

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

In Re: Fell Charter School :
Appeal from Denial of Charter : **Docket No. CAB 2001-9**
School Application by :
Carbondale Area School District :

OPINION AND ORDER

I. Background

This matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter referred to as "CAB") on an appeal filed by the Fell Charter School (hereinafter referred to as "Fell") from the denial of its charter school application (hereinafter referred to as "Application") by the Board of Public Education of the Carbondale Area School District (hereinafter referred to as "School District").

II. Findings of Fact

1. On or about March 30, 2001, Fell submitted an Application to the School District to begin operation for the school year 2002-2003.

2. The School District conducted public hearings on May 9, 2001 and June 25, 2001.

3. Fell provided supplementary submissions to the School District by July 9, 2001, entered as Post Hearing Submission Exhibits of Fell Charter School, Fell Charter School Response to School Board, dated July 9, 2001 (hereinafter referred to as "Response, PHS").

4. On July 19, 2001, the School District denied the grant of a charter to Fell by a 9 – 0 vote. The School District adopted the written decision in September of 2001 and issued its written decision on September 11, 2001.

5. Pursuant to 24 P.S. §17-1717-A(i)(2) of the Charter School Law, Fell obtained the requisite signatures on petitions to appeal and submitted the petitions to the Court of Common Pleas of Lackawanna County.

6. On November 21, 2001, the Allegheny Court of Common Pleas decreed that the signatures on the petitions circulated in support of an appeal were sufficient pursuant to 24 P.S. §17-1717-A.

7. On December 3, 2001, Fell filed a Petition of Appeal with CAB.

8. By letter dated December 19, 2001, CAB accepted Fell's appeal and assigned a hearing officer to this matter.

9. On January 25, 2002, the hearing officer held a pre-hearing conference.

10. Subsequently, the hearing officer received an affidavit of Martin F. Lawler, Superintendent of the School District, which attested to the transmittal of the Decision denying the Application to Fell on September 11, 2001.

11. The hearing officer determined that the Decision was part of the certified record and notified Fell and the School District accordingly in a letter dated February 7, 2002.

12. At its February 13, 2002 meeting, CAB heard oral arguments regarding Fell's appeal.

13. The respective parties submitted briefs on or about March 4, 2002.

14. Fell filed a letter reply brief to the School District's brief on or about March 11, 2002.

15. Several residents of the School District developed an interest in the creation of a charter school after the School District decided to close Fell Elementary School, and they subsequently formed the Founding Coalition of Fell. (Transcript from Oral Argument before CAB, February 13, 2002 (hereinafter referred to as "CAB Transcript"), p. 20).

16. Beginning in September 2000, the Founding Coalition held public meetings to present the charter school concept and to decide upon a management company. These meetings, which started with an initial attendance of between 20 and 30 people, eventually reached a standing room only attendance (over 100 people) at the local municipal building in November 2000. (CAB Transcript, p.23; May 9, 2001 Hearing Transcript, p. 52).

17. Fell received 85 e-mails and 54 letters of support from residents, businesses, and elected officials. (Application, Exhibit F; Response, PHS, Exhibit 5, Part I).

18. Fell received contributions in support of a charter school from School District alumni in small amounts that totaled \$10,025. (Application, Exhibit F; Response, PHS, Exhibit 5, Part I).

19. The Petition of Support for Fell contains the names of 554 signatories (Application, Exhibit F; Response, PHS, Exhibit 5, Part I). In excess of 400 of the signers indicate a residence in Simpson or Carbondale, two municipalities which lie within the School District. Over 200 children are represented by parents who listed a Simpson or Carbondale address and supplied their telephone number in the column titled "Contact me for enrollment."

20. Affidavit of Mark Gerchman attests to 126 Pre-Enrollment Applications, of which 104 Pre-Enrollment Applications are for students who reside in the School District. (Response, PHS, Exhibit 5, Part V).

21. Fell is a Pennsylvania non-profit corporation organized and existing under the laws of Pennsylvania with its registered office at 522 Main Street, Simpson, PA_18407. (Application, Exhibit D).

22. Fell entered into an executed Management Agreement (hereinafter referred to as "Agreement") with Mosaica Education, Inc. (hereinafter referred to as

"Mosaica"), whereby Mosaica, a for-profit entity, will provide management services for Fell. (Application, Exhibit D; Response, PHS, Exhibit 5, Part VI).

23. Although the Agreement gives Mosaica considerable responsibilities in managing Fell, Fell's Board of Trustees (hereinafter referred to as "Board") retains ultimate or fundamental control over Fell through its power of approval.

24. Fell will be governed by a Board of Trustees, which will make policy, assure sound management and actively participate in the provision of necessary funds. The Board of Trustees has the ultimate responsibility to determine general, financial, personnel and related policies. (Application, p. 85).

25. Fell is a non-profit entity that is independent of Mosaica. (Application, Exhibit D, Sections III.01, III.02).

26. Fell does not presently need curriculum for grades 9 and 10 or detailed curriculum for grades 7 and 8 since Fell will only serve kindergarten through grade six the first year that it enrolls students. (Application, p. 71).

27. Fell intends to add a grade each year of operation, and Mosaica is developing curriculum for grades 9 and 10, which will not be needed until the year 2006. (Application, p. 71).

28. In keeping with its stated intention to maintain small classes and a small school, Fell intends to limit class size to 25 children and to divide a large school into smaller SchoolHouses of 75 to 150 students as enrollment increases. (Application, p. 53).

29. The Application outlines the involvement of the Founding Coalition members and the community in the choice of curriculum and a management company and also provides a roster of eleven Fell Charter School Committees composed of approximately twenty-five individuals. (Application, pp. 64-66, 72-75, 76-78).

30. The Application provides the address of the facility, 775 Main Street, Simpson, PA, which is property owned by St. Basil's Russian Orthodox Church of Simpson, PA. (Application, p. 96).

31. A Memorandum of Understanding between Mosaica and St. Basil's Russian Orthodox Church of Simpson, PA describes purchase and lease arrangements for the property. (Application, Exhibit E).

32. The Application includes a proposed floor plan and an architectural drawing. (Application, Exhibit E).

33. Fell proposes a seven and a half hour, extended school day and an extended 200-day school year. (Application, pp. 57-58).

34. Fell's Application indicates a commitment to providing intensive pre-service and in-service training. (Application, pp. 56, 103, 106).

35. Fell has indicated the types and amounts of insurance coverage it will obtain. (Application, pp. 96-97).

36. Fell provided an analysis of student achievement in order to demonstrate the high quality of the Paragon curriculum. (Response, PHS, Exhibit 5, Part I,).

37. The Fell Application describes the means by which Fell will accommodate students with special needs and states that it will fully comply with federal laws and regulations. (Application, pp. 59-60).

38. Fell submitted an application for a single district charter.

39. The School District evaluated the Application by relying upon financial considerations as either a basis for the denial of the Application or a factor in the denial of the Application.

III. Conclusions of Law

1. The present appeal is properly before CAB, pursuant to 24 P.S. §§17-

1701-A, *et seq.*

2. Charter School Law governs the application and approval processes and operation of charter schools in Pennsylvania. 24 P.S. §§17-1701-A, *et seq.*

3. The criteria for evaluating an Application under 24 P.S. §1717-A(e)(2) are:

- (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d).
- (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.
- (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.
- (iv) The extent to which the charter school may serve as a model for other public schools.

4. The e-mails, letters of support, alumni contributions, Petition of Support, and affidavit, attesting to 126 Pre-Enrollment Applications, demonstrate sustainable support for Fell in the aggregate as required by 24 P.S. §17-1717-A(e)(2)(i).

5. Fell will operate as a non-profit entity and as such, may be granted a charter pursuant to 24 P. S. §17-1703-A and 24 P.S. §17-1720-A.

6. The Charter School Law allows non-profit charter schools, acting through their respective boards, to contract with for-profit entities to provide educational or various other services, so long as the ultimate control of the charter school remains in the hands of the charter school's board of trustees.

7. The Application submitted by Fell provides sufficiently detailed information to satisfy the statutory requirements of Section §17-1719-A(4), (5), (8), (12), (13), and (17) of the Charter School Law in the areas of proposed governance

structure, curriculum, community involvement, school calendar, professional development plan, and insurance coverage. 24 P.S. §17-1719-A.

8. The Application submitted by Fell provides the necessary information pertaining to the facility's address, description, ownership, and leasing arrangements to satisfactorily meet the requirements of Section 17-1719-A(11) of the Charter School Law. 24 P.S. §17-1719-A(11).

9. Fell's Application conforms to the legislative intent of the Charter School Law. 24 P.S. §17-1702-A.

10. The Application submitted by Fell substantiates the capability of Fell, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter as required by Section 17-1717-A(e)(2)(ii). 24 P.S. §17-1717-A(e)(2)(ii).

11. Fell is not constrained, under the Charter School Law, to seek a regional charter simply because it may enroll students from another school district.

12. The Charter School Law does not provide that financial impact should be a basis upon which an application should be evaluated. The legislature intended the criteria for evaluation to be educational in nature, and therefore, evaluating an application on the basis of financial considerations is improper.

13. Any issues which are not raised by the School District are deemed satisfied. The School District raised no issues regarding the extent to which Fell may serve as a model for other public schools, as required by 24 P.S. §17-1717-A(e)(2)(iv). Therefore, this criteria is deemed satisfied.

14. Fell has satisfied the requirements of the Charter School Law, and therefore, should be granted a charter.

IV. Evidentiary Issues

Before addressing the merits of the appeal, preliminary evidentiary matters must be addressed. First, Fell sought to exclude the School District Decision from the Certified Record because the School District allegedly had not transmitted the Decision to Fell in accordance with the statutory requirement of Section 17-1717-A(e)(5) of the Charter School Law. 24 P.S. §17-1717-A(e)(5). As a result of the affidavit filed by Martin F. Lawler, Superintendent of the School District, attesting to the transmittal of the Decision on September 11, 2001, the hearing officer determined that the Decision was transmitted and should be part of the Certified Record.

Second, at the February 13, 2002 meeting of CAB, Fell requested that CAB accept the Pre-Enrollment Applications into evidence and include them in the record. CAB accepted the Pre-Enrollment Applications at that time over the objection of the School District and took the objection under advisement.

Pursuant to Charter School Law, CAB has the discretion to allow either party to supplement the record if the supplemental information was previously unavailable. 24 P.S. §17-1717-(A)(i)(6). Information that was previously unavailable cannot include information that could have been obtained and submitted for inclusion into the record prior to the school district's vote. In this particular case, the Pre-Enrollment Applications that Fell presented to CAB as supplemental information were not only available prior to the School District's vote, but they were specifically requested by the School District. Because the Pre-Enrollment Applications were available prior to the School District's vote, upon reflection, they will not be admitted as part of the record. An affidavit submitted by Mark Gerchman, Trustee of Fell, addresses the issue of pre-enrollments and was submitted, without objection, as Post Hearing Submission Exhibit No. 5, Part V in the Fell Charter School Response to School Board, dated July 9, 2001. Thus, the Pre-Enrollment Applications are not

necessary. They are hereby excluded from the record, and the School District's objection is granted.

V. Discussion

Section 17-1717-A(e)(2) sets forth four criteria under which a charter school application is to be evaluated. These are not the sole criteria, but are the criteria that the legislature set forth in the Charter School Law. The criteria for evaluating an application are:

- (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d).
- (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.
- (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.
- (iv) The extent to which the charter school may serve as a model for other public schools.

The School District based its denial of Fell's Application for a charter school on the following grounds:

1) Fell allegedly failed to provide the necessary "demonstrated, sustainable support . . . by teachers, parents, other community members and students" as required by 24 P.S. § 17-1717-A(2)(i).

2) Fell allegedly failed to adequately provide the information specifically requested in 24 P.S. §17-1719-A(4), (5), (8), (11), (12), (13), and (17) pertaining to:

- a) the proposed governance structure (24 P.S. §17-1719(A)(4));
- b) the curriculum to be offered (24 P.S. §17-1719(A)(5));

- c) the manner in which community groups will be involved in the planning process (24 P.S. §17-1719(A)(8));
- d) the description of and address of the physical facility, the ownership and any lease arrangements (24 P.S. §17-1719(A)(11));
- e) the length of the school day and school year (24 P.S. §17-1719(A)(12));
- f) a professional development plan for the faculty of a charter school (24 P.S. §17-1719(A)(13)); and
- g) adequate liability and other appropriate insurance (24 P.S. §17-1719(A)(17));

3) Fell allegedly failed to adequately conform to the legislative intent outlined in 24 P.S. §17-1702-A(1) of improving student learning and 24 P.S. §17-1702-A (2) of increasing learning opportunities for all pupils.

4) Fell allegedly failed to show its “capability . . . in terms of support and planning, to provide comprehensive learning experiences” as evidenced by its alleged failure to provide sufficient, adequate information related to the facility requirement of 24 P.S. §17-1719-A(11).

5) Fell allegedly failed to submit an application for a regional charter school.

6) Fell allegedly would present an unwanted financial impact on the School District.

A. Demonstrated, Sustainable Support

According to 24 P.S. §17-1717-A(e)(2)(i), a charter school applicant must show “demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students.” Community support must be shown in the application document or by comments received at the public hearing. CAB has interpreted Section 1717-(A(e)(2)(i) to mean that the indicia of support is to be measured in the aggregate and not by individual categories of support.

Furthermore, CAB concluded that an applicant's failure to show strong support in any one category is not necessarily fatal to the application. The Commonwealth Court in Brackbill v. Ron Brown Charter School held that CAB's interpretation was reasonable. Brackbill v. Ron Brown Charter School, 777 A.2d 131, 138 (Pa. Cmwlth. 2001). However, a reasonable amount of support in the aggregate must be demonstrated to show that the proposed charter school will be supported as an on-going entity. *Souderton Charter School Collaborative* (Docket No. CAB 1999-2).

Initial community interest in the proposed charter school was demonstrated in November of 2000 by the well-attended, standing room only, meeting held at the municipal building for the purpose of discussing the concept of a charter school and considering Mosaica, as a potential management company. That initial interest eventually culminated in a Petition in Support of the Fell Township Charter School. That Petition included approximately 554 signatures. (Application, Exhibit F; Response, PHS, Exhibit 1, Part I).

A close examination of the Petition indicates that the majority of the individuals signing the Petition list a residence of Simpson or Carbondale, municipalities which are located within the School District. In fact, over 400 of the signatures list a Carbondale or Simpson address. Contrary to the School District's position that the Petition did not solicit information related to whether the resident signer has children and whether the resident would like to be contacted regarding enrollment, the Petition contains a column titled "Contact me for enrollment" and "Phone No." In addition, the Petition shows that over 200 children are represented by individuals who listed a Simpson or Carbondale address and supplied their telephone number in the column requesting contact for enrollment.

Eighty-five e-mails and fifty-four letters of support from residents, businesses, and elected officials provide further evidence of community support. (Application, Exhibit F; Response, PHS, Exhibit 5, Part I). Additionally, Fell received

contributions totally \$10,025 from 81 donors. (Application, Exhibit F; Response, PHS, Exhibit 5, Part I). Three additional letters of support and an additional contribution of \$25.00 also exist. (Response, PHS, Exhibits 1, 2, 3, and 4). At the May 9, 2001 Hearing, Mr. Bazink, a member of the Fell Board, testified that there was a "pledge of nearly forty thousand dollars more," in addition to the money already donated through the 81 donors. (May 9, 2001 Hearing Transcript, p. 54). Mr. Bazink also testified that Fell received financial support from Fell Golden Age Club and V.F.W. Auxiliary, and support from the Veterans of Foreign Wars, Walter Paciga Post 4712. (May 9, 2001 Hearing Transcript, p. 54; Applicant's Exhibit Nos.3; 5). Mr. Bazink further testified that Fell received support from two large corporations, one of which was willing to work with Fell to set up a summer technology workshop and a school-to-work program. (May 9, 2001 Hearing Transcript, p. 54). All of the above provide ample evidence of demonstrated community support.

This broad level of sustainable community support is buttressed by an affidavit submitted by Mark Gerchman by July 9, 2001 as part of the record. (Response, PHS, Exhibit 5, Part V). Not only does the affidavit certify that there are 126 prospective students to be enrolled in the Fell Charter School, but the affidavit specifies that of the 126 students, 60 are Carbondale residents and 44 are Fell Township residents.

Although the School District argues that the 126 Pre-Enrollments fall below the initial projected enrollment of over 200 students (Application, p. 72), thus indicating a loss of support, the mere fact that 126 students are pre-enrolled demonstrates a sufficient level of sustainable support. CAB will not speculate that the number of 126 prospective students represents a loss of support.

The School District's allegations regarding loss of support are not material; what is material is that the Petition contains over 400 signatures of Simpson and Carbondale residents and the affidavit attests to 126 Pre-Enrollment Applications, of

which 104 are district resident students. Although the applicant has not specifically shown that teachers have indicated support for the charter school plan, Mr. Edward Skorupa, a member of the Fell Board, testified at the CAB Hearing that three teachers from the Carbondale Area School District donated money to Fell anonymously. (CAB Transcript, p. 26). Fell also received an e-mail from a teacher inquiring about teaching positions and expectations for teachers. (Applicant's Exhibit, No. 3). In addition, one of the Fell Board members, Mr. Mark Gerchman, is currently a teacher. Despite the limited support shown by teachers, the Charter School Law does not require support in every category, but in the aggregate. Fell has demonstrated sustainable community support in the aggregate. Thus, this reason for the School District's denial is rejected.

B. Extent to which Application Considers Information Requested in §17-1719-A

The School District next contends that Fell's Application for a charter school has failed to satisfy several of the requirements of 24 P.S. §17-1719-A.

1. Proposed Governance Structure

The School District argues that the Management Agreement which Fell entered into with Mosaica impermissibly delegates all real and substantial authority and responsibility for key education decisions to Mosaica, a for-profit entity. The School District specifically argues that Fell has given Mosaica the authority to prepare the charter school's budget, to assume responsibility for many day-to-day administrative activities, and to take sole responsibility for key educational decisions, particularly in the area of personnel and supplemental programming. As a result of Fell's alleged transfer of authority to Mosaica, the School District contends that the Fell Board will not have real and substantial authority and responsibility for the educational decisions.

The Charter School Law provides that a charter school must be organized as a public, not-for-profit corporation, and that a charter may not be granted to any for-profit entity. 24 P.S. §17-1703-A; 24 P.S. §17-1720-A. The Charter School Law also permits "any corporation," profit or non-profit, to "establish" a charter school. 24 P.S. §17-1717-A(a). Once established, the board of trustees of a charter school is entrusted with the "authority to decide matters related to the operation of the school, including, but not limited to, budgeting, curriculum and operating procedures, subject to the school's charter." In addition, the trustees have the "authority to employ, discharge and contract with necessary professional and nonprofessional employees subject to the school's charter and the provisions of this article." 24 P.S. §17-1716-(A).

The Charter School Law allows charter schools to enter into contracts or leases in order to procure services, equipment and supplies from for-profit entities. As CAB concluded in *Collegium Charter School*, "nothing in the Charter Law prohibits the involvement of for-profit entities in the establishment and operation of a charter school, so long as the school itself is not for-profit, the charter school's trustees have real and substantial authority and responsibility for the educational decisions, and the teachers are employees of the charter school itself." *Collegium Charter School*, (Docket No. CAB 1999-9), p. 23. This position was upheld in *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (Pa. Cmwlth. 2000), and in subsequent charter school cases: *Leadership Learning Partners Charter School*, (Docket No. CAB 2000-8), p.14; *Legacy Charter School*, (CAB Docket No. 2000-14), p. II.

On or about March 1, 2001, Fell was organized as a Pennsylvania non-profit corporation with a board of directors composed of members of the Founding Coalition, the group of individuals who proposed a charter school. (Application, Exhibit D). Subsequently, the board of directors entered into an Agreement with

Mosaica to provide management services for Fell. (Application, Exhibit D; Executed copy, Response, PHS, Exhibit 5, Part VI). The School District argues that a substantial portion of the essential functions of the Board of Trustees, “policy making, the assurance of sound management and active participation in the provision of necessary funds” as required by the Fell By-laws has been given to Mosaica under the Agreement. (Application, Exhibit B, Fell By-laws, Section 3).

The School District’s concerns here are similar to concerns raised by the school districts in West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa. Cmwlth. 2000); Brackbill v. Ronald H. Brown Charter School, 777 A.2d 131 (Pa. Comwlth. 2001). In both those cases involving a management agreement with Mosaica, the Court did not find anything in the record to indicate that the arrangement between Mosaica and the charter school would deprive the board of trustees of “ultimate” control or responsibility of the charter school. In *Lincoln-Edison Charter School*, CAB held that the board of trustees maintained “fundamental control” where the management agreement gave the board responsibility for overseeing the management company’s operation of the school, and even though the management company exercised significant responsibilities for day-to-day operations, the board retained “ultimate” control, and therefore, possessed substantial authority and responsibility. *Lincoln-Edison Charter School*, (CAB Docket No. 2000-11), pp. 7, 8.

An examination of applicable sections of the Fell Agreement (Application, Exhibit D) indicates that the Fell Board maintains “ultimate control” of educational decisions. The following sections emphasize the authority of the Board in granting approval to decisions recommended by Mosaica. The educational services that Mosaica will provide are specifically subject to *Board approval*. (Application, Exhibit D, Section I.01(a)). Mosaica’s educational services will be provided *in accordance with* the “Educational Program” as *adopted by the Board* of Directors and provided

for in the Charter. (Application, Exhibit D, Section I.01(b)). Any substantial modification of the educational services is subject to the prior *approval of the Board*. (Application, Exhibit D, Section I.01(c)). Mosaica is “responsible and *accountable to the Board* for the provision of the Educational Services.” (Application, Exhibit D, Section I.01(d)).

In terms of the Charter School budget and financial reporting, future annual budgets will be prepared by Mosaica, but subject to the *approval of the board*. (Application, Exhibit D, Section I.02(a)(vi)(A)). Mosaica must also provide other information on a periodic basis, which would enable the *Board to monitor Mosaica’s “performance* under this and related agreements including the effectiveness and efficiency of its operations at the Charter School.” (Application, Exhibit D, Section I.02(a)(vi)(E)).

The Agreement also makes clear that the Charter School and Mosaica are independent of each other. Neither is a “division or a part” of the other. (Application, Exhibit D, Section III.01). Mosaica will not have “any role or relationship with the Charter School that, in effect, substantially limits the Charter School’s ability to exercise its rights, including cancellation rights, under this Agreement. The Board may not include any director, officer or employee of [Mosaica].” Nor may the “voting power of the Board . . . be vested” in Mosaica. (Application, Exhibit D, Section III.02).

Under the terms of the Agreement, Mosaica merely has the responsibility of recommending teachers and support staff. The Board hires teachers and staff, who are designated as employees of Fell. (Application, Exhibit D, Sections VI.01 and VI.02). Mosaica has the right to evaluate the teachers, but it may only make recommendations to the Board regarding their promotions, salaries, discharge and other factors. (Application, Exhibit D, Section VI.03). Although the principal is designated an employee of Mosaica, the Agreement vests the Board with the

authority “to supervise the principal and to hold him or her accountable for the success of the Charter School.” (Application, Exhibit D, Section VI.02).

Finally, the Board is also given “ultimate responsibility to determine general, academic, financial[,] personnel and related policies deemed necessary for the administration and development of Fell Charter School in accordance with its stated purposes and goals.” (Application, p. 85).¹ Based on all of the above, it is clear that the Board has fundamental control of the charter school. Thus, this ground for denial of the charter is rejected as well.

2. Curriculum

The Charter School Law requires that an applicant provide information regarding the “mission and education goals of the charter school, the curriculum to be offered and the methods of assessing whether students are meeting educational goals.” 24 P.S. §17-1719-A(5). Based upon the testimony of Dr. Dominick Famularo at the June 25, 2001 Hearing, the School District contends that Fell has not satisfied the above statutory requirement as a result of its failure to provide curriculum for grades nine and ten and its failure to provide detailed curriculum and objectives beyond sixth grade. (Decision of the Carbondale Area School District (hereinafter referred to as “Decision”), p. 12). The School District further contends that Fell’s philosophy regarding class size is inconsistent with its projected enrollment figures. (Decision, p. 12).²

Although the Application Fact Sheet states that Fell will serve Kindergarten through Grade 10, the Application also indicates that Fell will only serve kindergarten

¹ In addition, the Fell By-laws enumerate the Board’s broad authority in the areas of curriculum, annual budget, and employment, even as to the appointment or dismissal of the principal, an employee of Mosaica. (Application, Exhibit B, Fell By-laws, Section 3.6(a), (b), (j) and (o).

² The School District’s concerns regarding curriculum also included the alleged lack of a detailed technology plan. Fell did provide information related to usage and integration of computers into the curriculum. (Application, pp. 11, 54). However, a technology plan is not required by the Charter School Law.

through sixth grade the first year that it enrolls students. (Application, pp. 1, 71). According to the Application, Fell anticipates adding an additional grade each year after that. Thus, curriculum beyond the sixth grade is not necessary at this point. Fell indicates that Mosaica is currently developing curriculum for ninth and tenth grade in line with the criteria that the Fell Board requested. (Response, PHS, Exhibit 5, Part II). Thus, Fell has satisfied the statutory requirement of Section 17-1719-A(5) by providing sufficiently detailed information for the kindergarten through sixth grade curriculum, which Fell will need upon its opening date. 24 P.S. §17-1719-A(5).

A review of the Application itself resolves the School District's allegation that Fell advocates small classes and a small school, yet projects an enrollment of 750 students in five years. The School District has arrived at its conclusion based upon conjecture rather than actual information. As the school increases in enrollment, Fell intends to "divide the larger school into smaller SchoolHouses of 75 to 150 students from all grade levels." (Application, pp.1, 53). Fell further indicates that each SchoolHouse will be limited to seven teachers and tutors with supplemental instructors and learning specialists floating among the SchoolHouses. Thus, there is no inconsistency as suggested by the School District, and Fell has satisfied the statutory requirement of Section 17-1719-A(5) of the Charter School Law. 24 P.S. §17-1719-A(5). Therefore, this reason for the School District's denial is rejected.

3. Manner of Community Involvement

The School District raises two concerns about community involvement. First, the School District argues that the local impetus for initiating the charter school movement originated with the School District's decision to close Fell Elementary School. (Decision, p. 14). The Charter School Law does not address the underlying rationale for a charter school application. While dissatisfaction with closing a local

school may have prompted community members to seek an alternative educational route, the underlying rationale of opposition to a School District consolidation plan is not a basis upon which a charter school application can be evaluated and denied. The Charter School Law is predicated upon a community's concern with local, educational issues.

Next, the School District suggests that Mosaica, and not community members, was the impetus for the Application. However, the Application provides a roster of eleven school committees of community residents involved in the charter school planning process. Approximately twenty-five individuals serve on those committees. (Application, pp. 72-75). The Application specifically refers to the integration of local history and social studies into the Paragon Curriculum. According to the Application, the curriculum will be tailored to the specific needs of students or local community and culture and will draw on the talents, passions, and resources of teachers, parents, and community members. (Application, p.10). Additionally, Fell provided information in the Application indicating that it would engage in community activities ranging from establishing informal associations with local colleges to hosting educational workshops and cultural seminars. (Application, p. 65). Thus, Fell has provided sufficient information in the Application describing community support and involvement in the planning process to meet the statutory requirements of Section 17-1719-A(8) of the Charter School Law. 24 P.S. §17-1719-A(8). Therefore, this reason for the School District's rejection of the Fell Application is rejected.

4. Physical Facility

The Charter School Law requires an applicant to provide 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." 24 P.S. §17-1719-A(11). Another

section of the Charter School Law specifies that a charter school may be located in "space provided on a privately owned site, in a public building or in any other suitable location." 24 P.S. §17-1722-A(a). Furthermore, the charter school facility must comply only with the public school regulations that concern the health or safety of students. 24 P.S. §17-1722-A(b).

With this statutory background, the School District argues that Fell's failure to provide detailed facility information in the Application amounts to a fatal flaw. The School District contends that Fell must submit a more complete description of the proposed facility, a site development plan, alternate sites, a capital improvement plan, a sales agreement, an individualized, site-specific architectural drawing, a cost analysis for converting the facility, and documentation signifying compliance with zoning and licensing requirements. The School District also maintains that Fell has not resolved safety issues. The Charter School Law, as set forth above, does not require this type of extensive facility and facility-related information. The law simply requires a general description of the facility, its address, ownership information, leasing arrangements, suitability, and safety considerations. Fell has satisfactorily complied with all pertinent statutory requirements, particularly the requirements of 24 P.S. §17-1719-A(11) and 24 P.S. §17-1722-A(b).

The Application states that the "proposed school will be located at 775 Main Street, Simpson, PA, within the Carbondale Area School District" and that the "property is approximately six acre[s], with an approximately 12,000 square foot building that currently serves as a church hall for St. Basil's Russian Orthodox Church." (Application, p. 96). Mosaica is currently negotiating to purchase the property and construct a building of approximately 40,000 square feet to provide additional space for classrooms, offices, a multipurpose room, etc., which will be in compliance with all applicable building codes. Mosaica then intends to lease the property to Fell. (Application, p. 96). A Memorandum of Understanding submitted

with the Application provides an additional description of the site, including a floor plan and an architectural drawing. (Application, Exhibit E). In addition to the above-described facility information, a lengthy discussion of the proposed facility occurred during the June 25, 2001 Hearing. (June 25, 2001 Hearing Transcript, pp.60-68).

A Memorandum of Understanding between Mosaica and St. Basil's Russian Orthodox Church of Simpson, PA identifies the ownership of the site. (Application, p. 96). The Memorandum also addresses the leasing arrangements. (Application, Exhibit E).

Nonetheless, the School District argues that the Memorandum of Understanding is not a sales agreement. Neither Charter School Law nor the charter school application requires a sales agreement. Moreover, the Commonwealth Court in Brackbill v. Ronald Brown Charter School held that "[a]lthough an applicant must include a proposed facility in its application, there is no requirement that the facility be under a contractual obligation before the charter is granted." 777 A.2d 131, 139 (Pa. Cmwlth, 2001). CAB recognized in *Phoenix Academy Charter School* that the Charter School Law does not require a signed lease, but simply requires the facility to be identified and that the "ownership and lease arrangements be described in at least a general way." (Docket No. CAB 1999-10), p. 21. The Memorandum of Understanding clearly describes the purchase and lease agreements in a general way.

Finally, Fell has addressed safety concerns through the Memorandum of Understanding. The Memorandum of Understanding states that the Buyer and the Trustees of the charter school agree that improvements necessary to satisfy the standards of applicable building codes must be made prior to the opening of the charter school.³ Thus, Fell has satisfactorily complied with all pertinent statutory

³ The School District alleged that Fell failed to obtain various licensing and zoning approvals. Fell did receive a letter from the Fell Township hearing officer that the site proposed for educational purposes did

requirements related to the physical facility as mandated by 24 P.S. §17-1719-A(11) and 24 P.S. §17-1722-A(b), and therefore, this ground for the School District's denial is also rejected.

5. Length of School Day and Year

The length of the school day and school year is information required in the application by 24 P.S. §17-1719-A(12). Fell provides that information on pages 57 and 58 of the Application. The proposed school day schedule for elementary students runs from 8:00 a.m. to 3:30 p.m., and the proposed school calendar contains 200 school days with a start date of August 20, 2002. Fell has, thus, duly satisfied the requirements for the proposed school calendar.

The Decision of the School Board, however, concludes that the Application is inaccurate because the actual length of instructional time in the day is allegedly less than in the School District. This was raised as a concern because Fell stated in its Application that it would provide an extended school day. (Application, p. 52). Dr. Famularo, testifying on behalf of the School District, estimates that if each of the four breaks provided in the daily elementary schedule were 15 minutes in length, and they were subtracted from Fell's seven and a half-hour day, then Fell would have a school day a half hour shorter than a day at the Carbondale Elementary School. (June 25, 2001 Hearing Transcript, p. 51; Application, p. 58). The School District's opinion is based purely upon Dr. Famularo's speculation regarding the length and type of breaks planned in Fell's proposed school day schedule. Moreover, Dr. Famularo did not provide any information regarding the number, length, and type of breaks provided at the Carbondale Elementary School. Therefore, his speculation

conform to existing zoning ordinances or requirements. (Applicant's Exhibit 11). However, CAB has not held that an applicant must obtain zoning approval as a prerequisite to a charter grant. *Bucks County Montessori Charter School*, (Docket No. CAB 1999-7), p. 24.

does not provide a sufficient basis for determining that Fell has not provided a longer school day, and, therefore, is an insufficient basis for denying Fell's Application.

6. Professional Development Plan for the Faculty

The School District alleges that the Application does not provide a clear and developed professional development plan for faculty, as required by 24 P.S. §17-1719-A(13). Contrary to the School District's allegation, the Application specifically addresses staff development and professional opportunities in a number of sections. In addition to a commitment to providing intensive pre-service and in-service training, Fell indicates that it will devote 20 days the first year and 15 days each additional year to staff development. Furthermore, it will provide all teachers with training in Reading and Language Arts instruction and the use of technology. Fell also commits to providing two in-house program facilitators for continuous in-classroom teacher training. Additionally, Fell will give the teachers the opportunity to attend seminars and conferences. (Application, p. 56).

The Application also states that providing "exemplary ongoing professional development in math and science instruction and in technology integration" is a job goal. (Application, p. 103). Furthermore, Fell intends to provide in-service education customized to the population and to the curriculum. (Application, p.105). The Application even lists a number of instructional/learning opportunities for staff participation. In addition to listing the learning opportunity, such as Creating Kindergartens Where Students Can Bloom, Fell has designated the month during which this learning opportunity will occur. (Application, p.106). On the basis of the above commitments to professional development which Fell articulates in the Application, Fell has satisfied the statutory requirement of 24 P.S. §17-1719-A(13) by providing a sufficient professional development plan for faculty. Thus, this ground for denial of the Application is rejected.

7. Insurance Coverage

The provision of adequate liability and other appropriate insurance for the charter school, its employees and the board of trustees is mandated by 24 P.S. §17-1719-A(17). The School District argues that Fell should have provided insurance quotes or descriptions of insurance policies in order to comply with this statutory requirement. The School District also alleges that the indemnity clauses and third-party clauses in the Agreement could potentially impact Fell's ability to obtain the necessary insurance coverage.⁴ On pages 96 and 97 of the Application, Fell provided the types and amounts of insurance coverage it intends to obtain. While Fell could have provided a more comprehensive description of its insurance coverage plans, this is not required by the law, and Fell has provided sufficient information. The lack of more comprehensive details in providing insurance information is not fatal to the school's compliance with 24 P.S. §17-1719-A(17) and 24 P.S. §17-1717(A)(e)(2)(iii). Moreover, in light of the fact that Mosaica management agreements have been upheld in many of the decisions of CAB and the Commonwealth Court, significant weight cannot be attributed to the School District's allegations of insufficient insurance coverage. West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa. Cmwlth. 2000); Brackbill v. Ron Brown Charter School, 777 A.2d 131 (Pa. Cmwlth. 2001). Therefore, the School District should not have denied the Fell Application on this ground.

C. Conformity to Legislative Intent

The School District argues that Fell has failed to conform to the legislative intent of improving pupil learning and increasing learning opportunities for all pupils as required by 24 P.S. §17-1702-A(1) and (2). In regard to the issue of pupil

⁴ Once again, the School District is wrongly denying this Application based on mere speculation. The applicant will be required to obtain the necessary insurance prior to opening its doors.

learning, the School District contends that a review of two schools, a Pennsylvania Bensalem Township charter school and a Michigan school, that utilized the Paragon Curriculum provided by Mosaica, indicates that Fell will not improve pupil learning because of the Paragon curriculum it will utilize. (Decision, page 31). Fell counters the School District's position with an analysis of student achievement in the Pennsylvania Bensalem School, showing that its PSSA test scores are above the state average and that a fifth grade class at Bensalem Township scored 40 points above the state average in math and reading in 1999-2000. Fell also notes that while the Fell Elementary School scored below the state average, the scores for Fell Elementary were higher than the Carbondale Elementary School scores. (Response, PHS, Exhibit 5, Part I).

Moreover, a number of CAB decisions support the use of Paragon Curriculum. In *Ronald H. Brown Charter School*, CAB described the Paragon Curriculum as "designed to prepare students to be creative, intuitive and analytical thinkers with a solid understanding of the history of ideas," and that it "combines the pragmatism and rigors of classical education with the best teaching practices worldwide, including technology." Docket No. CAB 1999-1, p. 21, see also, *Collegium Charter School* (Docket No. CAB 1999-9); *Leadership Learning Partners Charter School* (Docket No. CAB 2000-8).

Concerning the legislative intent of increasing opportunities for all pupils, the School District alleges that Fell failed to provide drafts or finalized plans, procedures or processes demonstrating how Mosaica will comply with all laws and regulations governing the provision of educational services to students with disabilities, and in particular, that Fell failed to show how the Paragon Curriculum can be modified to meet the needs of students with disabilities.

The Fell Application does, however, describe the means by which Fell will accommodate students with special needs. It addresses matters such as parent

involvement, least restrictive environment, Individualized Educational Programs, the inclusion model, initial identification step, etc. In addition, Fell states in the Application that it will fully comply with federal laws and regulations, particularly the Individuals with Disabilities Education Act (IDEA), and Fell enumerates the ways in which it will demonstrate compliance. (Application, pp. 59-60). In light of the information provided by Fell in the Application, Fell does not need to provide finalized plans or curriculum modifications in order to show Fell's conformity to the legislative intent outlined in 24 P.S. §17-1702-A(2). Moreover, CAB has repeatedly found that the Paragon Curriculum satisfies statutory requirements. See Brackbill v. Ronald Brown Charter School, 777 A.2d 131 (Pa. Cmwlth, 2001); Phoenix Academy Charter School (Docket No. CAB 1999-10). Thus, Fell has met the intent of the law, and these reasons for the School District's denial are rejected.

D. Capability to Provide Comprehensive Learning Experiences

The School District maintains that Fell failed to meet the statutory requirement of demonstrating its capability in terms of support and planning to provide comprehensive learning experiences. The School District refers to the lack of an adequate school facility, property, leasing arrangements, other facility requirements, and the lack of an executed agreement between Fell and Mosaica as a basis for Fell's failure to satisfy 24 P.S. § 17-1717-A(e)(2)(ii).⁵

All of these issues have previously been addressed. In its Application, Fell has demonstrated that it possesses the capability to provide comprehensive learning experiences to students, and thus satisfies the statutory requirement of Section 17-1717-A(e)(2)(ii) of the Charter School Law. 24 P.S. §17-1717-A(e)(2)(ii). Thus, this basis for the School District's denial is rejected.

⁵ Fell did provide the executed signature page of the Agreement in its Post Hearing Exhibits (Response, PHS, Exhibit 5, Part VI). Thus, this issue is resolved.

E. Regional Charter School

The School District contends that Fell should have submitted an application for a regional charter school. The School District bases that contention on the assertions that Fell notified outlying school districts of their obligation to transport students and that the majority of the signatures on the Petition of Support and the majority of the speakers at the Public Hearings were from outlying communities. (Decision, p. 37). The School District's definition of outlying communities is unclear. However, the majority of the signatures on the Petition of Support, as previously noted, list a residence of Simpson and Carbondale. Thus, the School District's contention is ill founded.

Most importantly, the right of an applicant to choose whether to apply for a single district charter or a regional charter has been clearly established. CAB held in West Chester Area School District v. Collegium Charter School that "[N]othing in the Charter Law leads to the conclusion that simply because applicants intend to draw students from more than one school district they are obligated to seek a regional charter. (Docket No. CAB 1999-9), p. 25. The Commonwealth Court, in affirming the CAB decision, determined that the Charter School Law "does not set forth any particular set of circumstances that would require a charter school applicant to apply as a multi-district regional charter school rather than a single district charter school. Instead, the Charter School Law leaves that choice completely up to the applicant regardless of the anticipated geographic makeup of the student body." West Chester Area School District v. Collegium Charter School, 760 A.2d 452, 463 (Pa. Cmwlth. 2000). This ground for denial of the Application is, thus, rejected.

F. Financial Impact of the Fell Charter School

The Charter School Law does not provide that financial considerations should be a basis upon which an application for a charter school should be evaluated and

denied. The Charter School Law generally uses criteria that are educational in nature. *Souderton Charter School Collaborative* (Docket No. CAB 1999-2), p.13. In *Wonderland Charter School*, CAB noted that although the school district is not limited to the bases listed in 24 P.S. §17-1717-A, the bases listed are all educational in nature. CAB also noted that the “legislature’s intentions in this act are education centered in general. Thus, this Board considers the creation of financial criteria for judging a charter school application to be improper.” (Docket No. CAB 1999-3), p.15. CAB further reiterated this position in *Sugar Valley Rural Charter School*, when it held that the school district’s reliance “upon the loss of revenue or the ‘waste of taxpayers monies’ as a factor in the analysis of whether to grant a charter” was “directly contrary to the intent of the Charter School Law.” (Docket No. CAB 1999-4), p.16.

Financial considerations were voiced on several occasions during the June 25, 2001 Hearing. See June 25, 2001 Hearing Transcript, pp. 56-59, 70. Most importantly, four of the nine School District Board members indicated during the voice vote at the final hearing on the Fell Application that financial considerations were either a basis for their denial or a factor in their denial of the Fell Application. Mr. Wagner stated that in his opinion as a board member, “Carbondale Area citizens cannot afford two public schools.” (July 19, 2001 Hearing Transcript, p. 7). Ms. Lepre referred to the cost element in registering her vote. She stated, “I would also note the cost element here for the [tax payers] and senior citizens. We would be saving you money by adding on to the Carbondale Elementary and not redoing the Fell School. If you go with the Charter School, then we’ll have two and I think it is just going to cost us way [to] much money.” (July 19, 2001 Hearing Transcript, p. 8). Mr. Jordan unequivocally based his denial upon financial considerations. Mr. Jordan stated, “I just don’t think it is feasible and I don’t think that the people of Carbondale can afford another school. Based upon that, that’s the way I am going to

decide.” (July 19, 2001 Hearing Transcript, p. 10). Ms. Palmiero commented, “My personal concern is as a [tax payer], we can’t really afford anymore tax raises. I would deny.” (July 19, 2001 Hearing Transcript, p. 12).

These School District Board members wrongly relied upon a consideration of financial impact in their denial of the Fell application. This was an invalid criterion for denying a charter school applicant, and CAB rejects this basis for the denial of Fell’s Application.

VI. Conclusion

Fell has satisfied the criteria delineated in 24 P.S. §17-1717-A(e)(2) and 24 P.S. §17-1719-A for evaluating a charter school application. The record indicates that Fell has demonstrated, sustainable support for a charter school and has shown that it possesses the capability, in terms of planning and support, to provide comprehensive learning experiences for students. Fell has sufficiently considered and provided the information requested in P.S. §17-1719-A, and Fell’s Application conforms to the legislative intent of the Charter School Law as outlined in 24 P.S. §17-1702-A. For all of these reasons, Fell’s appeal should be affirmed and a charter granted.

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

In Re: Fell Charter School :
Appeal from Denial of Charter : **Docket No. CAB 2001-9**
School Application by :
Carbondale Area School District :

ORDER

AND NOW, this 2nd day of May, 2002, based upon the foregoing and the vote of this Board, the December 19, 2001 appeal of the Fell Charter School is hereby AFFIRMED and the Carbondale Area School District is hereby directed to grant the Application and sign the Fell Charter School's charter pursuant to 24 P.S. §17-1720-A.

For the State Charter School Appeal Board

/s/
Charles B. Zogby,
Chairman