

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

In Re: Sugar Valley Rural Charter School :
Appeal from Denial of Charter :
School Application by : Docket No. CAB 1999-4
Keystone Central School District :

Synopsis

The Keystone Central School District (“KCSD”) denied the application of the Sugar Valley Rural Charter School (the “SVRCS”) on a number of grounds. Based upon the Findings of Fact, Conclusions of Law and Discussion hereinafter, we conclude that the denial was improper. In some instances, the bases for denial were not criteria upon which the legislature intended an applicant to be judged. In other instances, the District’s findings are not supported by the record evidence and are rejected.

The Charter School Law provides a guide for reviewing a charter school application and for reviewing a district’s process in evaluating the application. This decision reviews the evidence presented by the parties in relationship to the criteria upon which the application was denied. We assume that if the denial does not specifically mention the inadequacy of the applicant in meeting a requirement, KCSD has agreed that the applicant has met that requirement.

In addressing the appeal of this matter, KCSD also raised various procedural objections to the charter applicant’s appeal. We have decided these objections contrary to the District, and have set forth our findings separately as to the preliminary objections, and our substantive determination.

Findings of Fact - Procedural Issues

1. The Sugar Valley Concerned Citizen's ("SVCC") filed an application with KCSD to form a Charter School and the application was denied on March 1, 1999.

2. On July 1, 1999, SVCC filed an appeal of that decision to the Charter School Appeal Board ("CAB"), and the CAB appointed Tracie Heglas, Esquire, as the Hearing Examiner to conduct a hearing, if necessary, and to certify the record of proceedings to the CAB.

3. On July 16, 1999, KCSD filed an Answer, New Matter and Motion to Dismiss SVCC's appeal, along with a supporting Memorandum of Law, alleging the following deficiencies:

- a. the appeal was untimely;
- b. service of the appeal by facsimile, the proof of service and the number of copies of the appeal, did not comply with the General Rules of Administrative Practice and Procedure;
- c. a Petition for Appeal was filed by SVCC on May 4, 1999, which was improvidently accepted by the CAB prior to the July 1, 1999 date set for filing appeals in the statute;
- d. the appeal was deficient in that it failed to allege any substantive facts relied upon, and was not upon a form developed by the Pennsylvania Department of Education;
- e. the adoption of the General Rules of Administrative Practice and Procedure by the Board violated the Sunshine Law and the Board erred in requiring an expedited answer to the appeal;
- f. the appointment of a Hearing Examiner was an invalid delegation of the CAB's authority;
- g. the appeal was not verified.

4. On July 27, 1999, SVCC filed its Reply to New Matter along with a supporting Memorandum of Law.

Conclusions of Law - Procedural Issues

1. The Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, 24 P.S. §§17-1701-A *et seq.*, governs the application and approval processes and operation of charter schools in Pennsylvania.
2. SVCC's appeal was timely filed, and properly served upon the CAB.
3. The General Rules of Administrative Practice and Procedure apply to all administrative actions before executive agencies unless contrary rules are adopted.
4. The CAB has not adopted any rules of procedure contrary to the General Rules of Administrative Practice and Procedure.
5. The CAB's action in appointing a Hearing Examiner was in accordance with the General Rules of Administrative Practice and Procedure.
6. SVCC's appeal is not deficient in any manner necessitating its dismissal.

Discussion - Procedural Issues

KCSD's procedural challenge to the appeal filed in this matter fails in every respect. While procedures applicable to proceedings before CAB should be followed, KCSD has not demonstrated any viable deficiencies on the part of SVCC or regarding the appeal document that it filed in this matter.

a. Filing and Service

KCSD raises numerous allegations relating to the manner, form or timing of the appeal filed by SVCC in this case. Under the Charter School Law, an appeal may not be taken to the CAB from the decision of a local school board until July 1, 1999. In addition, the CAB must review the certified record of an appeal within thirty (30) days of the notice of acceptance of the appeal.

KCSD first argues that the appeal is untimely and that it should be dismissed because SVCC should have filed an appeal in the Court of Common Pleas. There is no support for this proposition in the Charter School Law. However, KCSD points to the case of Plaughner v. American Viscose Corporation, 24 A.2d 698 (Pa. Super. 1942) in support of its argument. This decision is inapposite. The issue in Plaughner was not the creation of an appellate body, but rather the failure to organize a medical advisory board to assist the Workmen's Compensation Board in making findings on medical issues. Plaintiff sought disability benefits and was being denied a final determination because the Common Pleas Court remanded for a determination by this nonexistent medical advisory board. On appeal, the Superior Court held that the Workmen's Compensation Board could decide the case, rather than hold it in abeyance until the other board was organized.

Here, the facts are quite different. Shortly after SVCC became eligible to appeal based upon the Common Pleas Court certification of April 8, 1999, the Governor's nominees had all been presented to the Senate for confirmation. They were confirmed on June 14, 1999 and were sworn in on July 1, 1999, consistent with the Charter School Law. Thereupon, SVCC filed its appeal, consistent with the statutory language that "[n]o appeal from a decision of a local school board may be taken until July 1, 1999." 24 P.S. §17-1717-A(f). There is no other appeal time line set forth in the statute.

The General Assembly set forth numerous timelines for the application process and even for the collection of signatures in support of an appeal on a "petition to appeal." In contrast, however, there are no temporal requirements for the subsequent steps in the Court of Common Pleas or to file the appeal with the CAB, but for the July

1, 1999 appeal commencement date. Thus, we reject this argument and find that the appeal was timely.

In the alternative, KCSD next argues that the CAB accepted SVCC's appeal on May 4, 1999 but did not review the record within thirty (30) days thereof and, therefore, the CAB has no jurisdiction of the appeal. As noted above, the CAB could not accept appeals until July 1, 1999, and therefore, the May 4, 1999 letter from counsel by its very language acknowledged receipt of the decree from the Court of Common Pleas, which decree found the petition filed with the Court to have been sufficient. 24 P.S. §17-1717-A(i)(5). This simply made SVCC **eligible to appeal**. Further, the petition filed with the Court clearly does not constitute an appeal since it is simply a Department of Education form with KCSD resident signatures, names, addresses and dates of signature, along with an affidavit. See, 24 P.S. §17-1717-A(i)(3)(4). Moreover, CAB did not exist at this time, the letter from counsel did not and could not "accept" any "appeal" and therefore, the thirty (30) day time period in which the CAB had to meet to review the certified record did not begin to run at that time. Only after the CAB members were sworn in on July 1, 1999 could the CAB accept appeals, which is when SVCC's appeal was filed and accepted. Therefore, we also find that SVCC's appeal was not filed prematurely.

The School District also argues that the Charter School Law does not allow any school board decisions denying charter applications made prior to July 1, 1999 to be brought before the CAB on July 1, 1999. The CAB does not agree with the School District's position. The Charter School Law merely provides that an appeal may not be taken from a decision of a local school board until July 1, 1999. 24 P.S. §17-1717-A(f). There is no provision in the Charter School Law that prohibits the CAB from accepting

an appeal, on or after July 1, 1999, of any local school board decision made prior to July 1, 1999. The Charter School Law does not provide any time frame within which an appeal must be filed by the charter applicant. The Charter School Law only requires that in order to be eligible to appeal a denial of a charter, the applicant must obtain a certain amount of signatures within sixty (60) days of the denial. The Charter School Law provides no further requirements about when the appeal must be filed with the CAB. For these reasons KCSD's argument must be rejected.

Next, KCSD argues that service by facsimile is not proper service. However, although counsel may have received a copy of the appeal by facsimile, the appeal in the Certified Record was sent by first-class mail. The General Rules of Administrative Practice and Procedure require that pleadings be served by mail or in person. 1 Pa. Code §33.32. Thus, this objection is meritless. Although the proof of service does not match the format specified in the General Rules, it certainly contains all the requisite information. 1 Pa. Code §33.36. To dismiss the appeal on this very technical ground certainly elevates form beyond substance. Moreover, CAB is mystified by the argument that KCSD received an insufficient number of copies of the appeal. Under Section 33.37, only one copy of all documents, except briefs is necessary. Clearly, KCSD received one copy; thus this requirement too was met.

KCSD also complains that there are two separate forms or appeal documents in this case, and that such constitutes a fatal procedural flaw. However, the only reference to a form to be developed by the Pennsylvania Department of Education is found in 24 P.S. §17-1717-A(i)(3), in reference to the petition filed with the Court of Common Pleas. There is no other directive in the Charter School Law regarding creation of a form to be

used in filing an appeal with the CAB. Thus, the CAB properly instructed appellants to follow Section 35.17 in preparing their appeals.

Finally, regarding the lack of verification of SVCC's appeal, under Section 33.12 an appeal filed with the CAB need not be verified because the Charter School Law does not require such. 1 Pa. Code §33.12.

Based on all of the above, the School District's procedural challenges to SVCC's appeal are dismissed. The filing of the appeal was timely and its form was proper.

b. Procedure

The School District complains that the appeal must be dismissed because SVCC failed to conform to Section 35.17 and, most specifically that it failed to plead any material facts that would merit favorable consideration of its appeal. CAB disagrees. In reading SVCC's petition, one certainly discerns SVCC's interest in the matter and the facts and arguments supporting their appeal. Moreover, a review of the District's pleadings demonstrates that the appeal was certainly precise enough to enable the KCSD to fully respond to each and every issue raised by the appeal. Thus, we find that this procedural contention too must be rejected. We also note that it is our responsibility and duty on appeal to determine whether the *findings or conclusions* of the School District are supported by the evidence already of record. Given the our explicit statutory authority to agree or disagree with the findings of the School District (although "due consideration" of those findings is required), as well as the more than sufficient pleadings filed in this case, we are loath to require SVCC to be any more specific and, for example, to cite to legal authority. See 24 P.S. §17-1717-A(i)(6).

The School District also contends that the adoption of the General Rules of Administrative Practice and Procedure by the CAB violates the Sunshine Act, and that the appointment of a hearing examiner in accordance with those rules constitutes an impermissible delegation of the Board's authority. These contentions, as with those previously enumerated, lack any viability.

First, the General Rules of Administrative Practice and Procedure are applicable to all proceedings before Commonwealth agencies, with two exceptions - 1) when the applicable governing statute sets forth inconsistent rules on the same subject; or 2) when the agency has promulgated inconsistent regulations on the same subject. 1 Pa. Code §31.1. Neither of these exceptions apply in this case. The alleged violation of the Sunshine Act need not even be addressed, for in the absence of the Board's action adopting the rules, the same rules would nonetheless apply.

Second, the General Rules of Administrative Practice and Procedure specifically provide for the appointment of hearing examiners for the purpose of developing a record of proceedings and allows for the appointment of "examiners" when evidence is to be taken in a proceeding. 1 Pa. Code §35.185. The Charter School Law specifically provides for supplementation of the record, which may involve the taking of additional evidence, 24 P.S. §17-1717-A(i)(6), in addition to the general provision in the Administrative Code that provides a hearing right as a predicate to any valid adjudication of a Commonwealth agency. (2 Pa.C.S.A. §504). Finally, the CAB has not delegated any of its decision-making authority to the hearing examiner; rather, the hearing examiner's role is simply that of certifying the record to the CAB, while the CAB

retains its obligation under the Charter School Law to decide this matter. For all these reasons, the procedural objections of the School District will be denied.

FINDINGS OF FACT – Substantive Issues

1. The Keystone Central School District (“KCSD”) is a Pennsylvania school district with its principal place of business at 95 West Fourth Street, Lock Haven, Pennsylvania 17745.

2. The Sugar Valley Concerned Citizens (“SVCC”) is a non-profit organization with a post office box address of Box 223, Loganton, Pennsylvania 17747.

3. The Sugar Valley Rural Charter School (hereinafter “SVRCS”) is the proposed charter school to be established by the SVCC.

4. On November 14, 1998, KCSD received a formal Charter School Application Resubmission from SVCC for a charter school in Sugar Valley for the academic year 1999-2000.

5. Prior to this final Application resubmission on November 14, 1998, SVCC had previously submitted its Charter School Application to KCSD on three separate occasions.

6. On each occasion, KCSD denied/disapproved SVCC’s Application.

7. KCSD held a public hearing on January 21, 1999 to discuss the November 14, 1998 Application.

8. In its Notice of Determination dated March 1, 1999, KCSD denied SVCC’s November 14, 1998 Application, in part, because “SVCC has [not] fulfilled its burden to meet the standards for approving the authorization of a charter school in the School District. Given the lack of compliance with Act 22 of 1997, the issuance of a charter would not only be unwarranted, but would be wasteful of School District taxpayer monies.”

9. On March 19, 1999, SVCC filed a Petition for Allowance of Appeal, in accordance with 24 P.S. §17-1717-A-(l)2, with the Court of Common Pleas of Clinton County.

10. On April 8, 1999, the Court of Common Pleas of Clinton County, held that the Petition complied with jurisdictional requirements of Act 22 and ordered that the Petition be transferred to the CAB.

11. The parties to this appeal have agreed that the Record does not need to be supplemented, as would be permitted under the Charter School Law.

12. KCSD denied the Application because of curricular issues, financial issues, operational and facility considerations, governance, [lack of] demonstrated sustainable support, discrimination, accountability, employee matters, liability and insurance, and health and safety issues.

13. KCSD's conclusions on the proposed curriculum were that it is "needy and reverts back to a curriculum of years past." Alternatively, even if the SVCC curriculum is a sound traditional curriculum, the District found it not to be "innovative or unique" nor did it provide "expanded types of educational opportunities [which are] not available within the public school system."

14. Wayne C. Henderson, former Assistant Superintendent of KCSD provided an analysis of the curriculum proposed by SVCC, and his analysis was adopted by KCSD in its Notice of Determination.

15. Henderson notes in his report that the strengths of the curriculum are, in part, that "SVRCS seems to have well developed programs to foster sustained community involvement in the education of students, and the curriculum seems to have the basic elements of a sound traditional rural education."

16. Henderson's concerns with the curriculum are, in part, that "although the plan has a sound traditional curriculum, it certainly does not contain any unique aspects or creative facets that the KCSD would want to use as a model in other schools. The

curriculum is not progressive, but just the opposite.”

17. In KCSD’s Notice of Determination, it also adopted an analysis of SVCC’s proposed curriculum by Vito Forlenza, a curriculum specialist who is recognized statewide.

18. In Forlenza’s report, he notes that the strengths of the curriculum are, in part, that the curriculum approach calls for: the integration of “traditional” subject matter and skills in accordance with a student’s stages of development; an organizational structure which emphasizes continuous progress; and, the acknowledgement that curriculum coordination and articulation are important with lists of goals and objects, curriculum overviews of subject areas and an attempt at more detailed curricula.

19. According to Forlenza’s report, the needs of the curriculum are, in part, that the curriculum and related references contained in the plan are difficult to discern between and among the sets of goals, objectives, standards and learning outcomes, and the curriculum documentation is housed in discrete subject areas with performance objectives which seem to be in conflict with the proposed philosophy that the curriculum will be integrated.

20. Neither of the reports of Henderson or Forlenza, however, contain any specific finding of a curriculum deficiency regarding SVCC’s proposed curriculum.

21. Notwithstanding the fact that SVRCS’ application did not include a budget breakdown or a plan for alternative resources, the SVCC did include a five-year budget proposal and financial management plan in its Application.

22. In response to KCSD’s operation and facility concerns, regarding whether the school could realistically opening for the 1999-2000 school year, SVCC agreed to delay opening the school until September 2000 while attempting to resolve the issues that had been raised.

23. Regarding potential enrollees, SVCC included in its Application a Student Recruitment Plan in which survey figures show that there are 219 proposed students from

175 families who plan to attend SVRCS.

II. CONCLUSIONS OF LAW

1. The present appeal is properly before the CAB, pursuant to the Charter School Law, 24 P.S. §§1701-A, *et. seq.*

2. In accordance with 24 P.S. §17-1717-A (e)(2) of the Charter School Law, the charter school application is to be evaluated based on, but not limited to, the following criteria: (i) sustainable support by teachers, parents, other community members and students; (ii) the capability to provide comprehensive learning experiences to students; (iii) the extent to which the application conforms to the legislative intent outlined in 24 P.S. §1702-A; and (iv) the extent to which the charter school may serve as a model for other public schools.

3. In accordance with 24 §17-1719-A, an application to establish a charter school shall include, *inter alia*, (5) the ... education goals of the charter school, the curriculum to be offered and the methods of assessing whether students are meeting educational goals; (9) the financial plan for the charter school; and (11) a description of and address of the physical facility in which the charter school will be located.

4. The application of SVCC was improperly denied by the Respondent, the Board of School Directors of the Keystone Central School District, because the Petitioner satisfied the criteria of 24 P.S. §1717-A(e)(2) and because SVCC'S application met the application requirements of 24 P.S. §1719-A.

5. In accordance with 24 P.S. §17-1702-A, the legislative intent of the Charter School Law is to, *inter alia*, (1) improve pupil learning; (2) increase learning opportunities for all pupils; (3) encourage the use of different and innovative teaching methods; and (4) provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.

6. SVCC's application and proposal are consistent with the intent of the

Charter School Law.

III. DISCUSSION

Beginning in May 1997, SVCC submitted an application to establish SVRCS, K–12, in Loganton, Pennsylvania. The application was initially submitted to KCSD’s Board of Directors on May 31, 1997 and resubmitted on November 15, 1997, March 12, 1998 and November 14, 1998. Each submission was denied by KCSD.

This action is a result of the appeal of the denial of the November 14, 1998 application resubmission (hereinafter “the Application”) for a charter school to be established in Sugar Valley for the academic year 1999-2000. KCSD held a public hearing on January 21, 1999 relative to the Application and subsequently denied the Application in its Notice of Determination, dated March 1, 1999.

A local school district board of directors is to evaluate a charter school application based on certain factors. See 24 P.S. §17-1717-A (e) 2. The factors to be considered include, but are not limited to: (i) sustainable support by teachers, parents, other community members and students; (ii) the capability to provide comprehensive learning experiences to students; (iii) the extent to which the application conforms to the legislative intent outlined in 24 P.S. §1702-A; and (iv) the extent to which the charter school may serve as a model for other public schools. Each of these factors should be measured on a continuum.

A. Curricular Issues

KCSD contends that one of the reasons the Application was denied was because of curricular issues. KCSD contends that SVCC’s proposed curriculum is “needy and reverts back to a curriculum of years past.” KCSD has relied on findings of Wayne C. Henderson, former Assistant Superintendent of KCSD, and Vito Forlenza, a curriculum specialist recognized statewide. Both Henderson and Forlenza conducted evaluations of

the SVRCS proposed curriculum.

In regard to the weaknesses in the proposed curriculum, Henderson stated, in part, that “although the plan has a sound traditional curriculum, it certainly does not contain any unique aspects or creative facets that the KCSD would want to use as a model in other schools. The curriculum is not progressive, but just the opposite.”

It is important to note, however, that Henderson, the former Assistant Superintendent of KCSD, addressed certain strengths of the curriculum as well. These strengths are, in part, that “SVRCS seems to have well developed programs to foster sustained community involvement in the education of students and the curriculum seems to have the basic elements of a sound traditional rural education.”

According to Forlenza, the weaknesses of the curriculum are, in part, that “the curriculum and related references contained in the plan are difficult to discern between and among the sets of goals, objectives, standards and learning outcomes, and the curriculum documentation is housed in discrete subject areas with performance objectives which seem to be in conflict with the proposed philosophy that the curriculum will be integrated.”

The strengths of the curriculum, according to Forlenza, are, in part: that “the curriculum approach calls for integration of “traditional” subject matter and skills in accordance with student’s stages of development; an organizational structure which emphasizes continuous progress; and the acknowledgement that curriculum coordination and articulation are important with lists of goals and objects, curriculum overviews of subject areas and an attempt at more detailed curricula.”

Neither Henderson’s nor Forlenza’s report contain a specific finding of a curriculum deficiency. SVRCS has adopted a curriculum model that integrates traditional subject matter and skills with activities appropriate to each child’s stage of development and learning modalities. In its Application, SVRCS has provided a thorough educational program including: teaching methods and pedagogy; innovative tools for practice;

mathematics curriculum overview for grades K-12; science curriculum for grades K-12; social sciences curriculum for grades K-12; communications curriculum for grades K-12; special needs; education goals/expectations for students; extracurricular activities; school accountability; student evaluation; ongoing professional development; school community and conflict resolution.

KCSD contends that even if the SVCC's curriculum is a sound traditional curriculum, it is not "innovative" or "unique" nor does it provide "expanded types of educational opportunities [which are] not available within the public school system." In taking this position, KCSD has misconstrued the legislative intent of promoting charter schools in order to "**encourage** the use of different and innovative teaching methods." See 24 P.S. §1702-A (3)(emphasis added). The purpose of the statute is to **encourage** the use of innovative methods, not to exclude charter applicants whose proposed methods may not be as innovative or as different as the school district believes they should be.

As required under 24 P.S. §1717-A (e) (2) (ii) and 24 P.S. §1719-A of the Charter School Law, SVRCS has set forth in its Application a curriculum that will provide a comprehensive learning experience to students. Based upon the above discussion, the school district's finding to the contrary is rejected.

B. Community Support

KCSD also contends that the Application was denied because of the lack of demonstrated sustainable support for the charter plan by teachers, parents, other community members and students, as required by 24 P.S. §1717-A (e) (2) (i). Specifically, KCSD avers that it has not been provided evidence that any student will be attending SVRCS.

In its Application, SVCC included a Student Recruitment Plan. As part of the Student Recruitment Plan, household surveys were conducted in 1997 and 1998 to gather information from the community. Utilizing information obtained in the April, 1998

survey, a total of 219 school age children from 175 families are planning to attend SVRCS. The total of 219 students includes nine (9) special needs students. These numbers show a continued support for the proposed charter plan, in accordance with 24 P.S. §1717-A (e) (2) (i). Thus, this ground for denial of the application is rejected as well.

C. Financial Planning

In accordance with 24 P.S. §17-1719-A, an application to establish a charter school shall include, inter alia, (9) the financial plan for the charter school. KCSD contends that SVRCS lacks a responsible financial plan. KCSD further contends that: SVRCS is not a reasonable investment of the “taxpayers hard earned dollars”; the application did not include a budget breakdown or a plan for alternative resources; and there was no financial support other than state funds.

In its Application, SVCC presented a comprehensive five-year Financial Management Plan for SVRCS. The Plan includes a start-up budget, a first-year budget based on a maximum enrollment of 250 K-12 students and a five-year budget with an incremental growth in enrollment of 25 – 35 students per year. In its Plan, SVCC also addressed the ways in which additional revenues will be sought.

In its Notice of Determination, which delineated the reasons that the KCSD denied the Application, one of the stated reasons for denying the Application was that it would “be wasteful of School District taxpayer monies.” This motivation, to deny a charter because the district would lose money, is contrary to the Charter School Law. By encouraging the creation of charter schools and by explicitly funding charter schools from school district revenues, the legislature intended for districts to give up a portion of their revenues in order to allow charter schools to operate. Conversely, the legislature did not include financial considerations among the criteria upon which a charter school application should be judged. Therefore, it was directly contrary to the intent of the Charter School Law for KCSD to rely upon the loss of revenue or the “waste of taxpayers monies” as a factor in the analysis of whether to grant a charter. We disagree with

KCSD's findings in this regard, and reject them.

D. Facility

In accordance with 24 P.S. § 17-1719-A, an application to establish a charter school shall include, inter alia, (11) a description of and address of the physical facility in which the charter school will be located. In its Notice of Determination, KCSD addressed the operational and facility considerations of the proposed school and whether the school could be operational for the opening of the school year 1999-2000. In its Application, SVCC presented a Site Development Plan, which included a site description and a facility description, in accordance with 24 P.S. §1719-A (11). Furthermore, SVCC also included a list of facilities previously considered with potential for future use and a facility feasibility study prepared by Hoffman & Popovich Architects and Associates.

During the course of the Application process, SVCC satisfied the test regarding the physical facility. However, KCSD raised several concerns including land development requirements, proper zoning and the lease agreement. It is SVCC's obligation to bring the facility into compliance with the applicable standards and codes. Based on the testimony of Mr. Nevin T. Conaway of SVCC at the CAB meeting, SVCC has opted not to proceed with the initially proposed facility and is looking into other options. In addition, SVCC has agreed to delay opening the school until September 2000, in order to attempt to resolve the outstanding issues relative to the operation and facility considerations with the district and to ensure that the facility ultimately selected is in compliance with all applicable standards and codes. Therefore, KCSD's concerns with whether the school could be operational for the opening of the 1999 school year are no longer a viable issue. SVCC should not, we conclude, be penalized for making a concerted effort to address and cure the concerns of KCSD, by locating a new facility in which the charter school will be located. For these reasons, we find that KCSD erred in rejecting the application for lack of information in the application regarding SVRCS' proposed school facility.

IV. Summary

In sum, we find that, as required under 24 P.S. §1717-A (e) (2) (ii) and 24 P.S. §1719-A of the Charter School Law, SVRCS has set forth in its Application, a comprehensive learning experience for its students. In regard to demonstrated sustainable support for the charter school, we find that the Student Recruitment Plan, included in the Application, shows a continued support for the proposed charter plan, in accordance with 24 P.S. §1717-A (e) (2) (i).

With respect to the information that must be included in the Application, in accordance with 24 P.S. §1719-A, we find that SVCC has presented a comprehensive five-year Financial Management Plan for SVRCS. KCSD's reliance upon the loss of revenue as a factor in the analysis of whether to grant a charter is directly contrary to the legislative intent of the Charter School Law.

Finally, contrary to KCSD's assertion, during the course of the Application process, SVCC satisfied the test regarding the physical facility in which the charter school will be located. Because SVCC is attempting to address and resolve KCSD's concerns by locating a new facility and is willing to delay the opening of the school until September 2000, it should not be denied the charter on this basis.

ORDER

AND NOW, this _____ day of November, 1999, based upon the foregoing and the vote of this Board¹, the Keystone Central School District's Motion to Dismiss is denied; the July 1, 1999 appeal of the Sugar Valley Rural Charter School is affirmed; the District's March 1, 1999 decision denying the charter application is reversed; and the Board of School Directors of the District is hereby directed to grant the application and sign Sugar Valley's charter pursuant to 24 P.S. §17-1720-A.² Furthermore, once the Sugar Valley Rural Charter School has finalized its facility plans for the 2000-2001 school year, it shall provide both the Board of School Directors of the District and this Board with the facility information required under 24 P.S. §17-1719-A(11) and the school's charter shall be amended accordingly.

For the State Charter School Appeal Board

Eugene W. Hickok
Chairman

¹ At the Board's August 18, 1999 meeting, the Board voted 3-3 to grant the appeal, so the appeal was determined to have been denied because of the tie vote. However, a subsequent vote was taken at the Board's August 27, 1999 meeting because counsel to the Board determined that the Charter School Law required an affirmative or negative vote of a majority of the Board, which would be four votes, for action to be taken. At the August 27, 1999 meeting, the Board first voted to deny the school district's Motion to Dismiss by a vote of 4-1 with members Aliota, Bunn, Tait and Hickok voting to deny the Motion and member Shipula voting to grant the Motion. The Board then voted to grant the appeal by a vote of 4-1, with members Aliota, Bunn, Tait and Hickok voting to grant the appeal and member Shipula voting to deny.

² Although the charter in this case shall run for the statutory period of from 3 to 5 years from the date of the signature of the district or the Chairman of this Board, the school will not be authorized to commence operation under that charter before the beginning of the 2000-2001 school year.