, p. 4; Exhibit 4, pp. 2, 31, 32).

6. The proposed educational experience will be consistent with Montessori principles. Among the elements of the Montessori philosophy and methodologies that BCMCS will incorporate and which distinguish its program from the current Pennsbury curriculum are the following:

- Use of tactile materials for instruction, instead of just “chalk and talk” or a heavy reliance on workbook curricula.
- “Cosmic Education” that offers the child a vision of the universe on a grand scale and reflects the concept of the order and interrelatedness of all elements of the cosmos.
- Treatment of cultural subjects (e.g., anthropology, astronomy, biological sciences, chemistry, economics, geography, geology, government, history, philosophy, physics, political science and sociology) as a totally integrated curriculum rather than being broken down into separate subject matters.
- Integrating development of skills in language, mathematics, arts and crafts, foreign language, gymnastics and music as much as possible with the cultural subjects.
- Full-day kindergarten that will include practical life, sensory, cultural, mathematical and linguistic activities.
- Multi-age groupings, each encompassing three years.
- Foreign language instruction for all students, starting in kindergarten.
- Language instruction based on phonics rather than whole language; however, the reading program for the lower grades involves a whole language approach as well as phonics.
- Emphasis on writing before reading in language activities, with the real experience in reading and writing occurring through the child’s work in other areas of the curriculum such as geography, history and botany.
- Mathematics instruction based on number theory.

(Exhibit 4, pp. 9-14, Appendix B; Exhibit 13, Attachment 1, p. 5).

7. BCMCS will actively seek out opportunities for its students to participate in age-appropriate community service activities. (Exhibit 4, p. 26).

8. BCMCS will make arrangements with various community organizations, including Pennsbury, for the provision of extracurricular activities. (Exhibit 4, p. 26).

9. BCMCS will conduct a mandatory six-week summer orientation program for parents and children without previous Montessori experience to facilitate the transition of those students in the school. (Exhibit 4, pp. 9-10, 13).

10. BCMCS' approach to special needs students is distinct from Pennsbury's. The BCMCS classroom will be particularly adaptable to the needs of special needs students because of its emphasis on multi-sensory presentation, a multitude of hands-on work and inherent self-pacing of lessons. (Exhibit 4, p. 17).

11. Special education professionals have documented the particular effectiveness and suitability of a Montessori program for special needs students. (Exhibit 13, Attachment 8, Items A, D and E).

12. Children with physical disabilities, such as those in wheelchairs, are easily accommodated in the Montessori classroom because of the flexibility of seating. Students are not restricted to confined spaces or desks, and lessons are frequently conducted on the carpet or at tables. (Exhibit 4, p. 18).

13. The multi-sensory nature of the Montessori system readily allows for integration of students who do not speak English. (Exhibit 13, Attachment 1, p. 5, Attachment 8, Item D, p. 15).

14. Mary Callahan, who is both a reading specialist and a Montessori-trained teacher, will serve as the reading specialist on the BCMCS evaluation team. (Exhibit 13, Attachment 1, p. 2, Attachment 2, Item B).

15. BCMCS will hire a full-time, state-certified special educator to work with special needs students. It may have to hire a second special educator by the third year of operation. (Exhibit 4, pp. 18, 51, 63).

16. BCMCS will employ a part-time school psychologist. Although BCMCS has clearly identified a school psychologist in the first two years of operation, it is difficult to ascertain what accommodation BCMCS has made for this position in the third, fourth and fifth years. (Exhibit 4, pp. 31, 63; Exhibit 5, Appendix M).

17. Movement through the BCMCS educational program is based on the mastery of clearly stated core competencies (Exhibit 4, pp. 8, B-12—B-19, B-40—B-47, B-72—B-73, B-90—B-92, B-97, B-98, B-99, F-4).

18. The BCMCS student evaluation forms provide ample opportunity to document students' academic progress. (Exhibit 4, Appendix F).

19. BCMCS will administer the Pennsylvania System of School Assessment ("PSSA"), the standard assessment test required of public schools by the Pennsylvania Department of Education. It will not administer other standardized tests, such as those conducted by Pennsbury, since those tests are inconsistent with Montessori-based education. (Exhibit 4, p. 24; Exhibit 13, Attachment 1, pp. 6-7).

20. In addition, BCMCS will assess students through more subjective internal techniques unique to the Montessori system, including portfolios containing representative

samples of the student's work and daily and weekly contacts between the student and the teacher. (Exhibit 4, Appendix F).

21. BCMCS will use the standardized test results and the internal evaluations not only to determine the strengths and needs of individual students but also to identify appropriate adjustments to the curriculum. (Exhibit 4, pp. 24-25).

22. Responding directly to the specific pieces of information required by the Application Package, BCMCS furnished the address and a detailed description of the site under consideration; explained the suitability of the site for the proposed school, taking into consideration necessary renovations and compliance with applicable building codes and describing the services of the facility (e.g., heating, ventilation, lighting, sanitary condition and water supply); described plans for maintenance of the facility on both daily and extended bases; outlined steps taken toward acquisition of a facility or land; and described financing plans, consisting of a loan from Equi-Mor Holdings, Inc., which lends exclusively to charter schools. (Exhibit 4, pp. 54-57; Exhibit 5, Appendix N).

23. The proposed site consists of 5.14 acres of undeveloped land, zoned R2, located on Stoney Hill Road in Lower Makefield Township ("Lower Makefield"). BCMCS has entered into a real estate contract to purchase the land for \$300,000, which is contingent upon BCMCS's obtaining financing, suitable clearances for water and sewer permits and development permits from Lower Makefield. (Exhibit 4, p. 54).

24. During the first year of operation, the school's physical plant will consist of connected modular units housing five or six classrooms, administrative areas and meeting space. BCMCS will add more modular classrooms in succeeding years in accordance with its growth plan. BCMCS intends to lease the modular units from Wilmot Modular Structures, which has

also erected modular facilities for Pennsbury. (Exhibit 3, pp. 11-12, 37-38; Exhibit 4, p. 55; Exhibit 13, Attachment 1, pp. 7-8 and Attachment 10).

25. The BCMCS Application mentions the one-year lease of an existing commercial property as a back-up plan in the event of unforeseen delays in the land development process. In the event such delay affects the summer orientation session only, the Application mentions leasing of space from an existing school to conduct this session. (Exhibit 4, p. 55).

26. Under Pennsbury's charter school application criteria, zoning approval is not a prerequisite to the grant of a charter. Furthermore, it is not feasible for BCMCS to seek zoning approval from Lower Makefield until it has a charter. (Exhibit 3, pp. 29-38; Exhibit 6, p. 15).

27. BCMCS has retained an architect, an engineer and other consultants to prepare land use applications to Lower Makefield Township and will address issues of traffic flow at the site in the site development plans that it will submit to Lower Makefield as part of the land development approval process. (Exhibit 3, pp. 23, 34, 37; Exhibit 13, Attachment 1, p. 8).

28. The financial plan submitted by BCMCS contains a detailed summary of revenues and expenditures and three years of cash flow projections. (Exhibit 4, pp. M-1—M-5).

29. BCMCS has articulated the bases for its financial assumptions concerning the costs of land improvement and leases, insurance and liabilities, and salaries and benefits and also the anticipated revenues from per pupil allocations. (Exhibit 4, pp. 51-54; Exhibit 5, Appendix O; Exhibit 13, Attachment 1, pp. 3, 4, 8).

30. BCMCS has built into its proposed budget contingencies for lower than anticipated enrollment and more costly than anticipated renovations and purchases (Exhibit 3, pp. 19-20).

31. BCMCS has made provision for an annual audit by a certified public accountant. (Exhibit 4, p. 23; Exhibit 5, Appendix L—Bylaws, Article VI, Section 3, Article VIII, Section 1).

32. The BCMCS founding coalition consists of over 60 individuals of diverse professional backgrounds and includes both parents and educators (Exhibit 4, p. 41; Exhibit 5, Appendix J).

33. BCMCS assessed support for a charter school among Pennsbury residents through petitions, a telephone survey conducted by an independent telemarketing firm and an informal mail survey. A total of 424 residents signed the petitions; 21 percent of the 200 respondents to the telephone survey indicated an interest in sending their children to BCMCS; and 53 percent of the respondents to the mail survey indicated that they would be likely to send their children to the school. A variety of local organizations and institutions, including the Bucks County Center of LaSalle University, indicated their support. (Exhibit 4, pp. 39-40; Exhibit 5, Appendices H, I).

34. BCMCS will make available to teachers and other staff professional development opportunities, including attendance at workshops sponsored by Montessori organizations and participation in and utilization of Montessori professional organizations. (Exhibit 4, pp. 63-64).

35. A teacher at BCMCS functions as a guide or facilitator who allows each child to build upon his or her own strengths so that the child may reach full intellectual, social, physical and emotional potential in a classroom community. The teacher is the primary transmitter of the Montessori philosophy and is entrusted with assuring that the classroom environment will allow each student's initiative to flourish and with monitoring the students' progress toward stated Montessori objectives. (Exhibit 4, p. 41; Exhibit 5, Appendix R, pp. N-5—N-11).

36. Pennsbury reserved the right to establish criteria, in addition to the criteria set forth in the Charter School Law, for evaluating charter school applications and the criteria were to be included in a Board-approved application form.<sup>2</sup> Assuming *arguendo* that Pennsbury included additional criteria in its Application Package, it nevertheless evaluated certain areas of BCMCS's Application according to criteria not included in its Application Package, such as, technology, traffic issues, zoning approvals and accommodation of parents and students unable to attend the orientation session. Not only were these additional criteria not initially made known to BCMCS, Pennsbury raised these criteria for the first time in its January 25, 1999 Resolution denying the Application. (Exhibit 1, *passim*; Exhibit 6, *passim*; Exhibit 7, p. 8).

## **II. Conclusions of Law**

1. The Charter Law permits the State Charter School Appeal Board ("CAB") to arrive at findings of fact and legal conclusions different from the local board of directors and requires the CAB to set forth reasons it agrees or disagrees with the findings of the local board of directors.

2. The BCMCS Application demonstrates sustainable support for the charter school plan by teachers, parents, other community members and students, as required by Section 1717-A(e)(2)(i) of the CSL, 24 P.S. § 17-1717-A(e)(2)(i).

3. The BCMCS Application demonstrates the capability of the proposed charter school, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter, as required by Section 1717-A(e)(2)(ii) of the CSL, 24 P.S. § 17-1717-A(e)(2)(ii).

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<sup>2</sup> The Charter School Law allows the school district to establish additional criteria which must be addressed in a charter application if the additional criteria is consistent with the Charter School Law.

4. The BCMCS Application considers, in a comprehensive and responsive manner, the information requested in Section 1719-A of the CSL, 24 P.S. § 17-1719-A, as required by Section 1717-A(e)(2)(iii) of the CSL, 24 P.S. § 17-1717-A(e)(2)(iii).

5. The BCMCS Application sufficiently establishes the mission and educational goals of the proposed charter school, the curriculum to be offered and the methods of assessing whether students are meeting educational goals, as required by Section 1719-A(5) of the CSL, 24 P.S. § 17-1719(A)(5).

6. The BCMCS Application demonstrates an adequate financial plan for the proposed charter school and sufficiently sets forth the provisions which will be made for auditing the school under Section 437 of the Public School Code of 1949, as required by Section 1719-A(9) of the CSL, 24 P.S. § 17-1719(A)(9).

7. The BCMCS Application establishes how the proposed charter school will provide adequate liability and other appropriate insurance for the charter school, its employees and the board of trustees, as required by Section 1719-A(17) of the CSL, 24 P.S. § 17-1719(A)(17).

8. The BCMCS Application identifies how the academic curriculum of the proposed charter school will meet the academic requirements for student performance as set forth in 22 Pa. Code Chapter 4, relating to academic standards and assessment, as required by Section 1715-A(8) of the CSL, 24 P.S. § 17-1715(A)(8).

9. The proposed educational planning and program of BCMCS sufficiently complies with federal laws and regulations governing children with disabilities, as required by Section 1732-A(c)(2) of the CSL, 24 P.S. § 17-1732-A(c)(2).

10. The BCMCS Application conforms to the legislative intent outlined in Section 1702-A of the CSL, 24 P.S. § 17-1702-A, as required by Section 1717-A(e)(2)(iii) of the CSL, 24 P.S. § 17-1717-A(e)(2)(iii), in that it will operate as a method to accomplish the following:

- Improve pupil learning.
- Increase learning opportunities for all pupils.
- Encourage the use of different and innovative teaching methods.
- Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- Hold itself accountable for meeting measurable academic standards and provide a method to establish accountability systems.

11. The BCMCS Application demonstrates that the proposed charter school has the potential to serve as a model for other public schools, as required by Section 1717-A(e)(2)(iv) of the CSL, 24 P.S. § 17-1717-A(e)(2)(iv).

12. Pennsbury's determination that the BCMCS Application fails to satisfy the criteria set forth in Section 1717-A(e)(2) of the CSL, 24 P.S. § 17-1717-A(e)(2), is not supported by substantial evidence of record.

13. The *de minimis* deficiencies of an easily correctable or technical nature noted by Pennsbury do not constitute proper grounds for denying the Application.

14. When submitting its Application, BCMCS reasonably relied on Pennsbury's resolution denying the original charter school application, the Application Package and the

comments made at the public hearing as setting forth the criteria and standards by which Pennsbury would evaluate the Application.

15. Pennsbury's evaluation of certain areas of the Application, e.g., technology, traffic flow, zoning approvals and accommodation of parents and students unable to attend the summer orientation, were based on criteria presented for the first time in the Resolution denying the Application, which constitute novel and after-the-fact criteria. Thus, Pennsbury's decision is not in accordance with the CSL.

### **III. Discussion**

#### **A. History of the Proceedings**

On November 17, 1997, the BCMCS founding coalition submitted a charter application (Exhibit 14) to Pennsbury. Pennsbury conducted public hearings on December 18, 1997, January 8, 1998, and January 14, 1998 concerning the application. (Exhibit 15, p. 1). On February 19, 1998, the Board voted to deny BCMCS's application, citing thirty-seven deficiencies in the application. The main areas of concern were site and facilities, budget and finance, curriculum and special education (Exhibit 15).

BCMCS submitted a revised charter Application to Pennsbury on November 12, 1998 (Exhibits 4, 5), utilizing the Application Package (Exhibit 6). (It now proposes to begin operation in the 2000-2001 school year (BCMCS Prehearing Statement, p. 3).) The Board held a public hearing on this Application on December 17, 1998 (Exhibit 3). On January 8, 1999, BCMCS submitted supplemental information ("Supplement") to the School District (Exhibit 13). At its meeting on January 21, 1999, the Board voted to deny the Application. The reasons for denial were set forth in a "Resolution," dated January 25, 1999 ("Resolution"), which stated that

the information contained in the Application and the supplemental information provided were still “not sufficient to insure the integrity of the curriculum, a sound fiscal plan, an adequate facility, and accountable governance” (Exhibit 1, p. 3).

As required under the CSL, BCMCS then filed a petition with the Bucks County Court of Common Pleas seeking certification of its signature petitions. After the Court issued a decree, dated May 10, 1999, certifying the sufficiency of the signatures (Petition of Appeal, Exhibit B), the instant appeal followed.

Following a telephonic prehearing conference on July 20, 1999 before Michael H. Kline, Esquire, the appointed hearing officer, the parties determined that an evidentiary hearing was not necessary and that the appeal could be decided upon the record created before Pennsbury. The parties submitted waivers, signed by counsel, indicating that they knowingly waived their rights, including the right to a hearing, under 2 Pa. C.S.A. §§ 501-508 and 1 Pa. Code Chapters 31, 33 and 35. In addition, the parties agreed to waive the statutory timelines set forth in Section 1717-A(i)(7)-(8) of the CSL, 24 P.S. § 17-1717-A(i)(7)-(8), for consideration and disposition of this appeal by the CAB.

Each party submitted proposed findings of fact, proposed conclusions of law and a brief or memorandum of law in support thereof. Neither party filed a reply brief. The parties presented oral argument before the CAB on November 8, 1999.

**B. Standard of Review**

The Charter Law requires the CAB to review the decision of the local board of directors and give “due consideration” to the findings of the local board of directors. 24 P.S. § 17-1717-A(i)(6). The CAB is also required to set forth, in a written decision, the reasons why it agrees or disagrees with the findings of the local board of directors. Additionally, the CAB is authorized

to allow the local board of directors and the charter applicant to supplement the record if the supplemental information was not previously available. Therefore, although the CAB's review is limited to the record before it and to any supplemental information accepted by the CAB, the CAB may make an independent review of the evidence and is not bound by the findings of the local school board. 24 P.S. § 17-1717 (i)(6).

**C. Review of Grounds for Denial**

**Introduction: The Legal Standards**

Pennsbury's decision cannot be affirmed because (1) it violates the CSL and (2) the factual findings underpinning it are not supported by substantial evidence. Either of these is in itself a legally sufficient ground for reversal of the decision.

The CSL mandates that Pennsbury consider certain enumerated factors when deciding whether to grant a charter school application. However, that list is not exclusive and Pennsbury is free to supplement it. 24 P.S. § 17-1717-A(e)(2). Pennsbury has availed itself of that flexibility by establishing a policy, expressed in its Qualitative Review Form, that it will set forth such additional criteria in a "board-approved application form" (Exhibit 7, p. 8). The criteria and standards on which BCMCS reasonably relied in revising and then supplementing its Application to meet Pennsbury's concerns consisted not only of the Application Package itself but also of the findings articulated by Pennsbury in the denial of the original application (Exhibit 15) and the comments made at the public hearing (Exhibit 3). Notwithstanding these various vehicles by which Pennsbury appropriately gave BCMCS notice of the concerns that it had to address, the deficiencies that it had to correct and the criteria that it had to meet on resubmission, Pennsbury in effect changed the rules at the end of the game by imposing additional criteria, identified for the first time in the Resolution denying BCMCS's Application. The injection of these novel

criteria after review of the Application was inappropriate and these criteria underly Pennsbury's determinations with respect to technology, zoning approvals, traffic flow and accommodation of parents or students unable to attend the summer orientation sessions.

The criteria presented for the first time in the Resolution represent an arbitrary and capricious attempt to block an otherwise meritorious application and an abuse of the discretion conferred by the CSL on school boards to develop and utilize additional criteria. Therefore, they violate both the spirit and the letter of the CSL and are not valid additional criteria under Section 1717-A(e)(2), 24 P.S. § 17-1717-A(e)(2). To the extent that Pennsbury's decision rests upon such criteria, it is not in accordance with the law. *See Slawek v. State Board of Medical Education & Licensure*, 586 A.2d 362, 365 (Pa. 1991). The courts have defined "arbitrary" as "being based on random or convenient selection or choice rather than on reason or nature." *Springfield Township v. Gonzales*, 632 A.2d 1353, 1356 (Pa. Commonwealth Ct. 1993). (Extending the long-standing principle that courts should not decide constitutional questions if cases can be decided on nonconstitutional grounds, *West v. Hampton Township Sanitary Authority*, 661A.2d 459, 469 (Pa. Commonwealth Ct. 1995), to this administrative proceeding, the CAB does not have to reach BCMCS's contention that Pennsbury's action in this regard violated BCMCS's rights to due process and fundamental fairness. This aspect of the case can readily be disposed of according to the arbitrary and capricious standard.)

Many of the findings upon which Pennsbury relies in denying the Application are completely unsupported by the record. These encompass Pennsbury's determinations on curriculum, assessment, English as a second language ("ESL"), facilities and site, financial viability and a category termed "equity." They thus fail to meet the requirement of the Administrative Agency Law that the record contain "substantial competent evidence" to support

the decision. *Cohen v. State Board of Medicine*, 676 A.2d 1277, 1280 (Pa. Commonwealth Ct. 1996). “Substantial evidence is defined as such relevant evidence which a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1279.

The remainder of the findings point out *de minimis* weaknesses of a readily correctable or technical nature—e.g., lack of curricular flow charts, failure to explain the assessment tools to be used by the special educator, erroneous use of terminology and reference to standardized test scores of questionable relevance in assessing elementary students—that do not rise to the level of substantial competent evidence to support denial of the Application. Pennsbury’s reliance on unsupported conclusions and its emphasis on relatively minor deficiencies offer further support for the conclusion that Pennsbury tried to establish as many grounds as possible for denial of the Application without regard to the qualitative or substantive significance of those grounds.

What follows is an item-by-item analysis of the deficiencies set forth in the Resolution:

### **1. Curriculum**

Pennsbury identifies seven deficiencies in the BCMCS curriculum (Exhibit 1, p. 4). The first is that the Application does not address Chapter 4, 22 Pa. Code § 4.11(c), the Pennsylvania Reading and Writing Standards (Section 1.2), standards for critical thinking skills and metacognition (Exhibit 1, p. 4, Item 1). According to Section 4.11(c), public education provides opportunities for students to (1) acquire knowledge and skills, (2) develop integrity, (3) process information, (4) think critically, (5) work independently, (6) collaborate with others and (7) adapt to change. Both the academic and the non-academic goals outlined in the Application encompass these elements (Exhibit 4, pp. 7-9, 11). A review of the language program (Exhibit 4, pp. B-8—B-19) demonstrates that the development of critical thinking skills and metacognition

is central to the language program and is consistent with Section 1.2 of the Pennsylvania Reading and Writing Standards.

The second deficiency cited is that the Application does not guarantee a complete literacy program and does not comply with the Pennsylvania State Standards for reading and writing because the BCMCS curriculum is characterized as “phonics based” (Exhibit 1, p. 4, Item 2). On the contrary, language is an important part of the whole Montessori curriculum. Once a child has an understanding that writing is a graphic form of language, the curriculum focuses on spelling, word study, penmanship, grammar, punctuation and capitalization. The real experience in reading and writing occurs through the child’s work in other areas of the curriculum. (Exhibit 4, p. B-5).

Within the Montessori framework, writing usually comes before reading. After being helped to acquire the necessary components to produce writing, children may write for several months before discovering that they can read back their own writing. Eventually they realize that they can read the writings of others. Reading is thus achieved through the child’s own creative writing. (Exhibit 4, p. B-5)

According to the Application, upon completion of the lower elementary program (grades K-3), students should demonstrate language skills in writing, speaking, reading, listening, literature-based experience and literary skills (Exhibit 4, pp. B-14—B-15). Upon completion of the entire elementary program, they should demonstrate language skills in writing, speaking, reading, listening, literature and linguistics and grammar (Exhibit 4, pp. B-16—B-19). These skills are consistent with a “complete literacy program.” That BCMCS has chosen to develop these skills in a different manner from Pennsylvania—by including the main experience in reading and writing in areas of the curriculum other than language activities (Exhibit 4, p. B-1) and

exposing students to writing before reading—does not make its Application deficient. This approach is consistent with the legislative intent of the CSL to “[e]ncourage the use of different and innovative teaching methods.” 24 P.S. § 17-1702-A(3).

Likewise, BCMCS’s use of a phonics-based curriculum, rather than the three-cueing systems employed in Pennsbury’s reading and language arts program, does not represent a deficiency in its Application. Consistent with the legislative intent expressed in Section 1702-A of the CSL, 24 P.S. § 17-1702-A, the BCMCS curriculum is not supposed to be a mirror image of the existing Pennsbury program. Furthermore, the reading program for grades K-3 involves whole language as well as the phonetic approach (Exhibit 4, p. B-13). For these reasons, the School District’s finding is rejected.

The third cited deficiency is that the Application does not list anything in the oral communications category (Exhibit 1, p. 4, Item 3). It is true that this category is blank in the chart entitled Comparison of Pennsbury/Traditional Public Curriculum to Montessori (Exhibit 4, Supplement to Appendix B, p. 1). However, oral communication is an implicit part of the curriculum. Speaking skills are specifically identified in the Language Summary as being among the skills that students should demonstrate (Exhibit 4, pp. B-12—B-13, B-17). Oral language is included in the evaluation forms (Exhibit 4, p. F-2e). BCMCS has also included in its Supplement a professional article about Montessori methods that enhance oral language development for children who have language disorders or for whom English is a second language (Exhibit 13, Attachment 8, Item D, pp. 15-16). Thus, the reality of the Application demonstrates that this alleged deficiency is groundless.

Fourth, Pennsbury found absent from the student evaluation forms, documentation of the higher level skills required for students to become proficient readers and writers (Exhibit 1, p. 4,

Item 4). However, as the student's grade level rises, the language skills evaluated in the permanent record of academic progress become more complex (Exhibit 4, pp. F-3a—F-3h). Movement through the BCMCS educational program will be based on mastery of clearly stated core competencies (Exhibit 4, pp. 8, B-12—B-19, B-40—B-47, B-72—B-73, B-90—B-92, B-97, B-98, B-99, F-4). In addition, all the evaluation forms have space for comments (Exhibit 4, Appendix F). Thus, the forms provide ample opportunity to document students' progress.

Fifth, Pennsbury faults the reading/language arts curriculum as presented in the Application for failing to demonstrate the integration of communications skills described in the Mission Statement (Exhibit 1, p. 4, Item 5). A review of the Mission Statement (Exhibit 4, p. 7) reveals no reference to communications skills. Nonetheless, communications skills are well integrated into the curriculum, as discussed above. According to this same finding, the curriculum and recordkeeping are not congruent with the Mission Statement. On the contrary, the curriculum, which BCMCS has comprehensively documented (Exhibit 4, Appendix B), is wholly consistent with the core philosophy of the Montessori program, which is the active pursuit of many different, integrated learning experiences—physical, social and emotional, as well as cognitive (Exhibit 4, p. 7). BCMCS's approach to recordkeeping is consistent with that of other Montessori schools and its reporting is consistent with the recommendations of the American Montessori Society (Exhibit 13, Attachment 1, p. 7). Therefore, this is congruent with the Mission Statement, which is to provide an educational experience consistent with Montessori principles.

The sixth deficiency stated by Pennsbury is that the Application does not mention a reading specialist serving on the BCMCS evaluation team (Exhibit 1, p. 4, Item 6). The Supplement identifies Mary Callahan, who is both a special educator and a Montessori-trained

teacher, who will serve as the reading specialist on the evaluation team (Exhibit 3, pp. 50-51; Exhibit 13, Attachment 1, p. 2, Attachment 2, Item B). Thus, Pennsbury's finding was clearly erroneous.

The seventh deficiency concerns special needs children and the lack of an explanation of how the Montessori approach to learning differs from the multi-sensory presentation that is the hallmark of Pennsbury's programs (Exhibit 1, p. 4, Item 7). In addition to multi-sensory presentation, the hallmarks of Montessori are a multitude of hands-on work, individualized tasks and inherent self-pacing of lessons (Exhibit 4, p. 17). There appears to be a greater reliance on multi-sensory materials than in the traditional public school curriculum, in that they are to be utilized in all courses of instruction, not just language and mathematics—e.g., puzzle maps and land and water forms in geography; models of the solar system; and puzzles for plants, leaves, flowers and animals in biology (Exhibit 4, Appendix B and Supplement to Appendix B).

Children with physical disabilities, such as those in wheelchairs, are easily accommodated in the Montessori classroom owing to flexibility of seating. Students are not restricted to confined spaces or desks, and lessons are frequently conducted on the carpet or at tables (Exhibit 4, p. 18). The Supplement includes articles from special education professionals documenting the particular efficacy and suitability of the Montessori method for special needs students (Exhibit 13, Attachment 1, p. 9; Attachment 8, Items A, D, E). In short, BCMCS has amply documented various ways in which its approach to special needs children is distinct from Pennsbury's.

## **2. Assessment**

Pennsbury identifies six deficiencies relating to assessment (Exhibit 1, p. 5). The first is that the assessment system is not congruent with the requirements of 4 Pa. Code § 4.52 (Exhibit

1, p. 5, Item 8). The assessment system required by this regulation must meet several goals, which include determining the degree to which students are achieving academic standards, providing assistance to students who do not attain those standards and improving curriculum and instructional practices. 4 Pa. Code. §§ 4.52 (a)(1) and (2). The Application describes how the BCMCS evaluation system will be used to determine the strengths and the needs of individual students and to identify necessary adjustments to the curriculum (Exhibit 4, pp. 24-26). Thus it is consistent with these regulatory goals.

Furthermore, the required assessment system encompasses both objective and subjective elements. 4 Pa. Code § 4.52(d). The assessment methods proposed for BCMCS involve a variety of forms, including portfolios, and occur at a variety of frequencies during the school year, including daily and weekly contacts between student and teacher (Exhibit 4, p. 24; Appendix F).

The second deficiency noted is that the Application does not indicate how the curriculum will prepare students to be successful with the Pennsylvania System of School Assessment (“PSSA”) reading assessment (Exhibit 1, p. 5, Item 9). Neither the statutory requirements of the CSL governing the contents of the application, 24 P.S. § 17-1719-A, nor Pennsbury’s own Application Package (Exhibit 6, p. 9) require an applicant to address this point. Thus the Application is not deficient for not addressing this matter.

Similarly, neither the CSL’s requirements for the contents of the application nor Pennsbury’s Application Package obligate an applicant to address the third alleged deficiency, which is the failure to outline the provisions that have been made to allow parents to request exemption from PSSA for their children (Exhibit 1, p. 5, Item 10). Consistent with Section 17-1715-A(8) BCMCS students will participate in PSSA. Part and parcel of PSSA administration

involves granting exemptions upon parent request. Although BCMS will have to inform parents of this right and develop a mechanism for handling such requests, failure to discuss this in its Application, is not grounds for denial.

The fourth and fifth deficiencies cited by Pennsbury with respect to the assessment system concern the standardized tests to be administered by BCMCS (Exhibit 1, p. 5, Items 11-12). Here, Pennsbury is trying to have BCMCS conform to two contradictory standards. Pennsbury rejected the original application because BCMCS proposed to use the School District's tests to assess its students (Exhibit 15, p. 7, Item 22). Since the Montessori curriculum differed from its own curriculum, Pennsbury reasoned, test results using Pennsbury's tests would yield inaccurate results (Exhibit 15, p. 7, Item 22). Agreeing with that finding, BCMCS specified only the state-mandated PSSA tests in the Application (Exhibit 4, pp. 24-25; Exhibit 13, Attachment 1, p. 6).

In rejecting the Application, Pennsbury now faults BCMCS for failing to demonstrate how or whether its tests will compare to those Pennsbury is using currently (Exhibit 1, p. 5, Item 11). Pennsbury cannot have it both ways by first finding BCMCS's initial application deficient because the standardized testing proposed for BCMCS paralleled that of the School District, and then finding the revised Application deficient because the testing does not parallel that of the School District. The Pennsbury Application Package calls for a "well developed evaluation program in either school-developed or standardized testing" (Exhibit 6, p. 9). The documentation provided by BCMCS amply satisfies this requirement. Pennsbury's determinations about standardized tests are groundless.

As the sixth and final deficiency, Pennsbury cites the use of Scholastic Aptitude Test scores for comparison purposes (Exhibit 1, p. 5, Item 13). Pennsbury's concern over the

relevancy of these scores to the assessment of elementary school students is well taken. However, this is a difference in educational philosophy that does not detract from the overall adequacy of the assessment system and techniques proposed by BCMCS. Thus, we construe this as a recommendation, rather than as a basis for rejection of the Application.

### **3. English as a Second Language (“ESL”)**

BCMCS has addressed ESL in its supplementary materials by noting that the integration of students who do not speak English is facilitated by the multi-sensory nature of the Montessori system (Exhibit 13, Attachment 1, p. 5, Attachment 8, Item D, p. 15). If the BCMCS special needs educator identifies the need for additional ESL services, BCMCS is committed to providing them (Exhibit 13, p. 5). Thus, contrary to Pennsbury’s determination that BCMCS has failed to address the deficiency concerning ESL from the initial application (Exhibit 1, p. 5, Item 14; Exhibit 15, p. 5, Item 14), BCMCS has addressed this topic satisfactorily.

### **4. Curricular Flow Charts**

The absence of the curricular flow charts referred to in Appendix B of the Application (Exhibit 1, p. 5, Item 15) is a *de minimis* matter. BCMCS provides extensive and significant information regarding the curriculum such that the failure to provide the referenced flow charts is not a sufficient basis on which to deny the charter. Nonetheless, prior to commencing classes, BCMCS should develop and provide such charts to the district.

### **5. Technology**

Seizing upon the statement in the Application about the use of computers as a learning tool (Exhibit 4, p. 10), Pennsbury finds that the Application fails to address policies to cover use of the Internet by faculty and students, maintenance of technology equipment, the amount budgeted for the purchase of technology and related services and the manner in which

technology will be integrated into the classroom (Exhibit 1, p. 6, Items 16-19). Neither the resolution denying the original application (Exhibit 15), the instructions contained in the Application Package (Exhibit 6) nor the comments made at the public hearing held on December 17, 1998 (Exhibit 3) indicate that Pennsbury requires or would be requiring such documentation. Moreover, Section 1719-A of the CSL, 24 P.S. § 17-1719-A, relating to the contents of the application, cannot be construed so as to justify the detailed information about technology that Pennsbury now seeks. The concerns raised by Pennsbury are disproportionate to the significance of this item in the overall context of the Application. Pennsbury not only injected after-the-fact criteria to reach these determinations, but seized upon relatively minor deficiencies in search of grounds for rejection. Thus, these findings are rejected as grounds for denial of the Application.

## **6. Facilities and Site**

Section 1719-A(11) of the CSL, 24 P.S. § 17-1719-A(11), requires the charter school application to include “[a] description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.” The information BCMCS furnished in its Application and supplemental materials complies with the statutory requirement. The deficiencies in the facilities and site enumerated by Pennsbury (Exhibit 1, pp. 6-7, Items 20-27) far exceed the literal requirements of the statute and the information required in the Application Package (Exhibit 6, p.15).

According to the Application Package, the applicant must provide the following information: a description of and addresses for the facilities under consideration; an explanation how this site would be suitable; daily and extended maintenance plans; a discussion of “any progress, partnership developments or other future steps towards acquisition of a facility/land”;

and a description of facility financing plans (Exhibit 6, p. 15). BCMCS provided direct, detailed responses on each of these topics (Exhibit 4, pp. 54-57; Exhibit 5, Appendix N).

In response to questions raised at the public hearing, BCMCS provided additional information about the modular structures that will be used initially for classrooms and administration, including a proposed layout (Exhibit 3, pp. 37-38; Exhibit 13, Attachment 1, pp. 7-8, Attachment 10). The company from which BCMCS intends to lease the modular units, Wilmot Modular Structures, has erected modular structures for Pennsbury (Exhibit 4, p. 55), which modular structures comply fully with the applicable health and safety requirements (Exhibit 3, pp. 11-12). Thus, absent contrary evidence, we find no record basis for Pennsbury's concern about these modular structures (Exhibit 1, p. 6, Item 22).

The Application Package required information about a back-up plan considering alternative facilities (Exhibit 6, p. 15). In response, the Application mentions the one-year lease of an existing commercial property and the leasing of space from an existing school to conduct the summer orientation session (Exhibit 4, p. 55). Although Pennsbury is arguably correct in finding that BCMCS should have addressed this matter more extensively (Exhibit 1, p. 7, Item 25), the brevity of BCMCS' response is not fatal in an otherwise comprehensive discussion of facilities and site.

Pennsbury's findings about zoning approval (Exhibit 1, p. 7, Item 24, p. 8, Item 26, p. 10, Item 35) are problematic in several respects. First of all, Pennsbury gave BCMCS no prior notice that it needed to address these issues. None of the criteria set forth in the Application Package with reference to facilities suggests that zoning approval is a prerequisite to the grant of a charter (Exhibit 6, p. 15). Likewise, despite extensive discussion of zoning at the public hearing (Exhibit 3, pp. 29-38), nowhere was it stated that charter approval was to be made

contingent upon zoning approval. BCMCS's point about the difficulty of seeking zoning approval until it has a charter is well taken (Exhibit 3, p. 32). Even so, it indicated in the Supplement, that it planned to submit the zoning application to Lower Makefield on January 22, 1999 (Exhibit 13, Attachment 1, p. 8).

Second, the zoning process is under the jurisdiction of a separate and distinct governmental body, Lower Makefield, and is pursuant to a different statutory scheme, the Pennsylvania Municipalities Planning Code, 53 P.S. § 10101 et seq. Pennsbury, in predicating denial of a charter on the length of time required for zoning approval and the possibility that BCMCS might not be successful (Exhibit 1, p. 10, Item 36), has exceeded its statutory authority over the Application. *Cf. Borough of Moosic v. Pennsylvania Public Utility Commission*, 429 A.2d 1237, 1240 (1981) (Public Utility Commission's statutorily-mandated review of transfer by public utility of land to grantee outside Commission's jurisdiction did not obligate it to inquire into environmental impact of grantee's proposed use of land; review of that impact fell within purview of Department of Environmental Resources). The zoning process poses a risk for BCMCS in opening its school timely, if at all, but BCMCS alone must decide whether it wants to take that risk.

Finally, even if Pennsbury has valid concerns about zoning approval, all that the Application Package requires is that the applicant discuss "any *progress . . .* or other *future steps*" toward site acquisition (Exhibit 6, p. 15). It does not require the applicant to come before the School District with zoning and site development approval in hand. BCMCS has amply demonstrated the "progress" that it has made on this score, including the retention of an architect, an engineer and other consultants whose services will be required in preparing the land use applications to Lower Makefield (Exhibit 3, pp. 23, 34, 37; Exhibit 13, Attachment 1, p. 8).

Pennsbury also raises, after-the-fact, the related issue of traffic flow and specifically notes the lack of a traffic study (Exhibit 1, p. 7, Item 24.g). First, we believe this is a matter outside Pennsbury's purview. Secondly, BCMCS adequately addresses whatever concerns Pennsbury may have in this area by stating in the Supplement that all traffic flow issues will be addressed through site development plans as part of the land development approval process before Lower Makefield (Exhibit 13, Attachment 1, p. 8).

BCMCS contends that the concerns Pennsbury raised about bus accessibility, in rejecting the first application, have been eliminated since the school will be the only use on the five-acre site (Exhibit 13, Attachment 1, p. 8). In any event, bus accessibility, over which Pennsbury continues to express concern (Exhibit 1, p. 8, Item 27), is another issue best addressed in the zoning and site development review.

In short, Pennsbury's determinations about zoning, traffic flow and bus accessibility exceed its authority under the CSL and are rejected. If Pennsbury had been concerned about BCMCS receiving the approvals from Lower Makefield in time to begin operations for the 2000-2001 school year, Pennsbury could have conditioned the charter on the securing of the approvals by a certain date.<sup>3</sup>

## **7. Financial Viability**

In finding the Application financially deficient in general, and specifically with respect to legal fees and insurance costs (Exhibit 1, p. 8-9, 10, Items 28, 29 and 37), Pennsbury fails to give due deference to BCMCS's own judgments and assumptions and the outside expertise on which it relied. In developing its financial plan, BCMCS drew on the expertise of Marc Spector, Director of Finance for the Drexel University/Foundations Technical Assistance Center for

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<sup>3</sup> BCMCS in fact expressed willingness to accept a charter with this condition (Exhibit 3, p. 31; Exhibit 13, Attachment 1, p. 7).

Public Charter Schools and a member of the BCMCS advisory team (Exhibit 13, Attachment 1, p. 4; Attachment 2, Item A). Mr. Spector has 27 years of experience with school business and finance, 14 of which he spent in a managerial capacity with the School District of Philadelphia (Exhibit 13, Attachment 2, Item A).

BCMCS articulates in detail the bases for its financial assumptions in the Application and Supplement concerning the costs of land improvements and leases, insurance and liabilities, and salaries and benefits and also the anticipated revenues from per pupil allocations (Exhibit 4, pp. 51-54; Exhibit 5, Appendix O; Exhibit 13, pp. 3, 4 and 8). The Application contains a detailed summary of revenues and expenditures and three years of cash flow projections (Exhibit 5, pp. M-1—M-5). In concluding that the BCMCS budget understates costs, Pennsbury apparently fails to consider that BCMCS will be using modular classrooms and not undertaking a “bricks and mortar” project that would be more expensive (Exhibit 13, Attachment 1, p. 8).

Another member of the BCMCS advisory team, Dr. Phil Esbrandt, the Executive Director of the Drexel Technical Assistance Center, confirmed at the public hearing the adequacy of the budget for the initial years of operation (Exhibit 3, pp. 19-20). As Dr. Esbrandt, himself a former teacher, principal and superintendent, testified that the budget has built-in contingencies for lower than anticipated enrollment and more costly than anticipated renovations and purchases (Exhibit 3, pp. 19-20).

Another financial compliance issue, not addressed in the Resolution itself but alluded to only in Pennsbury’s Proposed Findings of Fact and Conclusions of Law (p. 12, Item 6), is the provision to be made for auditing the school under Section 437 of the Public School Code of 1949, 24 P.S. § 4-437, as required by Section 1719-A(9) of the CSL, 24 P.S. § 17-1719-A(9). The BCMCS bylaws provide for an annual audit by a certified public accountant and describe

the responsibilities of the treasurer and the finance committee with respect to audits (Exhibit 4, p. 23; Exhibit 5, Appendix L—Bylaws, Article VI, Section 3, Article VIII, Section 1). The Application Package mandates no additional information about auditing procedures (Exhibit 6, pp. 14-15). Consequently, BCMCS has in fact made appropriate provisions for audits and has satisfied this element of the CSL.

In short, BCMCS has complied with Section 1719-A(9) of the CSL, 24 P.S. § 17-1719-A(9), and provided the information requested in the Application Package (Exhibit 6, pp. 14-15).

## **8. Equity**

Pennsbury groups six deficiencies under a category termed “equity.” Three of these relate to special education (Exhibit 1, p. 9, Items 32, 33 and 35). The first, No. 32, states that the Application fails to explain what assessment tools the special educator will use to perform a diagnostic evaluation (Exhibit 1, p. 9, Item 32; Exhibit 4, p. 18). This is, at most, a *de minimis* deficiency. If a certified reading specialist or school psychologist must administer certain commonly used testing instruments, nothing in the Application suggests that BCMCS will not follow that requirement. Moreover, the Application specifically refers to the school psychologist as being part of the evaluation team (Exhibit 4, p. 19). Thus, this deficiency is rejected.

The second deficiency, No. 33, is the failure of the Application’s special education guidelines (Exhibit 4, pp. 17-19) to correspond to Pennsbury’s Special Needs Education Guidelines (Exhibit 4, Appendix D). This finding is totally devoid of substance. To the extent that Pennsbury’s guidelines reflect federal law governing children with disabilities, which Section 1732-A(c)(2) of the CSL, 24 P.S. § 17-1732-A(c)(2) obligates BCMCS to follow, BCMCS must adhere to them. The Application states the intention of BCMCS to comply fully with these federal statutes (Exhibit 4, pp. 16, 18). Furthermore, Section 1725-A(a)(4) of the

CSL, 24 P.S. § 17-1725-A(a)(4), permits a charter school to seek assistance from the intermediate unit to address the needs of exceptional students. Thus, BCMCS is not bound by the portions of Pennsbury's guidelines directing charter schools to use the School District to perform evaluations (Exhibit 4, p. D-2).

The third deficiency, No. 35, is the amount budgeted for special education needs. The overall adequacy of the BCMCS budget has been discussed above (pp. 26-28). If this amount proves inadequate, BCMCS will have access to additional special education funding pursuant to Section 1725-A(a)(3), 24 P.S. § 17-1725-A(a)(3) to cover the expense of services that Pennsbury does not furnish free of charge (Exhibit 4, pp. 18, D-2; Exhibit 13, Attachment 1, pp. 3, 4).

A fourth "equity" deficiency is that the five-year growth plan (Exhibit 4, p. 31) makes no accommodations for a school psychologist for the 2001-02, 2002-03 or 2003-04 (i.e., third, fourth and fifth) school years (Exhibit 1, p. 9, Item 33). Although BCMCS explains in its Petition of Appeal that it has made accommodations in its budget (Paragraph 9, Item R35), this is difficult to ascertain, since all salaries are lumped together (Exhibit 5, Appendix M). Nevertheless, even if a school psychologist is not retained for these additional years, BCMCS can obtain psychological services from the Intermediate Unit to assist BCMCS in addressing the specific needs of exceptional students. 24 P.S. §17-1725-A(a)(5). Therefore, this is not fatal to the application.

The fifth "equity" deficiency, an erroneous reference to the Instructional Support Team instead of the Multidisciplinary Team (Exhibit 1, p. 9, Item 31; Exhibit 4, p. 31)---an error that BCMCS acknowledges (Petition of Appeal, Paragraph 9, Item R)--is a technical, not a substantive, weakness. That Pennsbury has seized upon this error in terminology indicates the lengths to which it has gone to reject the Application.

The sixth deficiency in this group is Pennsbury's finding that the Application fails to address what accommodations will be made for parents or students who cannot attend the mandatory orientation session for students without prior Montessori experience (mentioned in Exhibit 4, pp. 9, 13) (Exhibit 1, p. 9, Item 30). Pennsbury did not request such information prior to rendering its decision on January 25, 1999. Furthermore, this apparent deficiency is not a sufficient ground to deny the Application. Rather than focusing on the positive purpose of this orientation session, easing the transition to a Montessori environment (Exhibit 4, p.13), Pennsbury has identified and exaggerated a problem that may not even exist. Thus, this finding is rejected as a ground for denial of the Application.

**D. Satisfaction of Statutory Criteria**

Finally, we will evaluate the Application according to the four factors identified in Section 1717-A(e)(2) of the CSL, 24 P.S. § 17-1717-A(e)(2). The first of these is “[t]he demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held [before the school board].” CSL, Section 1717-A(e)(2)(i), 24 P.S. § 17-1717-A(e)(2)(i). BCMCS community outreach efforts are detailed in Exhibit 5, Appendix H. They encompassed mailings or presentations to local governments, parent-teacher groups and local community organizations; establishment of a telephone number; establishment of an Internet website; posters; public service announcements; and handouts (Exhibit 4, pp. 33-39; Exhibit 5, Appendix H). Without a doubt, these extensive efforts bore fruit in the many positive responses received. BCMCS assessed support among Pennsbury residents through petitions, a telephone survey and a mail survey (Exhibit 4, p. 39). A total of 424 residents signed the petition; 21 percent of the 200 respondents to the telephone survey, conducted by an independent telemarketing firm,

indicated an interest in sending their children to BCMCS; over half the 53 respondents to the informal mail survey indicated that they would be likely to send their children to the school (Exhibit 4, pp. 39-40; Exhibit 5, Appendices H, I). A variety of local organizations and institutions, including the Bucks County Center of La Salle University, indicated their support (Exhibit 5, Appendix H). The founding coalition of BCMCS consists of over 60 individuals and includes both parents and educators (Exhibit 4, p. 41; Exhibit 5, Appendix J). The extensive documentation furnished by BCMCS is proof that an acceptable level of support for the charter school plan exists. Thus BCMCS has satisfied the first factor.

The second factor is “[t]he capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.” CSL, Section 1717-A(e)(2)(ii), 24 P.S. § 17-1717-A(e)(2)(ii). The breadth and depth of the proposed curriculum (Exhibit 4, Appendix B), by itself, demonstrates the capability of BCMCS to provide comprehensive learning experiences. In addition, BCMCS proposes an organizational and administrative structure (Exhibit 5, Appendices L, R), student evaluation mechanisms (Exhibit 4, Appendix F), financing (Exhibit 5, Appendix M) and a physical plant (Exhibit 4, pp. 54-56) that will enable it to deliver and sustain the comprehensive learning experiences contemplated by the curriculum. Thus BCMCS has fulfilled the second factor.

The third factor comprises two separate and distinct elements: first, “[t]he extent to which the application considers the information requested in section 1719-A,” and second, the extent to which the application “conforms to the legislative intent outlined in section 1702-A.” Judged in terms of the first element, the Application considers the information requested by Section 1719-A, 24 P.S. § 17-1719-A in all material respects.

The legislative intent of the CSL, set forth in Section 1702-A, is that charter schools operate as a “method to accomplish” six stated objectives. Through obvious differences in the educational environment, pedagogical philosophy, instructional methods and the curricular structure (Exhibit 4, pp. 7-16, Appendix B), BCMCS offers a method to achieve the first, second, third and fifth objectives: improve pupil learning; increase learning opportunities for all pupils; encourage the use of different and innovative teaching methods; and provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system. CSL, Section 1702-A(1), (2), (3) and (5), 24 P.S. § 17-1702-A(1), (2), (3) and (5). Furthermore, BCMCS has described the particular efficacy of the Montessori approach for students with special needs and has described how it intends to integrate such students into the classroom (Exhibit 4, pp. 17-21; Exhibit 13, Attachment 1, pp. 3-4, Attachment 8, Items A, D, E). Therefore, BCMCS truly satisfies the second objective of increasing learning opportunities for *all* students.

The fourth goal is to “create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.” BCMCS proposes to initiate an active recruiting program through advertisements in area newspapers and notification to Montessori training centers in the region with the intention of generating a sufficient pool of applicants for positions for the initial school year (Exhibit 4, p. 63). BCMCS will make available professional development opportunities to teachers and other staff (Exhibit 4, pp. 63-64). Moreover, a teacher, known as a director or directress, at BCMCS is afforded the opportunity to be responsible for the learning program at the school site, as outlined in the job description accompanying the Application, (Exhibit 4, p. 41; Exhibit 5, Appendix R, pp. N-5—

N-11). Thus the Application conforms to the legislative intent with respect to the fourth objective.

BCMCS can accomplish the final item of legislative intent—to “[h]old the schools established under this act accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems,” CSL, Section 1702-A(6), 24 P.S. § 17-1702-A(6)—through the use of the PSSA, which is required of all schools by the Pennsylvania Department of Education (Exhibit 4, pp. 24-25).

The fourth evaluation factor under Section 1717-A(e)(2) of the CSL, 24 P.S. § 17-1717-A(e)(2), is “[t]he extent to which the charter school may serve as a model for other public schools.” By virtue of its distinct curriculum, its methods of student evaluation, its governance structure, its hiring requirements and opportunities for professional development, the roles and responsibilities of its administrative and teaching staffs and the opportunities for parental involvement, BCMCS possesses the potential to serve as a model for other public schools. Therefore, BCMCS satisfies this final factor.

In conclusion, BCMCS has satisfied all four evaluation factors contained in Section 1717-A(e)(2) of the CSL, 24 P.S. § 17-1717-A(e)(2). Pennsbury’s determination that the BCMCS Application does not meet these factors is not supported by substantial evidence. In addition, Pennsbury’s determination about the Application is not in accordance with the CSL because the findings either elevate the significance of minor shortcomings or evaluate the information provided by BCMCS according to criteria that exceed the requirements of the Application Package.

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2000, based upon the foregoing and the vote of this Board<sup>4</sup>, the July 1, 1999 appeal of the Bucks County Montessori Charter School is affirmed, the Pennsbury School District's January 21, 1999 decision denying the charter application is reversed, and the Board of Directors of the School District is hereby directed to grant the application and sign Bucks County Montessori Charter School's charter pursuant to 24 P.S. §17-1720-A.

For the State Charter School Appeal Board,

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Richard Bunn

<sup>4</sup> At the Board's March 13, 2000 meeting, the appeal was granted by a vote of 6-0 with members Aliota, Bunn, Ford-Williams, Melnick, Reeves, and Shipula voting to grant the appeal. Chairman Hickok recused himself from the vote as he had recused himself from hearing argument on the case at the November 8, 1999 meeting based on the request of counsel for the school district.