

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

Vitalistic Therapeutic Charter School :
of the Lehigh Valley Appeal from : **Docket No. CAB 2010-04**
Inaction of the Bethlehem Area School :
District on its Renewal Application :

DECISION AND ORDER

The State Charter School Appeal Board (Board) met on September 28, 2010 and accepted and discussed this appeal. The Vitalistic Therapeutic Charter School (Vitalistic) is a regional charter school, serving students from the Allentown and Bethlehem Area School Districts. Vitalistic submitted its second renewal request to extend its regional charter to both districts on January 29, 2010. On April 22, 2010 the Allentown school District, after the conclusion of some negotiations and changes, approved the renewal charter. The Bethlehem Area School District (Bethlehem), notwithstanding the approval recommendation of the administration, voted to deny the renewal charter on June 21, 2010. The district did not, however, provide Vitalistic with a written notice detailing the reasons for its action.¹

On June 24, 2010, Vitalistic filed a Petition to Appeal with the State Charter School Appeal Board (CAB). Receipt of the appeal was acknowledged and Bethlehem was asked to file an answer and certify the record by June 15, 2010. In a subsequent conference call with counsel for the parties, Bethlehem indicated that the record before the Board of School Directors only included the charter renewal application and the June 21 Board agenda. In addition, Bethlehem indicated that it would be taking no further action and would not answer the appeal. Following

¹ As noted in *Young Scholars of Western PA Charter School*, CAB 2010-03, failure to provide written notice of the reasons for denial of a charter application is a fatal defect and such inaction authorizes CAB to find that the charter application is legally sufficient and approvable. This flaw was not raised in the appeal, which will be granted on other grounds.

this conference call, Vitalistic filed a Motion to Grant renewal Charter, which was presented to CAB at its meeting.

These proceedings are governed by Pennsylvania's General Rules of Administrative Practice and Procedure, which are found in Title 1 of the Pennsylvania Code. Section 35.35 of those rules provides the School District a period of 20 days to file an answer to the appeal. If the school district fails to answer it "may be deemed in default, and relevant basic facts stated in the ... petition [to appeal] may be deemed admitted." 22 Pa. Code § 35.35. Because Bethlehem failed to provide a certified record in this appeal, CAB has none. Based upon the Petition of Appeal, however, CAB finds that the record includes the following documents: (1) the Petition for Appeal filed by Vitalistic; (2) the approved charter from the Allentown School District (appended to the Petition); (3) the Charter School Renewal Request which had been filed with Bethlehem (a copy of which was not provided to CAB); and (4) the agenda of Bethlehem's June 21, 2010 Board of School Director's meeting.

In addition to failing to provide a certified record, Bethlehem never filed an answer to the Petition for Appeal within the prescribed time permitted for answers or as directed in the appeal acceptance letter. Thus, Bethlehem has neither admitted nor denied the averments of Vitalistic's Petition to Appeal. Because of this failure to answer, CAB must determine whether Bethlehem should be deemed in default because it did not file an answer and because, through counsel, Bethlehem indicated that it will take no further action and will not participate in this appeal before CAB. Were Bethlehem to be deemed in default, then the facts averred in the appeal would be deemed admitted and, as a result the appeal would of necessity be granted and the charter renewed. A motion to deem Bethlehem in default was made and seconded at the meeting and the motion was adopted by vote of the CAB. Thus, CAB enters the following:

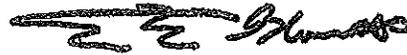
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ORDER

AND NOW, this 1st day of October, 2010, based upon the foregoing, the Bethlehem Area School District is deemed to be in default in this matter and the appeal of the Vitalistic Therapeutic Charter School is granted². A renewal charter will be deemed to be approved and signed by the Chairman of CAB, if the Board of School Directors, upon receipt of this decision, fails to execute a renewal charter within 10 days.

For the State Charter School Appeal Board



Thomas E. Gluck
Chairperson

² With CAB members Akers, Barker, Green, Reeves, Shipula and Gluck voting in favor of the motion, it was adopted unanimously by a vote of 6-0.