

BEFORE THE STATE CHARTER SCHOOL APPEAL BOARD
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

In the Matter of:	:	
	:	
LEHIGH VALLEY ACADEMY	:	
REGIONAL CHARTER SCHOOL	:	
	:	
v.	:	
	:	
BETHLEHEM AREA SCHOOL	:	
DISTRICT	:	
	:	
and	:	DOCKET NO: CAB 2000-12
	:	CAB 2000-13
SAUCON VALLEY SCHOOL	:	
DISTRICT	:	

OPINION AND ORDER

INTRODUCTION

Prior to November 15, 1999 and pursuant to the Charter School Law, 24 P.S. §§17-1701-A – 17-1732-A, the Lehigh Valley Academy Regional Charter School (“Lehigh Valley”) filed an application with the Bethlehem Area School District (“Bethlehem Area”) and the Saucon Valley School District (“Saucon Valley”) seeking to establish a regional charter school. See Certified Record B, Exhibit A and Certified Record C, Exhibit A. Public hearings relating to the applications were held on December 20, 1999 by Saucon Valley and on February 9, 2000 by Bethlehem Area. See Certified Record Q, item 3 and Certified Record P, item 7.

On February 28, 2000, Lehigh Valley’s application was denied by a vote of the respective School Boards of Directors for both Bethlehem Area and Saucon Valley. See Certified Record B, Exhibit B and Certified Record C, Exhibit B. Saucon Valley informed Lehigh Valley of the reasons for its denial of a regional charter in a letter dated March 28, 2000, and Bethlehem Area

informed Lehigh Valley of the reasons for its denial of a regional charter in a letter dated April 28, 2000. Id.

Thereafter, Lehigh Valley filed an Appeal Petition with the Court of Common Pleas of Northampton County, containing the requisite number of signatures under 24 P.S. §17-1717-A(i)(2). The Court entered an Order certifying that the petition met the requirements of Section 1717(i) of the Charter School Law, which decree was submitted to the Charter School Appeal Board on June 13, 2000. See Certified Record B, Exhibit C and Certified Record C, Exhibit C.

Pursuant to 24 P.S. §17-1717-A(f), Lehigh Valley then filed a Petition to Appeal with the State Charter School Appeal Board on June 30, 2000 seeking the reversal of the decisions by Bethlehem Area and Saucon Valley to deny the charter school applications filed by Lehigh Valley. Certified Record B, C. Motions to Consolidate the appeals of the charter denials of Bethlehem Area and Saucon Valley were filed simultaneously with Lehigh Valley's Petitions. Certified Record D, E. The Hearing Officer, in an Order dated July 27, 2000, granted these Motions. Certified Record H.

Subsequently, the parties provided the Hearing Officer with copies of the record below and agreed to the submission of supplemental information pursuant to 24 P.S. §17-1717-A(i)(6). At a meeting of the State Charter School Appeal Board ("CAB") on October 5, 2000, the Hearing Officer certified the record to CAB, including the supplemental information agreed upon by the parties. See Meeting Transcript, p. 7. At this meeting, the parties were given the opportunity to present oral argument on their respective positions relating to the denial of the Lehigh Valley regional charter application by Bethlehem Area and Saucon Valley. See id., generally.

Accordingly, CAB has jurisdiction over this matter pursuant to 24 P.S. §17-1717-A(i), and this matter stands ready for adjudication.

FINDINGS OF FACT

1. Applications for the grant of a regional charter were submitted to Bethlehem Area and Saucon Valley by Lehigh Valley prior to the statutory deadline of November 15, 2000. Certified Record B, Exhibit A and Certified Record C, Exhibit A.
2. Pursuant to 24 P.S. §17-1717-A, the school boards of directors of Bethlehem Area and Saucon Valley held public hearings relating to Lehigh Valley's applications on February 9, 2000 and December 20, 1999 respectively. Certified Record P, item 7 and Certified Record Q, item 3.
3. From time to time during the pendency of its applications with Bethlehem Area and Saucon Valley, Lehigh Valley provided additional information to the school boards of directors of Bethlehem Area and Saucon Valley. Certified Record P, Q
4. On February 28, 2000, the school boards of directors of both Bethlehem Area and Saucon Valley voted to deny Lehigh Valley's applications for a regional charter school. Id.
5. In a letter dated March 28, 2000, Saucon Valley informed Lehigh Valley of its reasons for denying the regional charter school application. Certified Record C, Exhibit B.
6. In a letter dated April 28, 2000, Bethlehem Area informed Lehigh Valley of its reasons for denying the regional charter school application. Certified Record B, Exhibit B.
7. The Court of Common Pleas of Northampton County has decreed that Lehigh

Valley obtained the requisite number of signatures to be eligible to appeal the denial of its regional charter school application by Bethlehem Area and Saucon Valley. Certified Record B, Exhibit C and Certified Record C, Exhibit C.

8. On June 30, 2000, Lehigh Valley filed with CAB timely Petitions to Appeal the denial of its regional charter application by Bethlehem Area and Saucon Valley. Certified Record B, C.
9. With its Petitions to Appeal, Lehigh Valley also filed Motions to Consolidate the Petitions. Certified Record D, E.
10. Lehigh Valley's Motions to Consolidate were granted by the Hearing Officer in an Order dated July 27, 2000. Certified Record H.
11. Lehigh Valley intends to enter into a management agreement with Mosaica Education, Inc. ("Mosaica") to provide educational and administrative services for the school. Certified Record B, C, P, Q.
12. Although Mosaica will provide educational and administrative services to Lehigh Valley, the Board of Directors of Lehigh Valley will retain ultimate control over the operation of the charter school. Id.
13. Lehigh Valley will operate as a non-profit corporation. Id.
14. Lehigh Valley proposes to employ the Paragon Curriculum, technology support and management techniques utilized at other schools managed by Mosaica. Id.
15. Lehigh Valley has identified a building that formerly housed Lower Saucon Elementary School as the site for its charter school. Certified Record B, C, P, Q, R, S.
16. Lehigh Valley is currently pursuing zoning permits that will allow the charter

school to operate from this location, but the zoning board has not yet granted permission. Certified Record R, S.

CONCLUSIONS OF LAW

1. There is demonstrated, sustainable support for Lehigh Valley pursuant to Section 1717(e)(2)(i) of the Charter School Law. 24 P.S. §17-1717-A(e)(2)(i).
2. Lehigh Valley will provide comprehensive learning experiences to its students pursuant to Section 1717(e)(2)(ii) of the Charter School Law. 24 P.S. §17-1717-A(e)(2)(ii).
3. Pursuant to Section 1717(e)(2)(iii) of the Charter School Law, Lehigh Valley's application for a regional charter sufficiently considers all required information, including:
 - a. information relating to insurance coverage as required by Section 1719(17) of the Charter School Law (24 P.S. §17-1719-A(17));
 - b. the proposed school facility as required by Section 1719(11) of the Charter School Law (24 P.S. §17-1719-A(11)); and
 - c. the school's budget and financial plan as required by Section 1719(9) of the Charter School Law (24 P.S. §17-1719-A(9)).24 P.S. §17-1717-A(e)(2)(iii).
4. Although Lehigh Valley will enter into a management agreement with Mosaica, a for-profit entity, the school itself will be a non-profit entity, and a charter may be granted to Lehigh Valley without violating Section 1703 of the Charter School Law, which requires that a regional charter school be a non-profit entity. 24 P.S.

§17-1703-A.

5. Mosaica's renovation of the proposed facility does not amount to a circumvention of Section 1715(10) of the Charter School Law. 24 P.S. §17-1715-A(10).
6. The Board of Trustees is sufficiently accountable to the public and parents pursuant to Section 1715(2) of the Charter School Law. 24 P.S. §17-1715-A(2).

DISCUSSION

Section 1717(e)(2) of the Charter School Law requires a school board to evaluate a charter school application based upon the following criteria:

- (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
- (ii) The capability of the charter school, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.
- (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.
- (iv) The extent to which the charter school may serve as a model for other public schools.

24 P.S. §17-1717-A(e)(2).

Pursuant to these guidelines, Bethlehem Area and Saucon Valley both denied Lehigh Valley's application for a regional charter school based upon the following criteria: (1) a lack of demonstrated, sustainable support for the charter school; (2) failure of the charter school to provide comprehensive learning experiences to its students; and (3) failure to submit the required information in the charter school application. Certified Record B, Exhibit B and Certified Record C, Exhibit B. With respect to this last basis for denial, the items that Bethlehem Area and Saucon Valley identified as being lacking in Lehigh Valley's regional charter school

application related to the location and facility for the charter school, adequate insurance coverage, and budgetary information. Id. In addition, both Saucon Valley and Bethlehem Area denied Lehigh Valley's application for a regional charter on the basis of the charter school's relationship with Mosaica, a for-profit entity. Id. Finally, Saucon Valley also denied the regional charter application because it believed that the Board of Directors of Lehigh Valley would not be accountable to parents and the community, and Bethlehem asserted that the proposed renovations to the charter school facility by Mosaica circumvented the Charter School Law. Id.

In accord with the discussion below, the Appeal Board now finds that Bethlehem Area and Saucon Valley improperly denied the applications for grant of a regional charter submitted by Lehigh Valley on the grounds identified in their letters dated March 28, 2000 and April 28, 2000 respectively.

Demonstrated, Sustainable Support for the Charter School

Both districts have denied Lehigh Valley's application for a regional charter because they assert that Lehigh Valley has not shown to their satisfaction that there is demonstrated, sustainable support for its charter school, as required by Section 1717(e)(2)(i). See 24 P.S. §17-1717-A(e)(2)(i).

In prior adjudications, CAB has provided guidance on this factor. For example, in Phoenix Academy Charter School, Docket No. CAB 1999-10, we defined "sustainable support" to mean "support sufficient to sustain and maintain the proposed charter school as an on-going entity." Id. at 24. CAB echoed this same principle in Hills Academy Charter School, Docket No. CAB 1999-12. See id. at 16.

Based upon this guidepost, we have previously found the following to be valid predictors

of “sustainable support:” (1) the pre-registration of students and families at the charter school;¹ (2) members of the community speaking in favor of a charter school;² (3) an expression of a reasonable degree of support in newspaper articles, letters to the editor, and editorials;³ and (4) “petitions of support,” “letters of support,” “written testimonials,” and “potential applicant lists.”⁴ Clearly, CAB has taken a relatively expansive view of what may be considered as indicia of demonstrated, sustainable support for a charter school.

In addition, although the Charter School Law lists four different groups (namely parents, teachers, students and other community members) from which valid support for a charter school may be demonstrated, there is no requirement that support be found in each of these four groups. See 24 P.S. §17-1717-A(e)(2)(i) and Hills Academy at 16. “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.” Id. (emphasis added); see also Environmental Charter School, Docket No. CAB 1999-14. CAB has also noted that, “it is the degree of support for the proposed charter school plan, not the vociferousness of the opposition, that is relevant.” Id. at 15 (emphasis in original); see also Souderton Charter School Collaborative, Docket No. CAB 1999-2.

Both Bethlehem Area and Saucon Valley have denied Lehigh Valley’s regional charter application on the grounds that there was insufficient “demonstrated, sustainable support.” The

¹ Specifically, 43 students (Collegium Charter School, Docket No. CAB 1999-9 at 12) and 60 students (Phoenix Academy at 24) have previously been found to be a valid predictor of sustainable support.

² Specifically, three community members (Phoenix Academy at 24) and eight community members (Collegium at 12) have previously been found by the Appeal Board to be a valid predictor of sustainable support. Also, “general” statements of support are sufficient since the Charter School Law “does not require that persons who state their support for the charter school must also state the reasons why they are supporting such a choice.” Collegium at 13.

³ See Phoenix Academy at 24.

districts based their determinations on the fact that only six members of the public appeared at the public hearing held by Bethlehem Area in support of the charter school,⁵ and only four members of the public appeared at the public hearing held by Saucon Valley in support of the charter school.⁶ However, in their argument before CAB, Lehigh Valley asserted that the solicitor for Bethlehem Area had suggested that the presentation at the hearing be kept brief and recommended that Lehigh Valley not “parade a lot of people up there.” Meeting Transcript p. 38. Therefore, the lack of persons at the hearing might have been at the behest of the district, or at least the result of a misinterpretation of this statement.

Whatever the reason for the lack of an overwhelming number of parties in attendance at the hearing, the record contains numerous other valid indicia of “demonstrated, sustainable support” for the charter school. For example, Lehigh Valley provided Bethlehem Area with written testimonials supporting the formation of the charter school from both statewide and community leaders. See Certified Record P, item 6.⁷ Also, Lehigh Valley presented Bethlehem Area with a petition containing the signatures of over 250 community members and Lehigh Valley

⁴ See Hills Academy at 16.

⁵ In its April 28, 2000 letter to Lehigh Valley explaining the reasons for its denial of the charter, Bethlehem Area questions the reliability of the showing of support from these six individuals because they were members of the charter school’s “founders group.” However, these persons were nonetheless “community members” and their support of the charter school cannot be disqualified merely because they are also members of the charter school’s “founders group.”

⁶ In its March 28, 2000 letter to Lehigh Valley explaining the reasons for its denial of the charter, Saucon Valley seems to discount the show of support from two of these community members because they do not reside within the Saucon Valley School District. This is improper in the case of a regional charter school application since the charter school will operate under a charter from more than one school district. In this case, although only two members of the public who attended the hearing in support of the charter school resided in the Saucon Valley School District, the other two community members were from the Bethlehem Area School District, which was the other district from which Lehigh Valley sought a regional charter. Therefore, the support of the regional charter school from the two Bethlehem Area residents is as equally relevant as the support demonstrated by the two Saucon Valley residents.

⁷ The Appeal Board has previously indicated that such information is a valid indicator of sustainable support. See Leadership Learning Partners Charter School, Docket No. CAB 2000-8.

presented Saucon Valley with a petition containing the signatures of over 170 members.⁸

Likewise, Francis Hackett, the principal founder of Lehigh Valley, testified at the Bethlehem Area public hearing that he had received unsolicited telephone calls from approximately nine teachers who expressed an interest in, and support for, the charter school. See Certified Record P, item 7, p. 137.

Based upon its consideration of this aggregate information, the Appeal Board finds that there is sufficient “demonstrated, sustainable support” from the community for the establishment of the Lehigh Valley Charter School to satisfy Section 1717(e)(2)(i) of the Charter School Law. 24 P.S. §17-7117-A(e)(2)(i). Therefore, the denial of Lehigh Valley’s charter school application by Bethlehem Area and Saucon Valley on the grounds of a lack of demonstrated, sustainable support is rejected.

Comprehensive Learning Experiences

In addition to an alleged lack of demonstrated, sustainable support for the charter school, both Bethlehem Area and Saucon Valley denied Lehigh Valley’s application for a regional charter because the districts believe that Lehigh Valley did not demonstrate its capability to provide comprehensive learning experiences to students, as required by Section 1717(e)(2)(ii) of the charter School Law. See 24 P.S. §17-1717-A(e)(2)(ii). Determining “capability” is a matter of degree, but the standard suggests at least “a minimum absolute threshold of acceptability.” William Bradford Academy, Docket No. CAB 1999-8.

As mentioned above, Lehigh Valley intends to utilize the Paragon Curriculum developed

⁸ The Petitions indicate that the persons signing the document are from the Bethlehem Area or Saucon Valley School Districts, are eighteen years of age or older, and support the establishment of the Lehigh Valley Academy Charter School. See Certified Record P, item 6 and Certified Record Q, item 6, respectively.

by Mosaica, which neither Bethlehem Area nor Saucon Valley believe will provide students of the charter school with comprehensive learning experiences. See Certified Record B, Exhibit B and Certified Record C, Exhibit B. The school districts assert that Lehigh Valley has not demonstrated that the proposed curriculum will prepare students to succeed on the Pennsylvania System of Schools Assessment (“PSSA”), and that Lehigh Valley has not completely described the content of the curriculum. Id. However, CAB has previously held that a district may not require that an applicant demonstrate student preparation for success on the PSSA (Bucks County Montessori Charter School, Docket No. CAB 1999-7 at 20), and Lehigh Valley’s application contains a thorough explanation of the curriculum and other information related to the education experiences that Lehigh Valley intends to offer its students. See e.g. Certified Record B, Exhibit A, pp. 5-19 and application exhibits; Certified Record C, Exhibit A, pp. 5-19 and application exhibits; Certified Record P, item 3.

We are not unfamiliar with Mosaica or the Paragon Curriculum that it has developed. See e.g. Ronald H. Brown Charter School, Docket No. CAB 1999-1. CAB has previously determined that the Paragon Curriculum “is designed to prepare students to be creative, intuitive and analytical thinkers with a solid understanding of the history of ideas.” Id. at 21.

The curriculum that Lehigh Valley intends to use to educate its students is remarkably similar to that approved by the Appeal Board in Ronald H. Brown, supra. For example, with both schools, the school day is to be divided into two essential components: (1) a morning session focusing on the “core” curriculum (*i.e.*, phonics, math, writing and science) and; and (2) an afternoon session focusing on the Paragon Curriculum. Certified Record B, Exhibit A, p. 8 and Certified Record C, Exhibit A, p. 8. As with the program scrutinized in Ronald H. Brown, supra, Lehigh Valley will implement a seven and one-half hour school day, resulting in an

additional three and one-half years of instruction time over the K – 12 sequence. See Certified Record B, Exhibit A, p.4 and Certified Record C, Exhibit A, p. 4. Also, both Lehigh Valley’s educational program and the educational program in Robert H. Brown, supra., utilize various self-assessment or evaluation models, including: (1) the Pennsylvania System of Schools Assessment (“PSSA”); (2) the Iowa Test of Basic Skills (“ITBS”); and (3) parent satisfaction surveys. Finally, Lehigh Valley presented evidence to the districts that the Paragon Curriculum has proven successful in other Mosaica-managed schools. See e.g. Certified Record P, item 6.

Based upon this information and the information contained in the Certified Record, CAB finds that Lehigh Valley is capable of providing comprehensive learning experiences to its students pursuant to Section 1717(e)(2)(ii) of the Charter School Law. 24 P.S. §17-1717-A(e)(2)(ii). Accordingly, the denial of Lehigh Valley’s charter school application by Bethlehem Area and Saucon Valley on the grounds of a lack of comprehensive learning experiences is rejected.

Extent to Which the Application Contains Required Information and Conforms to the Legislative Intent

In addition to asserting that there is not sustainable support for the charter school and that the charter school cannot provide comprehensive learning experiences, both districts have denied Lehigh Valley’s application on the grounds that the application does not consider the information requested in Section 1719 of the Charter School Law. See 24 P.S. §17-1717-A(e)(2)(iii). The information that the districts assert is not adequately considered in Lehigh Valley’s application relates to: (1) insurance coverage; (2) the charter school’s location; and (3) Lehigh Valley’s budget.

With regard to insurance coverage, Bethlehem Area asserted in its April 28, 2000 letter

that Lehigh Valley has not sufficiently demonstrated that adequate insurance has been or will be obtained.⁹ Section 1719(17) of the Charter School Law merely states that an application must include information relating to how the charter school will provide adequate liability and other appropriate insurance for the charter school, its employees and the Board of Trustees of the charter school. 24 P.S. §17-1719-A(17). There is no requirement in the Charter School Law for minimum levels of insurance coverage; rather, such coverage must only be “adequate.” See id. Lehigh Valley’s application sets forth seven different types of insurance and the coverage levels the charter school intends to obtain, including: (1) comprehensive general liability insurance; (2) officers and trustees insurance; (3) property insurance; (4) bonding; (5) motor vehicle liability insurance; (6) equipment insurance; and (7) workers compensation insurance. Certified Record B, Exhibit A, p. 41. Although Lehigh Valley did not actually obtain insurance from a specific insurer, a requirement that the charter school do so before a charter is granted is unreasonable. The charter school has provided sufficient information relating to insurance coverage in its application.

Accordingly, CAB finds that the types of insurance and liability levels included in Lehigh Valley’s application for a regional charter school are adequate to satisfy the requirements of Sections 1719(17) and 1717(e)(2)(iii) of the Charter School Law. 24 P.S. §§17-1719-A(17), 17-1717-A(e)(2)(iii). Therefore, the decision by Bethlehem Area to the contrary is rejected.

Both districts also denied Lehigh Valley’s application because it failed to provide adequate information pertaining to the proposed location of the school. The Charter School Law requires that an application must contain a description and address of the physical facility in

⁹ Saucon Valley appears to be satisfied with the insurance information and coverage provided by Lehigh Valley in the application for a regional charter, because this is not cited as a reason for denial. See Certified Record C, Exhibit B.

which the charter school will be located, including the ownership thereof and any lease arrangements. 24 P.S. §17-1719-A(11); see also Phoenix Academy at 20-21. Although Lehigh Valley's application for a regional charter only contains general information regarding the various potential facilities for the charter school, supplemental information was provided to the districts that clearly identified the proposed facility as being the former Lower Saucon Elementary School in Lower Saucon Township. Bethlehem Area was notified of the proposed Lower Saucon Elementary School site at its hearing on February 9, 2000. Certified Record P, item 7. That information was also confirmed in a letter that was sent to the Bethlehem Area solicitor on February 25, 2000. Certified Record P, item 9. The same information was also furnished to Saucon Valley via a facsimile transmission on February 23, 2000. Certified Record Q, item 8. In addition, the parties agreed to the submission of supplemental information relating to the zoning permit that is being sought by Mosaica (the proposed purchaser and lessor of the facility) in Lower Saucon Township.¹⁰ Certified Record R, S.

Based upon the information in the record of the school district proceedings below and the information in the supplemented record agreed upon by the parties, CAB finds that Bethlehem Area and Saucon Valley improperly denied Lehigh Valley's application on the grounds that it failed to provide sufficient information relating to the physical facility for the charter school pursuant to Section 1719(11) and 1717(e)(2)(iii) of the Charter School Law. 24 P.S. §§17-1719-A(11), 17-1717-A(e)(2)(iii).

Another issue that Bethlehem Area has raised about Lehigh Valley's application is that it

¹⁰ Initially, the zoning permit was denied, but Mosaica is currently appealing that denial. After the denial, Mosaica applied for an ordinance interpretation permitting continued use of the property as an educational facility. On September 7, 2000, the Zoning Board denied that request, but Mosaica has indicated that it will appeal that decision since it believes that several of the board members are improperly connected with Saucon Valley and were biased against Lehigh Valley.

failed to consider required information relating to the charter school budget and financial plan.¹¹ Bethlehem Area asserts that the application fails to meet the requirements of Section 1717(e)(2)(iii) of the Charter School Law. 24 P.S. §17-1717-A(e)(2)(iii). Bethlehem Area specifically argues, that the budget fails to account for the difference in per pupil allocations between Saucon Valley and Bethlehem Area, and it fails to allow for payment to Mosaica for administrative and educational services. However, it appears that the concerns raised by Bethlehem Area regarding Lehigh Valley's budget are unreasonable and unfounded.

With regard to Lehigh Valley's alleged "miscalculation" of the number of students that may attend from either Saucon Valley or Bethlehem Area, it is impossible to precisely determine exactly how many students will attend the charter school, let alone determine from which districts those students will migrate. Furthermore, for the purpose of developing a budget, there is no way of ascertaining exactly how many children applying to the school will be given enrollment preference under Section 1723 of the Charter School Law. 24 P.S. §17-1723-A. Finally, the budget set forth by Lehigh Valley in its application for a regional charter clearly sets aside \$439,030.00 to the management company, namely Mosaica, for the services that are set forth in the management agreement between Mosaica and Lehigh Valley. Therefore, Bethlehem Area's requirement for more precise calculations in Lehigh Valley's budget is unreasonable, and it is clear from the Certified Record that funds have been allocated in the proposed budget for the payment of administrative and educational services rendered by Mosaica.

For these reasons, CAB rejects Bethlehem Area's assertion that Lehigh Valley's application for a regional charter fails to consider the required financial information pursuant to

¹¹ As with the insurance coverage issue, Saucon Valley has not raised any issues pertaining to the validity of Lehigh Valley's budget.

Sections 1717(e)(2)(iii) and 1719(9) of the Charter School Law. 24 P.S. §§17-1717-A(e)(2)(iii), 17-1719-A(9). Accordingly, Bethlehem Area's denial of the regional charter application on the ground that it fails to include sufficient budget and financial information is rejected.

Lehigh Valley's Association with Mosaica

Bethlehem Area and Saucon Valley have also denied the charter because of Lehigh Valley's association with Mosaica, a for-profit entity. Section 1703 of the Charter School Law prohibits the grant of a regional charter to a for-profit entity. 24 P.S. §§17-1703-A (definition of "regional charter school"). Because Mosaica is a for-profit entity, and because Lehigh Valley has entered into a management agreement with Mosaica, the districts have asserted that they are unable to grant a regional charter pursuant to Section 1703. We find, however, that this is an improper basis for the denial of Lehigh Valley's application.

The Commonwealth Court has addressed the issue of involvement of for-profit corporations in charter schools:

Nothing in the [Charter School 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 education decisions, and the teachers are employees of the charter school itself.

West Chester Area School District, et al. v. Collegium Charter School, et al., 2000 Pa. Commw. LEXIS 486 (Pa.Cmwth. Ct., August 25, 2000). Although Lehigh Valley has not yet filed an application for non-profit status, it is abundantly clear from the record that the charter school will operate as a non-profit entity and that the charter school is sufficiently independent of Mosaica.

The Charter School Law authorizes Lehigh Valley to make contracts and leases for the purpose of procurements of services, equipment and supplies. 24 P.S. §17-1714-A(a). Pursuant

to that authority, Lehigh Valley has entered into a management agreement with Mosaica to serve as the management team for the school. Certified Record B, Exhibit A, p. 30, Certified Record C, Exhibit B, p. 30. That management agreement actually prohibits any action or allocation of responsibility that would be violative of the Public School Code, and both parties agree to abide by that law and the Charter School Law.

In addition, both the Commonwealth Court and CAB have previously approved use of Mosaica as a provider of educational and administrative services by charter schools. See Ronald H. Brown, supra.; Phoenix Academy, supra.; see also West Chester Area School District v. Collegium Charter School, Docket No. 2403 C.D. (Pa.Cmwlth. 8/25/00). Nothing in the record in this matter contradicts the factual bases for these prior determinations by CAB and the Commonwealth Court.

Accordingly, we find that Bethlehem Area and Saucon Valley improperly denied Lehigh Valley's application for a regional charter on the grounds that its relationship with Mosaica affects the charter school's status as a non-profit entity. Therefore, Bethlehem Area and Saucon Valley's decisions in that regard are rejected.

Miscellaneous Grounds for Denial

Besides the reasons discussed above, the districts have also denied Lehigh Valley's application on other miscellaneous grounds. Bethlehem Area has denied the charter because it believes that the proposed renovations to the charter school facility by Mosaica circumvent the Charter School Law. Saucon Valley has denied the charter application because it believes that the Board of Directors of Lehigh Valley will not be accountable to parents and the community.

With regard to the issue raised by Bethlehem Area, CAB finds that it is an improper basis for denial of a charter. Bethlehem Area asserts, in its April 28, 2000 denial letter, that because

the renovations to the proposed school facility will be completed by Mosaica, public funds will be used to complete the renovations, and thus, the construction project should adhere to provisions of the Public School Code and other statutes relating to school construction projects.¹² 24 P.S. §17-1715-A(10). However, there is no documentation that there is any agreement between Lehigh Valley and a contractor to perform construction or construction related services for Lehigh Valley. Mosaica, not Lehigh Valley, will be the owner of the facility. Lehigh Valley will be the lessor of the building and the Charter School Law clearly authorizes Lehigh Valley to lease a facility. Therefore, we do not view this as a violation of the Charter Law, and CAB rejects Bethlehem Area's denial of the regional charter to Lehigh Valley on this basis.

Likewise, Saucon Valley's other ground for denial of the charter to Lehigh Valley is improper. Saucon Valley asserted that the Board of Trustees for Lehigh Valley would not be accountable to parents because the founder of the school will appoint the initial Board. However, Section 5 and 6 of the proposed bylaws for the Board specifically allow for the participation of parents or any other community members on the various permanent and *ad hoc* committees of the Board. See Certified Record C, Exhibit A. Likewise, Lehigh Valley's application sets forth the charter school's plans for community and parental involvement. See e.g. Certified Record C, Exhibit A, pp. 24 et seq. Therefore, although the founder of the school will appoint the initial Board of Trustees for the charter school, there is sufficient accountability of the Board to parents and the community to satisfy Section 1715(2) of the Charter School Law. 24 P.S. §17-1715-A(2). Accordingly, this was an improper basis for denial by Saucon Valley, and its decision in that regard is rejected.

¹² The exact reasoning behind this basis for Bethlehem Area's denial is vague at best. Moreover, Bethlehem Area failed to amplify upon its rejection letter by adequately addressing this issue in its brief. See Certified Record K.

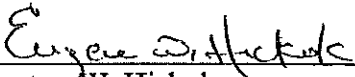
CONCLUSION

In sum, because the Saucon Valley and Bethlehem Area School Districts have improperly denied Lehigh Valley's application for a regional charter, CAB accordingly rejects their decisions.

ORDER

AND NOW, this 21st day of November, 2000, based upon the foregoing and the vote of the State Charter School Appeal Board,¹³ the June 30, 2000 appeal of Lehigh Valley Academy Charter School is affirmed, and the Bethlehem Area School District and the Saucon Valley School District are hereby directed to grant the Applications and sign Lehigh Valley Academy Charter School's regional charter pursuant to 24 P.S. §17-1720-A.

For the State Charter School Appeal Board,



Eugene W. Hickok
Chairman

¹³ At its November 3, 2000 meeting, the appeal was granted by a vote of 4-2, with members Aliota, Bunn, Hickok and Reeves voting to grant the appeal, and members Melnick and Shipula voting to deny the appeal.