

[J-216-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

MOSAICA ACADEMY CHARTER SCHOOL, LISA MAYO AND DESIREE MCCALL : 4 EAP 2001
: :
: Direct appeal from the Orders of the
: Commonwealth Court dated May 12,
v. : 1999, July 20, 2000, and December 18,
: 2000, at No. 803 M.D. 1998
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF EDUCATION; :
EUGENE HICKOK, IN HIS CAPACITY AS :
SECRETARY OF EDUCATION OF THE :
COMMONWEALTH OF PENNSYLVANIA; :
THE SCHOOL DISTRICT OF :
PHILADELPHIA BOARD OF EDUCATION: :
AND DAVID HORNBECK, IN HIS :
CAPACITY AS SUPERINTENDENT OF :
THE SCHOOL DISTRICT OF :
PHILADELPHIA :
v. :
: :
BENSALEM TOWNSHIP SCHOOL :
DISTRICT, RUTH E. BELL, PRESIDENT, :
BOARD OF SCHOOL DIRECTORS :
: :
APPEAL OF: SCHOOL DISTRICT OF :
PHILADELPHIA BOARD OF EDUCATION: :
AND DAVID HORNBECK, IN HIS :
CAPACITY AS SUPERINTENDENT OF :
THE SCHOOL DISTRICT OF :
PHILADELPHIA : SUBMITTED: November 20, 2001

DISSENTING OPINION

MR. JUSTICE NIGRO

DECIDED: December 31, 2002

In West Chester Area School District v. Collegium Charter School, __ A.2d __, 2002

WL 31852855 (Pa. Dec. 20, 2002), I outlined my position that the Charter School Law

(“CSL”), 24 P.S. §§ 17-1701-A. to 17-1732-A., requires a charter school applicant to seek a regional charter whenever the “applicant plans at the outset to actively recruit students from select school districts other than that in which the school is physically located.” ___ A.2d ___, ___, 2002 WL 31852855 at *14 (Nigro, J., dissenting). Here, Mosaica Academy Charter School (“Mosaica”) sought a local charter from Bensalem Township School District (“BTSD”), where its school would be physically located, but specifically planned for the vast majority of the students to come from neighboring districts. In my view, Mosaica was therefore obligated to apply for and obtain a regional charter as a prerequisite to requiring the neighboring school districts to finance Mosaica’s charter school with their residents’ tax dollars.

Significantly, in the charter school application that Mosaica submitted to BTSD, it projected that just 80 of its 400 students would reside in Bensalem Township, with the remaining 320 students residing outside the district. See Operating Budget, attached as Exhibit C to Revised 1997 Charter School Application (“Application”). Mosaica therefore expected a full eighty percent of its student body to come from other school districts, and in its application specifically identified Northeast Philadelphia and Lower Bucks County, both of which border BTSD, as regions in which it would conduct enrollment meetings. Application at 37. In spite of having targeted those areas, when Mosaica was asked on the application form about the efforts it had made “to notify those districts from which [it] would draw students,” it responded only that it had “met with the school board and the administration of BTSD on several occasions.” Id. at 25 (emphasis added). As such, it acknowledged that it had made no effort to notify the other school districts, much less discuss with those districts whether making a charter school available to their resident children would promote the legislative purposes underlying the CSL. See 24 P.S. § 17-1702-A. (describing the CSL’s purpose as, among other things, to improve pupil learning);

24 P.S. § 17-1717-A.(e)(2)(iii) (requiring school boards to evaluate whether a charter application conforms to the legislative intent set forth in section 17-1702-A.).

Nevertheless, after BTSD granted Mosaica's application for a local charter on June 24, 1998, Mosaica immediately began accepting hundreds of applications for enrollment from students in the Philadelphia School District. Almost exactly as predicted, by July 14, Mosaica had accepted 449 students -- 256 from the Philadelphia School District, and the remainder from Bensalem, Neshaminy and Bristol Townships.¹ Based on the number of students from Philadelphia, Mosaica sent a bill to the Philadelphia School District on July 17, 1998, demanding monthly payments of \$117,082.24, i.e., \$457.35 per month for each of the 256 students. It further indicated in an accompanying letter that it expected the Philadelphia School District to reallocate its transportation resources to provide transportation to Mosaica students living within its borders. See Letter from Gene Edelman, Acting Head of Mosaica to David Hornbeck, Superintendent of the Philadelphia School District, dated July 17, 1998.

According to the majority, the Philadelphia School District cannot defend itself against this claim for over \$1.4 million in annual tuition subsidies and transportation services because the CSL does not specifically provide for an appeal from a local board of school directors' decision to grant a charter.² However, when the regional charter provisions are applied as I believe they were intended, it is readily apparent that the

¹ It is not clear from the record how many students resided in BTSD.

² The majority also contends that "the legislature's decision to permit an appeal only from the denial of a charter application is not offensive to individual rights because all private citizens had a right to attend and participate in BTSD's July 7, 1998 open public forum." Slip Op. at 8-9. However, this public forum took place almost two weeks after BTSD granted the charter. Accordingly, to the extent that individual rights had been violated by the unilateral grant of the charter, I do not see how this forum could have ameliorated those violations.

General Assembly did not provide for appeals from charter grants because to do so would have been gratuitous given the democratic regional charter approval process. Under the statute as I interpret it, if a charter school intends to serve a region, it must obtain the approval of all of the school districts within that region from which it intends to actively recruit students. See 24 P.S. § 17-1718-A.(b) (“[A]ny action to . . . sign a written charter of an applicant shall require an affirmative vote of a majority of all the directors of each of the school districts involved.”). As such, approval of the charter signals unqualified support for the charter from all of the targeted districts. See id. Thus, the regional charter approval process simply negates the need to provide such districts with an appellate remedy.

Here, of course, Mosaica did not utilize the regional charter school application procedures and thus did not give the Philadelphia School District the opportunity to vote on its charter application. Nevertheless, Mosaica drew approximately 60% of its students from Philadelphia and sought to divert to its independent venture over \$1.4 million in Philadelphia taxpayers’ money that was presumably already budgeted for the Philadelphia public school system. The fundamental unfairness of this process is self-evident and, in my view, is not what the General Assembly intended. Accordingly, I would hold the charter invalid, at least insofar as it purports to impose obligations on the Philadelphia School District, and would thereby relieve the Philadelphia School District of any obligation to pay tuition subsidies to Mosaica or provide transportation to Mosaica students.