

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

**IN RE: Hills Academy Charter School : Docket No. CAB 1999-12**

**OPINION AND ORDER**

**I. Findings of Fact**

1. Hills Academy (“Hills”) seeks a charter to operate a school in the Penn Hills School District (“Penn Hills”) in accordance with the Charter School Law, 24 P.S. §§17-1701-A to -1732-A (“the Charter Law”). *R.R. Hills Application.*

2. Penn Hills reviewed Hills’ charter application, held a public hearing, and, after consideration, denied the application. *R.R. Penn Hills Decision and Meeting Minutes.*

3. Penn Hills concluded that Hills would not further the legislative intent to:

- improve pupil learning;
- increase learning opportunities for all pupils;
- encourage the use of different and innovative teaching methods;
- create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;
- provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system; and
- hold the schools established under the act accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

*R.R. Penn Hills Decision.*

4. Penn Hills concluded that Hills failed to show sustainable support. *R.R. Penn Hills Decision.*

5. Penn Hills concluded that Hills could not provide a comprehensive learning experience. *R.R. Penn Hills Decision.*

6. Penn Hills concluded that the proposed academic program does not reflect the community's specific needs. *R.R. Penn Hills Decision*.

7. Penn Hills concluded that Hills could not be a model for other public schools. *R.R. Penn Hills Decision*.

8. Penn Hills concluded that Hills would have an unfavorable financial impact on the community. *R.R. Penn Hills Decision*.

9. Hills obtained the requisite signatures of over 1200 school district residents on a petition, which was found to be sufficient by the Court of Common Pleas of Allegheny County. *R.R. Petition to Appeal, Exhibit C*.

10. Hills filed this appeal on July 1, 1999. *R.R. Petition for Appeal*.

11. Susan Varga, Bruce Dakan, Arthur Gennari, and Marilyn Messina seek to intervene. *R.R. Petition to Intervene*.

12. Susan Varga, Bruce Dakan, Arthur Gennari, and Marilyn Messina are not Penn Hills residents but reside in districts adjacent to Penn Hills. *R.R. Petition to Intervene, pars. 2-5*.

13. Hills will solicit students within ten (10) miles of Penn Hills. *R.R. Application, p. 37*.

14. Hills will contract with Mosaica Education, Inc. to provide instructional, administrative, and other services. *R.R. Application, p. 26*.

15. Hills will use the Paragon curriculum. *R.R. Application, p. 3*.

16. Paragon is a comprehensive academic program. *R.R. Application, generally*.

17. Hills' program differs from Penn Hills' by providing:

- Explicit phonics instruction;
- Math and Science taught as discrete subjects;
- Full-day kindergarten;
- 1 to 3 ratio of computers to students and extensive use of computer applications;

- Integrated “human eras” program in the afternoon;
- Foreign language instruction beginning in kindergarten;
- Approximately one hour per day more instructional time;
- School year increased by twenty days;
- Individualized personal learning plan for every child.

*R.R. Application, p. 5.*

18. Hills will use “primary care” teaching with children progressing from kindergarten to second grade with the same teacher, and then from third to fifth grade with the same teacher.

*R.R. Application, p. 19.*

19. Hills will use portfolio and performance-based student assessments. *R.R. Application, p. 21.*

20. Hills will rely upon Penn Hills for extracurricular activities. *R.R. Application, p. 23.*

21. Hills will extensively incorporate Spanish-language instruction into the curriculum. *R.R. Application, p. 12.*

22. Hills will use the same student testing standards as Penn Hills. *R.R. Transcript, p. 48.*

23. Five individuals testified in favor of Hills’ application at Penn Hills’ public hearing: Jaqueline Turner, a Penn Hills resident; Randi Gelernter, Michael DiRaimo, Rebekah Renshaw, and Ken Eisner, who are not Penn Hills residents. *R.R. Transcript, generally.*

## **II. Conclusions of Law**

1. Susan Varga, Bruce Dakan, Arthur Gennari, and Marilyn Messina lack standing to intervene. *1 Pa. Code §35.28.*

2. The applicable standard of review is not the standard used by appellate courts because the CAB has the authority, under the Charter Law, to agree or disagree with the findings

of Penn Hills, and to allow the charter school and/or the local board of directors to supplement the record if the supplemental information was previously unavailable. *24 P.S. §17-1717-A (6)*.

3. Hills’ application conforms to the Charter Law’s legislative intent. *24 P.S. §17-1702-A*.

4. Hills did not demonstrate sustainable support for the charter school plan by teachers, parents, other community members, and students, including comments received at public hearing. *24 P.S. §17-1717-A(E)(2)(I)*.

5. Hills could provide comprehensive learning experiences to its students. *24 P.S. §17-1717-A(E)(2)(II)*.

6. Hills could provide for the unique characteristics of the Penn Hills community, including serving as a model for other public schools. *24 P.S. §17-1717-A(E)(2)(III), (IV)*.

7. Hills’ financial impact on Penn Hills is irrelevant.

8. Hills’ application is not premature. *24 P.S. §17-1717-A(f)*.

9. Hills is not required to seek a regional charter. *24 P.S. §17-1723-A(a)*.

10. The Charter School Appeal Board’s procedures do not violate a legal requirement to promulgate regulations. *45 P.S. §§501-907, 1102-1208; 1 Pa. Code §31.1(a)*.

### **III. Discussion**

This appeal presents three matters for decision.<sup>1</sup> The first is a Petition to Intervene by four individuals who believe that the charter school will impact their personal finances. The second is the merits of the appeal; that is, whether the charter should be granted. The third is Penn Hills’ procedural objections, including whether the appeal is timely, whether Hills should

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<sup>1</sup> This opinion does not discuss the issue raised in the District’s brief about whether Hills is merely a “shell” non-profit organization controlled by Mosaica Education, Inc. Although there was some discussion of this matter at the school board hearing, it was not one of the reasons set forth by the District as a basis for the District’s denial of a charter to Hills.

have applied for a regional charter, and whether the Charter School Appeal Board's ("CAB") failure to promulgate regulations invalidates its procedures.

For the reasons set forth below, the Petition to Intervene should be denied and the charter should not be granted. One of Penn Hills' reasons for denial - that Hills failed to demonstrate sustainable support - has merit and is affirmed. All of the issues are addressed below.

**A. Petition to Intervene**

Susan Varga, Bruce Dakan, Arthur Gennari, and Marilyn Messina ("Petitioners") seek to intervene. They are not Penn Hills residents but reside in school districts adjacent to Penn Hills. *R.R. Petition to Intervene, pars. 2-5*. The Petitioners assert standing based upon Hills' statement, in its application, that it would solicit students from areas within ten (10) miles of Penn Hills. *Id., at par. 16*. The Petitioners allege that Hills will admit students from their home school districts. *Id., at par. 23*. Students attending Hills will take public funding with them to the charter school, thereby reducing the public funds available to the home school districts, and according to Petitioners, allegedly force the home school districts to cut programs, raise taxes, or both. *Id., at pars. 25-28*. The speculated program cuts and tax increases will allegedly harm the Petitioners individually. *Id., at par. 32*. Consequently, because of the alleged impact to residents of neighboring districts, the Petitioners argue that Hills is a de facto regional charter school and should have sought a regional charter. *R.R. Petitioners' Brief, p. 9*. Since Hills did not seek a regional charter, the Petitioners argue that the application should be denied as contrary to law. *Id.*

A careful reading of the Petition to Intervene reveals that Petitioners' claim for intervention is based solely on the allegation that Hills 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 Penn Hills. Therefore, the regional charter issue will be examined before the more general issue of intervention.

### **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 Hills' arguments 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 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 apply for 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 determine whether 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 to 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 was 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 charter 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 Hills' 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 to 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.<sup>2</sup>

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.

**(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 Penn Hills to grant a charter to Hills, the Petitioners' rights or interests will be directly affected because they will be subjected to

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<sup>2</sup> The appeal is by the applicant, disagreeing with the decision of the host school district. If Penn Hills would have granted Hills a charter, there would be 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.

higher taxes and/or a reduction in services. The higher taxes and/or reduction in services will occur, according to Petitioners, because their respective districts will have to pay subsidy money to Hills if any students residing in their respective districts attend Hills.

Petitioners' arguments are based on mere speculation. Even though the charter school intends to hold enrollment meetings in districts within ten miles of Penn Hills, there is only speculation about the number, if any, of students who may actually attend Hills. Even if students residing in districts outside of Penn Hills attend Hills, 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. There are too many unconnected links in the causal chain between granting a charter and increasing taxes or cutting programs in the Petitioners' districts for such a threat to be considered immediate. Furthermore, there is no recognition in Petitioners' arguments of the savings that will possibly occur as their respective districts are relieved of the need to educate former students who will be attending Hills.

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 Penn Hills 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 political process or their local districts and as taxpayers have voted and will continue to vote in elections for their respective boards of school directors, which are the entities that have 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 Penn Hills to grant a charter to Hills. 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 districts 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 their local boards 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 Penn Hills’ decision had been reversed, then Penn Hills would be obligated to grant a charter to Hills. Since the decision was upheld, Hills 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. The General Assembly understood the funding mechanism set forth in the Charter Law, and that it may affect school districts whose students attend a charter school. Nevertheless, the General Assembly did not provide individual taxpayers with a right to intervene in a charter school's appeal of the denial of a charter by a neighboring school district. 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. The Appeal of Hills Academy**

Hills' appeal raises five issues, which are addressed below. The first is the standard of review that the CAB must follow in deciding this appeal. The second, third and fourth issues concern the Charter Law's requirements for establishing a charter school. The fifth issue concerns the financial impact that granting a charter will have on Penn Hills. The central issue in this case is whether Hills has demonstrated sustainable support for the charter school plan. Because the record lacks any demonstration of sustainable support, Penn Hills' decision is upheld.

##### **1. Standard of Review**

Penn Hills argues that the standard of review is whether the District committed an error of law or an abuse of discretion. However, this interpretation conflicts with the language of the Charter Law. The standard of review set forth in Section 17-1717-A (6) is more liberal and relaxed than the general standard of review for an appellate court. While

giving the Directors' findings “due consideration”, the CAB is to review the Directors' findings and articulate its reasons for agreeing or disagreeing with the Directors. Therefore, only if the CAB capriciously disregards the Directors’ findings can it be said that the CAB did not give due consideration to the Directors’ findings. Additionally, in its discretion, the CAB may allow the charter applicant and the school district to supplement the record with information that was previously unavailable. The standard of review cannot be exactly the same as an appellate court's standard of review because the CAB can obtain and review information not available to the local board of directors, whose decision the CAB is reviewing. The CAB, since it has to agree or disagree with the findings of the Directors, can of necessity, determine the weight of the evidence behind each finding and draw its own conclusions. Therefore, the CAB’s standard of review is not limited to that of an appellate court.

## **2. Hills Did Not Demonstrate Sustainable Support**

Hills must show “demonstrated sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held [before the local school board].” *24 P.S. §17-1717-A(e)(2)(i)*. This support must be demonstrated when the application is submitted and considered. *Id.* Moreover, the Charter Law includes a mandatory period between Penn Hills’ public hearing and its decision, which allows additional time for the applicant to show community support. *24 P.S. §17-1717-A(d)*.

To determine whether the charter school has shown sustainable support, 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.

Hills failed to provide evidence of a reasonable amount of community support. The evidence Hills provided -- testimony of one Penn Hills resident and four non-residents -- is insufficient. Likewise, the signatures submitted to the Court of Common Pleas are not evidence of sustainable support. Those signatures were collected after the fact and for a different purpose. Moreover, those individuals could have appeared at the hearing to express their support for the charter school plan but apparently did not do so. Those individuals did not sign petitions of support, did not send letters of support to Penn Hills, did not provide written testimonials for Penn Hills to consider, did not sign potential applicant lists, or did not provide any other similar evidence that would tend to show that they supported Hills. Therefore, it cannot be presumed that their support is sustainable simply because they signed the petition to allow Hills to appeal Penn Hill's decision.

The lack of community support is troublesome, and not solely because the Charter Law requires support. Public schools are an expression of the community's desire to provide its children with a quality education. A public school that does not have a reasonable amount of community support, does not satisfy the Charter Law's support requirement.



### **3. Hills Could Provide a Comprehensive Learning Experience**

Hills' application is a serious attempt by respected educators to establish an effective academic program. Hills' lack of detail does not reflect an inability or unwillingness to provide a comprehensive learning experience. Hills will: incorporate Spanish into the educational program beginning in kindergarten; provide a longer school day and year; utilize teacher "looping" and individualized programs. While a demonstrated inability or unwillingness to provide a comprehensive learning experience would indeed be damning, the evidence does not support that conclusion.

### **4. Hills Could Provide For the Unique Characteristics of the Penn Hills Community**

Penn Hills decided that Hills did not increase learning opportunities for all, did not provide innovative teaching methods, did not provide new opportunities for teachers, and did not provide expanded choices for parents and pupils. Penn Hills also decided that Hills could not be a model for other public schools. Penn Hills' decision on those criteria can be summarized as an objection to Hills' perceived ability to tailor its program to community needs.

Penn Hills' determined that Hills could not satisfy the Charter Law's stated legislative intent to:

- improve pupil learning;
- increase learning opportunities for all pupils;
- encourage the use of different and innovative teaching methods;
- create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;
- provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system; and,
- hold the schools established under the act accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

*24 P.S. §§17-1702-A, -1717-A(E)(2)(III).*

Penn Hills' determination that Hills did not meet these requirements is contrary to the Charter Law. In addressing these requirements, Penn Hills mistakenly sees Hills' application as a critique of Penn Hills' educational program, and uses a comparison of the two programs to show that Penn Hills' educational program is superior. However, the decision whether to grant a charter to Hills should not be based on whether the Penn Hills' program is more impressive than Hills' program.

Regarding the individual elements of the legislative intent: First, Hills could improve pupil learning through its Paragon Curriculum. Pupil improvement is more than just standardized test scores, it is the result of the total program. Incorporating Spanish into the educational program beginning in kindergarten and incorporating performance-based grading has the potential to enrich a student's learning experience.

Second, Hills could increase learning opportunities through its multi-disciplinary approach, its longer school day and its longer school year. Third, Hills could encourage different and innovative teaching methods through its emphasis on individualized programs and teacher "looping." Fourth, Hills could provide parents and pupils with expanded choices through its use of individualized programs. Fifth, Hills could meet measurable standards through use of standardized tests.

Hills can be a model for other schools. Hills acknowledges that the Mosaica program must be customized before it can be implemented. *R.R. Transcript, p. 73*. Hills states that, given the opportunity to fully develop its program, it can be a model for other schools. *R.R. Hills Brief, p. 17*. The lengthened school day, the lengthened school year, teaching Spanish beginning in kindergarten and teacher "looping" provides support for the proposition that Hills can be a model for other schools.

## **5. Hills' Financial Impact on Penn Hills is Irrelevant.**

The General Assembly, by enacting the Charter Law, authorized the chartering, operating, and funding of charter schools in Pennsylvania. If Hills meets the Charter Law's requirements, it is entitled to a charter, regardless of the financial impact on Penn Hills.

The financial impact of a charter school on a school district is irrelevant because when the General Assembly passed the Charter Law, it knew and understood the potential impact of charter schools on school districts due to the funding mechanism set forth in the Charter Law. However, when it enacted the Charter Law, the General Assembly obviously determined that the benefits of charter schools outweigh the costs, and neither Penn Hills nor the CAB has the power to "overrule" that decision. Therefore, the financial impact set forth by Penn Hills as support for denial of the charter is not appropriate.

### **C. Procedural Objections**

In addition to defending its reasons for denial, Penn Hills asserts that Hills' appeal should be dismissed based on the following procedural grounds: (a) Hills' appeal was premature; (b) Hills was required to seek a regional charter;<sup>3</sup> and (c) the CAB's activities violated a legal requirement to promulgate regulations. There are no grounds to support Penn Hills' assertions.

#### **1. Hills' Appeal is Not Premature**

Penn Hills argues that Hills' appeal is premature because the appeal was "taken" to the Court of Common Pleas on April 12, 1999, before the CAB came into existence and before July 1, 1999. The Charter Law provides 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)*.

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<sup>3</sup> This issue was previously discussed in the section regarding the intervention issue and that discussion will not be repeated but is incorporated herein.

The argument that Hills' appeal was premature fails because the procedure before the Court of Common Pleas is not the appeal; it is a collateral procedure that is a prerequisite to filing an appeal with the CAB. *See 24 P.S. §17-1717-A(i)(2), (5)*. Hills had sixty days from the time its application was denied on February 9, 1999, to obtain the requisite number of signatures on petitions to be filed with the Court of Common Pleas or it would have lost its right to appeal to the CAB. *24 P.S. §17-1717-A(I)(2)*. It could not, however, file an appeal with the CAB until July 1, 1999. *24 P.S. §17-1717-A(F)*. Moreover, the Court of Common Pleas could not decide the merits of the appeal because only the CAB can review Penn Hills' decision. *24 P.S. §17-1717-A(i)(1)*. 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.

## **2. The CAB is Not Required to Promulgate Regulations**

Penn Hills argues that the CAB's procedures were not promulgated in accordance with the Commonwealth Documents Law, *45 P.S. §§ 501-907, 1102-1208*, and are, therefore, invalid. Penn Hills' brief, however, does not identify a single procedure that it finds objectionable.

Penn Hills does object to the appointment of hearing officers in its "New Matter." The CAB's procedures, including its use of hearing officers, are appropriate for three reasons. First, neither the Charter Law<sup>4</sup> nor the Commonwealth Documents Law requires the CAB to promulgate regulations. Second, any administrative body may legally operate under non-binding rules, known as statements of policy, which are specifically authorized by the Commonwealth Documents Law. *45 P.S. § 1102 (13)*. And third, the General Rules of Administrative Practice

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<sup>4</sup> The Charter Law simply authorizes the CAB to promulgate regulations, at its discretion. *24 P.S. § 17-1721-A (b)*.

and Procedure, 1 *Pa. Code* §§ 31.1-35.251, govern adjudicatory processes of all Commonwealth agencies, and no separate regulations are needed for an agency to apply them. 1 *Pa. Code* §31.1(a). These general rules were used by the CAB and by its hearing officers in this proceeding and they, in fact, authorize the use of hearing officers. Therefore, the CAB's procedures have not violated the Commonwealth Documents Law.

**ORDER**

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

- (1) the February 9, 1999 decision of the Penn Hills School District, denying the Charter School Application of Hills Academy Charter School, is affirmed and the July 1, 1999 appeal of the Charter School is denied<sup>5</sup>; and,
- (2) the Petition to Intervene is denied.<sup>6</sup>

For the Charter School Appeal Board,

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Eugene W. Hickok, Jr.  
Chairman

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<sup>5</sup> 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.

<sup>6</sup> 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.