

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

In Re: Appeal of Phoenix Academy Charter School : Docket No. CAB 1999-10

OPINION AND ORDER

I. INTRODUCTION

Phoenix Academy Charter School ("Phoenix Academy") is appealing the denial of its application for a charter school by the Phoenixville Area School District Board of School Directors ("Phoenixville"). Phoenixville denied the charter application by a 5-4 vote on February 18, 1999. Phoenixville issued its written denial on March 16, 1999, setting forth as required by Section 1717-A(e)(5) of the Charter School Law, 24 P.S. §17-1701-A et seq. (the "Charter Law"), the reasons for the denial. Phoenixville denied the application for the following six reasons:

1. Failure to satisfy 24 P.S. §17-1719-(A)(11) requirements regarding the school facility;
2. Failure to satisfy 24 P.S. §17-1719-(A)(13) requirements regarding the proposed faculty and professional development plan for the faculty;
3. Failure to conform with the General Assembly's intentions to create new professional opportunities for teachers as set forth in 24 P.S. §17-1702-A(4);
4. Lack of demonstrated sustainable support for the proposed charter school plan as set forth in 24 P.S. §17-1717-A(e)(2)(i);
5. Concerns over the for-profit status of the school; and,
6. Detrimental effects on the education of the remaining Phoenixville students.

In response to the denial, Phoenix Academy followed the statutory procedure for

perfecting an appeal to the State Charter School Appeal Board (“CAB”). On July 1, 1999, Phoenix Academy appealed Phoenixville's denial of a charter.

On July 7, 1999, Julia A. Stubinski and Harry L. Shreiner (jointly "Petitioners") filed a Petition to Intervene with the CAB. Petitioners previously sought and were granted intervenor status by the Chester County Court of Common Pleas in the sufficiency petition proceeding before it. Petitioners now seek intervenor status before the CAB on the substantive issues. The parties and the Petitioners submitted briefs setting forth their respective positions regarding the Petitioners' right to intervene. The briefs are part of the record certified to the CAB by the hearing officer. The CAB allowed counsel for Petitioners, counsel for Phoenixville, and counsel for Phoenix Academy to offer oral argument regarding the intervention issue.

The CAB has carefully considered the written and oral arguments presented by the parties and the Petitioners. For the reasons set forth in this Opinion, the Petition to Intervene filed by Julia A. Stubinski and Harry L. Shreiner is DENIED. Phoenix Academy's charter school application is DENIED, without prejudice to Phoenix Academy's rights to submit a new application or a revised application pursuant to 24 P.S. §17-1717-A(f).

II. FINDINGS OF FACT

1. Phoenixville denied the charter application of Phoenix Academy by a 5-4 vote on February 18, 1999.
2. Phoenixville issued its written denial on March 16, 1999.
3. On July 1, 1999, Phoenix Academy appealed Phoenixville's denial of a charter.
4. On July 7, 1999, Julia A. Stubinski and Harry L. Shreiner filed a Petition to Intervene with the CAB. Petitioners previously sought and were granted intervenor status by the Chester County Court of Common Pleas in the sufficiency petition proceeding before it.

5. Petitioners' claim for intervention is based solely on the allegation that Phoenix Academy should have submitted a regional charter school application.
6. The Charter Law provides that a charter school may be established and an application to establish a charter school shall be submitted to the local board of school directors of the district where the charter school will be located. 24 P.S. §17-1717-A.
7. A regional charter school may be established and the boards of school directors of one or more school districts may act jointly to receive and consider an application for a regional charter school. 24 P.S. §17-1718-A.
8. Petitioners are not taxpayers or residents of Phoenixville, where the proposed charter school is to be located, but are taxpayers and residents of the Downingtown Area School District ("Downingtown"), which is located within ten miles of the Phoenixville School District.
9. Phoenix Academy intends to hold enrollment meetings in districts within ten miles of the school district in which the charter school is to be located.
10. It is only speculation about the numbers, if any, of the Downingtown students who may actually attend Phoenix Academy, and even if students residing in Downingtown attend Phoenix Academy, there is no evidence that taxes will be raised or that there will be a reduction in services in Petitioners' district as a result.
11. Phoenix Academy's appeal was accepted by the CAB July 1, 1999, which is within 30 days of the approval of the sufficiency petition.
12. Phoenixville denied a charter to Phoenix Academy because it failed to locate a suitable facility prior to the time Phoenixville voted on the charter application.
13. None of the possible sites alluded to in the record as a possible location for Phoenix

Academy is currently under consideration as potential facilities.

14. Evidence of a currently proposed site (a former parochial school) was not provided by Phoenix Academy until the affidavit of Mahlon Miller, dated July 13, 1999, was filed with the hearing officer. This building is not one of the buildings suggested as a possible site at the time of Phoenixville's decision. Therefore, the affidavit is not admitted into the evidentiary record of this proceeding.
15. Phoenix Academy's application and supplemental materials submitted prior to Phoenixville's vote set forth a sufficient professional development plan for the faculty.
16. Phoenix Academy, and its primary service provider, Mosaica, have a thorough and widespread training scheme for the teachers to be able to deliver the academic program as intended.
17. The charter application sets forth new professional opportunities for teachers, such as teaching three grades in a three year cycle.
18. Phoenix Academy will be offering a proprietary curriculum and teaching methodology, which it claims is different from Phoenixville's academic curriculum and teaching methods.
19. Phoenixville did not establish in the record that it already offers what Phoenix Academy proposes to offer.
20. Sixty families pre-registered for Phoenix Academy.
21. At the public hearing, at least three members of the public, spoke in favor of the charter, while no one can be identified as speaking against it
22. Newspaper articles, letters to the editor and editorials expressed a reasonable degree of support for the charter school.

23. The necessary support exists to grant Phoenix Academy a charter.
24. Mosaica is a for-profit entity.
25. Phoenix Academy is a not for profit school.
26. Phoenix Academy's Board of Trustees has real and substantial authority and responsibility for educational decisions concerning Phoenix Academy.
27. The teachers and principal of Phoenix Academy are employees of the charter school and not employees of Mosaica.
28. It is reasonable for the founder and Board of Trustees to contract with commercial educational service providers for the expertise and skills necessary to operate a school, as well as for propriety curriculum and educational materials and methods that match the Trustees' visions and goals.

III. CONCLUSIONS OF LAW

1. Charter school applicants decide whether to seek a regional or a single district charter and the Charter Law does not obligate applicants who intend to draw students from more than one school district to seek a regional charter.
2. The Charter Law does not authorize the board of directors of the district in which the charter school is to be located, or the board of directors or residents of school districts from which students are recruited to attend a charter school located outside their resident district, to require an applicant to apply for a regional charter.
3. Phoenix Academy is not required to apply for a regional charter, and therefore, the claimed basis for Petitioners' alleged right of intervention disappears.
4. The Charter Law does not authorize any parties, other than the charter school applicant and the local board of directors, to be involved in the appeal process, and the Petitioners

- cite no other law that allegedly provides them with a statutory right to intervene.
5. Filing a sufficiency petition with the Court of Common Pleas is not the appeal of the denial of a charter but is merely a procedural requirement with which the charter school applicant must comply to be eligible to appeal, to the CAB, the denial of the charter by the local board of directors. 24 P.S. §17-1717-A(i)(2).
 6. Allowing the Petitioners to intervene in procedural proceedings before a Court of Common Pleas does not require the CAB to allow the Petitioners to intervene in the appeals on the merits before the CAB.
 7. There are no interests of the Petitioners that may be directly affected by the action of the CAB in these appeals because any decision to raise taxes or reduce services would be the direct result of action taken by the local board of school directors, not a result of action taken by the CAB.
 8. An order by the CAB to grant a charter binds only the school district in which the charter schools is to be located, and therefore, such an order in this appeal would not bind the Petitioners, who are taxpayers and residents of districts adjoining Phoenixville, the proposed charter school district.
 9. Simply because the regional charter school issue may be an issue of first impression does not mean that Petitioners have a right to intervene in these appeals.
 10. The Charter Law does not set forth a time period in which an applicant's appeal must be filed with the CAB.
 11. Phoenix Academy's appeal was timely and the CAB has jurisdiction to consider the appeal.
 12. The Charter Law permits the 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.

13. The applicable standard of review is not the standard used by appellate court because the CAB has the authority, under the Charter Law, to agree or disagree with the findings of Phoenixville, and to allow the charter school and/or local board of directors to supplement the record if the supplemental information was previously unavailable. 24 P.S. §17-1717-A (6).
14. A charter school applicant has the burden of proving that all of the enumerated requirements of the contents of a charter school application were satisfied.
15. Phoenixville correctly denied Phoenix Academy's application because Phoenix Academy failed to identify a proposed school facility in the application or in the supplemental materials presented to Phoenixville prior to Phoenixville's vote on the application.
16. The defective application regarding the facility was not cured by submitting the affidavit of Mahlon Miller, regarding the alleged procurement of a facility, after the Directors' vote on the application.
17. Information provided in Phoenix Academy's application concerning the professional development plan for the faculty was satisfactory.
18. The indicia of sustainable support is to be measured in the aggregate, and not by individual categories from which that support is to be measure. The listing of "teachers, parents, other community members and students" indicates the groups from which valid support can be demonstrated and is not intended to require that certain percentages of support be obtained in each of the four categories. Failure to demonstrate strong support in any one category is not necessarily fatal to an application.

19. Phoenix Academy demonstrated sustainable support to the degree required by the Charter Law.
20. The Charter Law requires that a charter school itself be a not for profit entity. 24 P.S. §17-1703-A. A for-profit corporation, association, or partnership may establish a charter school. 24 P.S. §17-1717-A(a).
21. The arrangement between Phoenix Academy and Mosaica is within the bounds envisioned and permitted by law.

IV. DISCUSSION

Before addressing the merits of the appeal, two preliminary matters must be addressed: The status of the Petitioners as intervenors and the jurisdiction of the CAB to hear the appeal.

A. Status of Petitioners as Intervenors

The Petitioners are not taxpayers or residents of Phoenixville, where the proposed charter school is to be located. Petitioners are taxpayers and residents of Downingtown Area School District ("Downingtown"). Downingtown is located within ten miles of the school district in which the proposed Phoenix Academy is to be located.

Petitioners base their intervention argument on their claim that Phoenix Academy is in reality a regional charter school. Their purported right to intervene is predicated upon their anticipation that Phoenix Academy will draw students from neighboring Downingtown. Petitioners argue that because Phoenix Academy stated that it would recruit from districts within ten miles of the charter school district, Phoenix Academy should have applied to each district within the ten mile area of recruitment and sought a regional charter pursuant to 24 P.S. §17-1718-A.

A careful reading of the Petition to Intervene reveals that Petitioners' claim for

intervention is based solely on the allegation that Phoenix Academy should have submitted an application for a regional charter. The Petitioners do not set forth any claims that they have any right or authority to intervene in the appeal if the charter application is properly a single district application made to Phoenixville. Therefore, the regional charter issue will be examined before the more general issue of intervention.¹

1. Charter School v. Regional Charter School

Petitioners have misread the Charter Law. The Charter Law provides that "a charter school may be established...", 24 P.S. §17-1717-A(a), and "[a]n application to establish a charter school shall be submitted to the local board of school directors of the district where the charter school will be located" 24 P.S. §17-1717-A(c). In addition, "a regional charter school may be established", 24 P.S. §17-1718-A(a) , and "[t]he boards of school directors of one or more school districts may act jointly to receive and consider an application for a regional charter school" 24 P.S. §17-1718-A(b). The applicant shall apply for a charter to the board of directors of any school district in which the charter school will be located." 24 P.S. §17-1718-A(b).

The CAB is persuaded by the arguments of Phoenix Academy that applicants for charter schools determine whether to seek a regional or a single district charter. The CAB concludes that this ability exists regardless of the anticipated geographical make-up of the student body. Nothing in the Charter Law supports the conclusion that an applicant is obligated to seek a regional charter simply because the applicant intends to draw students from more than one school district.

The Charter Law is very clear that a charter school applicant must submit an application

¹ Phoenixville did not rely upon the alleged regional nature of Phoenix Academy as a ground for its denial of the charter.

to the board of directors of the school district in which the charter school is to be located. The Charter Law also clearly states that any resident of the Commonwealth is qualified for admission to any charter school, except under certain provisions set forth therein, which are not applicable in this appeal. Furthermore, the Charter Law provides that the boards of directors of one or more districts may act jointly to receive and consider an application for a regional charter school.

Sections 17-1717-A and 17-1718-A set forth the application processes for single district "charter schools" and multi-district "regional charter schools" respectively. These sections contain no substantive requirements compelling an applicant to proceed as either a single district charter or a regional charter. Significantly, "[a]ll resident children in this Commonwealth qualify for admission to a charter school within the provisions of subsection (b)." 24 P.S. §17-1723-A (a). If more students apply to the charter school than the number of places available in the school, then students must be selected on a random basis. "First preference shall be given to students who reside in the district or districts." 24 P.S. §17-1723-A(a). "If available classroom space permits, a charter school may enroll nonresident students on a space-available basis, and the student's district of residence shall permit the student to attend the charter school." 24 P.S. §17-1723-A (c).

While the Charter Law structure allows applicants to select whether or not to apply for a regional charter school, it does not authorize the board of directors of the district in which the charter school is to be located to determine whether an applicant must apply for a regional charter school. Neither does the Charter Law authorize a board of directors or residents of a school district from which students are recruited to attend a charter school located outside their resident district can require an applicant to submit an application for a regional charter school. The Charter Law only authorizes that one or more school districts may act jointly to receive and

consider an application for a regional charter school. The authority to receive and consider an application for a regional charter school is not the authority to decide the type of application the charter applicant must submit. The Charter Law is clear that the charter applicant decides whether to submit an application for a regional charter school.

Additionally, if a charter applicant states in its application that it intends to hold enrollment meetings only within the district in which the charter school is to be located, then, according to Petitioners' position, the applicant would not have to apply for a regional charter. However, students residing in districts other than the charter school district could still enroll in the charter school if spaces were available. In that event, residents and taxpayers of districts outside the charter school district would have no more "control" over the charter school or the speculated tax increases or the speculated reduction in services than they would have if students enrolled from districts outside the charter school district because enrollment meetings were held within a ten mile radius of the district in which the charter school is located. This again shows the lack of support for Petitioners' position that they have a right to intervene in this appeal before the CAB.

The desire to seek a single district charter is not without its consequences to the applicant. Single district charters schools must be physically in the district granting the charter. Electing to apply for a single district charter could restrict the school's choice of facility sites. Similarly, if an applicant intended to operate a school in more than one building (for instance, a series of small neighborhood schools), the applicant might find it advantageous to apply for a regional charter.

Single district charter schools must also give preference to qualified students from the chartering district. Schools that are designed to attract a multi-cultural student body or draw

students from across socio-economic barriers by drawing from multiple school districts may be thwarted in their desire if the student demand is sufficient from the chartering school. Thus, the CAB can envision reasons why applicants would want to seek a regional charter instead of a single district charter.

Therefore, in concluding that Phoenix Academy's application need not be regional, the claimed basis for Petitioners' alleged rights of intervention disappear, and their petition must be, and is dismissed.

2. General Right To Intervene

Even if Petitioners' petition can be read as claiming that they have a right to intervene in a single district charter school application properly submitted in a neighboring district, they have not established any right to so intervene. Pursuant to the Rules of Administrative Practice and Procedure, "a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought" may file a petition to intervene. 22 Pa. Code §35.28(a). The right or interest may be (1) a right conferred by statute; (2) an interest that may be directly affected and which is not adequately represented by existing parties, and as to which petitioners may be bound by action of the agency; or (3) another interest of such nature that intervention may be in the public interest. 22 Pa. Code §35.28(1)(1-3). These three criteria, as related to the Petitioners' request for intervention, are discussed in seriatim.

(a) Right Conferred by Statute

The Charter Law authorizes a charter school applicant to appeal, to the CAB, the denial of a charter by the local board of directors. 24 P.S. §17-1717-A. Pursuant to the statute, the CAB reviews the record as certified by the local board of directors. 24 P.S. §17-1717-A(i)(6).

The statute also grants the CAB discretion to allow the local board of directors and the charter applicant to supplement the record submitted to the CAB, if the supplemental information was previously unavailable. 24 P.S. §17-1717A(i)(6). The Charter Law does not authorize any parties, other than the charter school applicant and the local board of directors, to be involved in the appeal process.²

Therefore, the Charter Law does not confer upon the Petitioners, a statutory right to intervene in the appeal process. Furthermore, the Petitioners have not argued that their professed right to intervene has been conferred by any other statute. Thus, the Petitioners do not have a statutory right to intervene in this appeal.

Petitioners argue that the Chester County Court of Common Pleas established their right to intervene in the appeal because the Court allowed the Petitioners to intervene in the sufficiency petition proceedings before the Court. Even though the Court of Common Pleas allowed the Petitioners to intervene in the proceedings before it, the CAB is not bound by the Court's decision. Under the Charter Law, filing a petition with the Court of Common Pleas is merely a procedural requirement with which the charter school applicant must comply to be eligible to appeal the denial of the charter by the local board of directors. 24 P.S. §17-1717-A(i)(2). The petitions filed with the Court of Common Pleas cannot be considered "the appeals" of the denial of the charters because the CAB, not the Court of Common Pleas, "has exclusive review of an appeal by a charter school applicant" 24 P.S. §17-1717-A(i)(1). Therefore, allowing the Petitioners to intervene in procedural proceedings before the Court does not require the CAB to allow the Petitioners to intervene in the appeals on the merits before the CAB.

² The appeal is by the applicant, disagreeing with the decision of the host school district. If Phoenixville would have granted Phoenix Academy a charter, there is no statutory right for anyone else to appeal that decision. Because Petitioners do not have the ability to challenge before the CAB a successful application, they do not have standing to participate in the appeal of an unsuccessful application.

(b) An Interest That May Be Directly Affected

There are no interests of the Petitioners that may be directly affected by the action of the CAB in these appeals. Petitioners argue that if the CAB requires Phoenixville to grant charters to Phoenix Academy, the Petitioners' rights or interests will be directly affected because they will be subjected to higher taxes and/or a reduction in services. The higher taxes and/or reduction in services will occur, according to Petitioners, because Downingtown will have to pay subsidy money to Phoenix Academy if any students residing in Downingtown attend Phoenix Academy.

Petitioners' arguments are based on mere speculation. Even though the charter school intends to hold enrollment meetings in districts within ten miles of the Phoenixville District, there is only speculation about the numbers, if any, of the students who may actually attend Phoenix Academy. Even if students residing in districts outside the Phoenixville District attend Phoenix Academy, there is no proof that taxes in the Petitioners' districts will be raised or that there will be a reduction in services in Petitioners' districts as a result. Furthermore, there is no recognition in Petitioners' arguments of the savings that will possibly occur as Downingtown is relieved of the need to educate former students who would be attending Phoenix Academy.

The Charter Law specifically provides that the "money follows the student." The General Assembly knew that school subsidy money would flow from the school districts to the charter schools. Nevertheless, the General Assembly did not grant persons such as Petitioners the right to intervene in the CAB appeal process.

Petitioners' rights or interests will not be directly affected by any action that the CAB may take. The CAB will either agree with Phoenixville that a charter should not be granted, or it will disagree with the local board of directors and order that a charter be granted. Ordering a school district to grant a charter to a charter school will not directly affect Petitioners. The local

board of directors in each school district determines whether taxes will be raised, or whether there will be a reduction in services, or both. These decisions are not made by the CAB, and therefore, the CAB's decision in this appeal will not directly affect the Petitioners. The Petitioners cry of "taxation without representation" is not valid. They presumably participate in the Downingtown political process and as taxpayers have voted and will continue to vote in elections for the Downingtown Board of School Directors, which is the entity which has the authority to raise school taxes and/or reduce programs.

Petitioners will not be directly affected by the CAB's decisions just as a teachers' association was found not to be directly affected by the decision of the Secretary of Education in Wilkinsburg Education Association v. Wilkinsburg School District, 690 A.2d 1252 (Pa. Cmwlth. 1996). In Wilkinsburg, a school district asked the Secretary of Education to approve the alteration of the school's elementary program. The teachers' association sought to intervene in the case, arguing that altering the elementary school program would require the furloughing of some teachers. Arguably as a result, some of the association's members would be directly affected by the approval of the school district's request. The Court in Wilkinsburg affirmed the Department's denial of intervention on the ground that the interests of the teachers' association would not be directly affected or the association bound by the Secretary's decision.

The Wilkinsburg Court noted that the association's interest was not directly affected and the association was not bound by approval of the school district's request because the Secretary's approval only provided the school district with discretion to alter the program. The Secretary's approval did not authorize the furloughing of teachers. Any teacher furloughs would result directly from the actions of the school district, not the actions of the Secretary.

Just as in Wilkinsburg, the rights or interests of the Petitioners in these appeals will not

be directly affected by the CAB ordering Phoenixville to grant charters to Phoenix Academy. Petitioners argue that they would be directly affected because their school boards might increase taxes or reduce services. Ordering the grant of a charter would not require the school district to raise taxes or reduce services. Rather, just as in Wilkinsburg, a decision by the CAB to order the grant of a charter will not directly affect Petitioners because any decision to raise taxes or reduce services would be the direct result of actions taken by the local board of school directors, not action taken by the CAB.

Additionally, an order by the CAB to grant a charter binds only the school district in which the charter school is to be located. Such an order does not bind any other school districts. The General Rules of Administrative Practice and Procedure do not define “bound”, and Pennsylvania law contains no analogous definition. Therefore, the term is to be given its common and approved usage. 1 Pa. C.S. § 1903(a). Webster’s Ninth New Collegiate Dictionary (1988) defines “bound” as “placed under a legal or moral restraint or obligation.” The Petitioners will not be bound by a determination in this matter because it will not restrain them or obligate them to do anything. The CAB’s decision only determines whether a charter will be granted. If Phoenixville’s decision had been reversed, then Phoenixville would be obligated to grant a charter to Phoenix Academy. Since the decision was upheld, Phoenix Academy is restrained from obtaining a charter. The CAB’s decision does not determine whether a neighboring school district will raise taxes and/or cut programs. Therefore, Petitioners are not bound by the CAB’s decision.

(c) Intervention And The Public Interest

Petitioners argue that the decision of the CAB on the issue of whether Phoenix Academy should have applied for a "regional charter school" is an issue of first impression and will set a

precedent, and therefore, Petitioners must participate in order to assure that the regional charter school issue will be fully developed and aggressively advocated. However, simply because the regional charter school issue may be an issue of first impression does not mean that Petitioners have a right to intervene in these appeals.

In addition, Petitioners' argument that they will be subjected to increased taxes or a reduction in services does not evidence an interest of such a nature that intervention may be in the public interest. Therefore, Petitioners have not shown that their intervention would be in the public interest.

Having concluded that Petitioners may not intervene in this case, no further consideration will be given to the legal arguments that they raise.

B. Jurisdiction to Hear the Appeal

Phoenixville has raised the issue of this Board's jurisdiction to hear this appeal. That argument is based upon the last sentence of 24 P.S. §17-1717-A (f) which reads "No appeal from a decision of a local school board may be taken until July 1, 1999." Phoenixville urges the CAB to conclude that this means that the decisions of school districts made prior to July 1, 1999 cannot be appealed. We decline to so conclude.

Phoenix Academy's appeal was filed and accepted by the CAB July 1, 1999. In doing so, the spirit and the letter of the statute were satisfied. The Charter Law does not set forth any time period by which an appeal must be filed with the CAB. The General Assembly has provided many explicit time periods in the Charter Law. It clearly knew how to articulate, if it so desired, a requirement that the appeal be filed within a certain time after the sufficiency petition was approved. Even if a reasonableness rule can be read into the Charter Law, the time frames involved here are satisfactory. Phoenix Academy appealed a decision made at a February

18, 1999 meeting that was reduced to writing on March 16, 1999. The sufficiency Petition was not granted until June 4, 1999. The appeal was filed on July 1, 1999, which is within 30 days of the approval of the sufficiency petition.

C. Assessment Of The Merits Of The Appeal

The Charter Law establishes the criteria by which the local board of school directors is to evaluate an application. 24 P.S. §17-1717-A (e)(2) provides:

A charter school application submitted under this article shall be evaluated by the local board of school directors based on criteria including, but not limited to, the following:

- 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 outline in section 1702-A.
- iv. The extent to which the charter school may service as a model for other public schools.

Phoenixville found the application wanting on criteria (i) and (iii). The school district did not voice any concerns over criteria (ii) and (iv), which accordingly will not be further addressed and will be deemed satisfied.

Section 17-1719-A, which is cross referenced in Section 17-1717-A (e)(2)(iii), establishes a list of specific information that an applicant is to include in the charter school application. It provides in relevant part that:

An application to establish a charter school shall include all of the following information:

* * *

- (11) 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.

* * *

- (13) The proposed faculty and a professional development plan for the faculty of a charter school.

* * *

Fifteen other enumerated requirements are found in §17-1719-A. Phoenixville did not find fault with Phoenix Academy's application regarding the other fifteen requirements, and they are not the basis for this appeal. The CAB will consider them to have been satisfied.

Section 17-1702-A, which also is cross referenced in Section 17-1717-A (e)(2)(iii), provides as follows:

It is the intent of the General Assembly, in enacting this article, to provide opportunities for teachers, parents, pupils and community members to establish and maintain schools that operate independently from the existing school district structure as a method to accomplish all of the following:

* * *

4. Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.

* * *

Phoenixville concluded that the application did not satisfy these three cross-referenced factors.

Phoenixville also considered two other factors, seizing upon the "including, but not limited to" language in Section 17-1717-A (e)(2). The CAB acknowledges that the four factors listed in Section 17-1717-A (e)(2) are not exhaustive. The CAB may consider other factors to the extent the parties or the record suggests they are present and relevant to the charter application.³ In this particular appeal, Phoenixville raised two additional issues: (1)The for-profit status of Mosaica Education, Inc. ("Mosaica") and its relationship with the Phoenix

Academy trustees, and (2) the impact on the remainder of the school district if the charter is granted. Accordingly, the CAB will also consider those issues.

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 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).

Turning now to the merits of the appeal and the facts of this case, the CAB will address each of the reasons articulated by Phoenixville for its denial.

(1) Failure To Satisfy 24 P.S. §17-1719-(A)(11) Requirements Regarding The School Facility

The Charter Law requires that:

An application to establish a charter school shall include all of the following information:

* * *

- (11) 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.

* * *

A charter school applicant has the burden of proving that all of the enumerated requirements for the contents of a charter school application were satisfied. If the local district

³ Moreover, as previously state in another case, the CAB concludes that school districts may develop and apply other evaluative criteria provided that they are consistent with the Charter Law.

denies the application because of the lack of required information in the application, the applicant has the burden of demonstrating to the CAB that the application requirement was satisfied. In this case, the required information regarding the proposed facility to be utilized by the school was not included in the application or in supplemental materials provided to Phoenixville before its February 18, 1999 vote on the application.

The CAB concludes that inclusion of the description and address of the physical facility in which the charter school will be located, along with ownership and leasing information are important factors in the application, the lack of which justifies the denial of the application in this appeal. We also conclude that the defective application regarding the building was not cured by submitting to the hearing officer, the affidavit of Mahlon Miller, dated July 13, 1999, regarding the alleged procurement of a facility. This building was not one of the buildings suggested as a possible facility at the time of Phoenixville's decision. Failure to identify the facility in the application, or in any supplemental information provided to the board prior to its vote, is a fatal defect. Therefore, the CAB concludes that Phoenixville correctly denied the application based upon Phoenix Academy's failure to identify a school facility in the application or in supplemental material presented to Phoenixville prior to Phoenixville's vote on the application.

This conclusion does not mean that the CAB does not have the authority to review and reverse the decision of a school district where the building has been properly identified but found to be unsatisfactory by the district. The CAB is cognizant of the practical difficulties faced by applicants when trying to "lock in" real estate pending approval of a charter. The Charter Law does not require that a lease be signed for a facility but requires that the facility be identified and the ownership and lease arrangements be described in at least a general way. 24 P.S. § 17-1719-

A (11). The local school board then assesses the reported information. Nothing in the Charter Law prohibits a local board from conditionally approving a charter, as urged by Phoenix Academy in this case. On the other hand, nothing in the Charter Law compels a local school board to grant a charter conditioned upon locating a suitable facility.

However, in this case, Phoenix Academy failed to provide the local board of directors with any information about a proposed facility prior to the board's vote on the application. Phoenix Academy withdrew some previously proposed facilities and although it promised to provide the local board with information about a facility prior to the board's vote, it failed to do so. Therefore, there was no facility for the board to "review" when it voted on the application.

(2) Failure To Satisfy 24 P.S. §17-1719-(A)(13) Requirements Regarding The Proposed Faculty And Professional Development Plan For The Faculty

The other "application factor" cited by Phoenixville as a reason for its denial of the charter was the alleged lack of a professional development plan for the faculty. The CAB finds that Phoenix Academy's application and supplemental materials submitted prior to Phoenixville's vote on the application set forth a sufficient professional development plan for the faculty. Therefore, we conclude that Phoenix Academy's application was not materially defective upon this aspect of the application, and we reverse the decision of Phoenixville to use this as a ground for denying the application.

The CAB concludes that the Charter Law does not require that the development plan for teachers be a separate manual, describing in minute detail professional development plans for all teachers. Such a document would be impractical, particularly if the faculty has not yet been hired. A more general program of training satisfies the statutory requirement. Furthermore, the training and professional development programs need not be set aside as a discrete portion of the application. Interspersing these programs throughout the description of the proposed charter

school and its goals, academic program and teaching methodologies, such as Phoenix Academy did in this case, is sufficient. A review of the record shows that Phoenix Academy, and its primary service provider, Mosaica, have a thorough and widespread training scheme for the teachers that will enable them to deliver the academic program as intended. This includes, but is not limited to ten days of training before each school year, five days of training during the school year, training in specialties, such as the performing arts and music, and the provision for teacher to teach several grades, rather than repeating the same material each year. For these reasons, the district's finding in this regard is rejected.

(3) Failure To Conform With The General Assembly's Intentions To Create New Professional Opportunities For Teachers As Set Forth in 24 P.S. §17-1702-A(4)

This legislative intention can be readily satisfied, and thus, is of relatively little weight. In this case, the CAB finds evidence in Phoenix Academy's application that new professional opportunities for teachers will be created. The CAB concludes that "new" as used in this section of the Charter Law does not require that the professional opportunities be unique and never-before-tried. Rather, it simply means opportunities that are different from the teaching methodologies and professional options available in the chartering school district.

As explained above, a substantial training program exists for teachers, who will be teaching three grades in a three year cycle. A review of the record shows that Phoenix Academy will be offering a proprietary curriculum and teaching methodology, which it claims is different from Phoenixville's academic curriculum and teaching methods. If Phoenixville desires to utilize this factor as a reason for denying the charter, it must establish in the record that it already offers what Phoenix Academy proposes to offer. The record contains no such evidence. Thus, this finding of Phoenixville is rejected.

(4) Lack Of Demonstrated Sustainable Support For The Proposed Charter School As Set Forth In 24 P.S. §17-1717-A(e)(2)(i)

In this case, the CAB finds that the support necessary to grant a Phoenix Academy's charter exists and concludes that the application should not be denied based upon this reason.

In arriving at this conclusion, the CAB notes several aspects of the Charter Law. First, it is the degree of support for the proposed charter school plan, not the size or vociferousness of the opposition, that is relevant. The applicant must demonstrate "sustainable support" for the charter school plan. The CAB concludes that the term "sustainable support" means support sufficient to sustain and maintain the proposed charter school as an on-going entity. The second aspect of this requirement is that the indicia of support is to be measured in the aggregate rather than by individual categories. The listing of "teachers, parents, other community members and students" indicates the groups from which valid support can be demonstrated. Certain percentages of support in each of the four categories are not required. Failure to demonstrate strong support in any one category is not necessarily fatal to an application. However, a reasonable amount of support in the aggregate must be demonstrated.

The record here shows that 60 families pre-registered for Phoenix Academy. At the public hearing, at least three members of the public, spoke in favor of the charter, while no one can be identified as speaking against it. Newspaper articles, letters to the editor, and editorials expressed a reasonable degree of support. In this case the CAB concludes that Phoenix Academy has presented a reasonable amount of support for the charter school plan, which is sufficient to satisfy the Charter Law's criteria.

(5) Concerns Over The For Profit Status Of The School

The CAB has carefully reviewed the application and supporting materials, and reviewed the legal arguments regarding this issue. The CAB finds that Phoenix Academy is not a for-

profit entity and is not a mere shell for a for-profit entity. The CAB concludes that the arrangement between Phoenix Academy and Mosaica is within the bounds envisioned and permitted by the law. Therefore, the CAB reverses Phoenixville's denial of the charter application based on this factor.

The Charter Law provides that a charter may only be granted to a nonprofit entity. 24 P.S. § 17-1703-A. It clearly provides, however, that a charter school may be established by any for-profit corporation, association, or partnership. 24 P.S. § 17-1717-A (a). A charter school may also enter into contracts for services, equipment and supplies, and may acquire real property. 24 P.S. § 17-1714-A (a)(3), (5). The CAB concludes that 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.

Phoenix Academy does intend to contract out certain management and administrative responsibilities to a profit-making corporation, which is permitted by the Charter Law. The CAB concludes that it is unrealistic to expect individuals who wish to provide alternate educational opportunities in their local school districts to themselves be professional educators or experts in the field of education. For founders and trustees to contract with commercial educational service providers for the expertise and skills needed to operate a school, as well as for proprietary curriculum and education materials and methods that match the trustees visions and goals, is reasonable and well within the structure of the Charter Law. The model agreement, which will be the basis for an agreement between Mosaica and Phoenix Academy, allows either party to terminate the agreement if there is a material breach of the agreement that is not remedied within thirty (30) days. The model agreement also provides that educational services are to be provided

in accordance with the education goals adopted by the charter school's trustees, and any substantial modification of the educational services will be subject to prior approval of the charter school's trustees.

Using these standards, the CAB finds that the arrangement between Phoenix Academy and Mosaica is within the bounds envisioned and permitted by the Charter Law. The school board's contrary finding is rejected as not being supported by substantial evidence.

(6) Detrimental Effects On The Education Of Remaining Phoenixville Students

Phoenixville's sixth reason is not explicitly set forth in the Charter Law. Phoenixville determined that the "including but not limited to" language of §17-1717-A (e)(2) authorized Phoenix Academy to be denied a charter because the granting of the charter would have detrimental effects on the education of the remaining students in Phoenixville. In particular, Phoenixville claimed that the district was "uniquely encumbered with four simultaneous and significant strains on its operations. These strains were: (1) the district's teaching staff working without a contract; (2) major building renovations on the high school and middle school to start in July 1999; (3) the recent approval of a \$10,000,000 bond issue; and (4) the relative inexperience of three fourths of the district's central administrators and building administrators in their current positions. According to the District, these reasons collectively, when combined with the teacher disapproval of the application, "create an unacceptable risk to the orderly administration of the District and to the delivery of quality education to those many students who will remain in District schools." March 16 letter denying the application, p. 5.

The disruption and detrimental impact alleged by Phoenixville, is based upon factors that commonly exist in school districts and would exist regardless of the granting of a charter. The strains mentioned by Phoenixville seem to be fairly routine operational issues that school

districts regularly encounter, and similar to the existence of charter schools, are just a factor of school districts existing and doing business. Additionally, when the General Assembly passed the Charter Law, it knew and understood the potential impact of charter schools on school districts because of the funding mechanism set forth in the Charter Law. However, the General Assembly obviously determined that the benefits of charter schools outweighed the costs. Therefore, these financial reasons set forth by Phoenixville as support for denial of the charter are not appropriate, and Phoenixville's decision is reversed on this factor.

ORDER

AND NOW, this 27th day of August, 1999, based upon the foregoing and the vote of this Board;

(1) the February 18, 1999, decision of the Phoenixville Area School District, denying the Charter School Application of Phoenix Academy Charter School, is affirmed and the July 1, 1999 appeal of the Charter School is denied;⁴ and,

(2) the Petition to Intervene is denied.⁵

For the Charter School Appeal Board,

Eugene W. Hickok, Jr.
Chairman

⁴ At the Board's August 27, 1999 meeting, the appeal was denied by a vote of 5-0 with members Aliota, Bunn, Shipula, Tait and Hickok voting to deny the appeal.

⁵ At the Board's August 27, 1999 meeting, the Petition to Intervene was denied by a vote of 4-1 with members Aliota, Bunn, Tait and Hickok voting to deny the Petition and member Shipula voting to grant the Petition.