

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

In Re: Bucks County Montessori Charter School:

Appeal from Denial of Charter	:	
School Application by	:	Docket No. CAB 2003-4
Pennsbury School District	:	

OPINION AND ORDER

I. BACKGROUND

Bucks County Montessori Charter School (hereinafter “Montessori”) is a nonprofit corporation incorporated under the laws of the Commonwealth of Pennsylvania. Montessori filed an appeal with the Charter School Appeal Board (CAB) on September 15, 2003. This appeal challenged a February 20, 2003 decision of the Pennsbury School District (Pennsbury) denying Montessori’s application for a charter middle school. Because this appeal appeared to present a novel procedural question regarding CAB’s jurisdiction, the parties were directed to brief the issue of CAB’s jurisdiction to hear this appeal, which briefs were filed on October 13 and 14. The parties then argued this question before CAB at its meeting of October 29, 2003.

II. DISCUSSION

Montessori was previously before CAB in the initial year of CAB’s existence at CAB 1999-7. In that matter, Montessori, the same nonprofit corporation, had also applied to Pennsbury for a charter to operate a Kindergarten to 6th grade charter school. CAB granted the charter’s appeal in a decision issued on March 29, 2000. Pennsbury ultimately executed a charter agreement with Montessori for the K-6th grade charter school, which commenced operation in the 2000-2001 school

year. That school continues to operate to this day and its charter is scheduled to expire on June 30, 2004.

The instant matter involves a dispute over Montessori's efforts to expand its program into grades 7 & 8. Montessori apparently first sought to amend its existing K-6th grade charter to add these grades. After this effort proved to be unsuccessful¹, Montessori, on November 15, 2002, submitted to Pennsbury what it styled as an application for a new charter to operate a charter middle school for 7th and 8th grade students. Pennsbury accepted the application and followed the timelines and procedures of the Charter School Law in reviewing and acting thereon. Ultimately, Pennsbury denied the application, Montessori secured signatures in support of an appeal, the signature petitions were certified by the Court of Common Pleas and this appeal followed.

The Charter School Law sets out CAB's jurisdiction, that is, those cases which CAB is authorized to hear and decide. This authority is specifically limited to four areas: (1) appeals from school district denials of applications to form a charter school (24 P.S. §17-1717-A(i)(1)), (2) appeals because a school district has failed to timely act upon a charter application (24 P.S. §17-1717-A(g)), (3) appeals from school district decisions to revoke a charter (24 P.S. §17-1729-A(d)) and (4) appeals from school district decisions to nonrenew a charter (24 P.S. §17-1729-A(d)). The Petition of Appeal filed by Montessori does not clearly show that any of these circumstances is involved. It does not appear that this is an application to "form" a new and distinct charter school, since the applicant – Montessori – already has another charter for grades K-6 and initially attempted to amend that charter to add grades 7 and 8. This is clearly not a case of tardiness on the district's

¹ It is unclear, because this case is at the preliminary procedural stage, whether Pennsbury simply ignored Montessori's overture to amend its charter or whether Pennsbury refused to allow the amendment. No evidentiary record has been made regarding this or any other potential factual dispute between the parties. However, this issue is not relevant to CAB's determination of the question of its jurisdiction.

part, nor does it involve a revocation or nonrenewal. Thus, the question of CAB's jurisdiction to hear this appeal must be addressed before the case can proceed on the merits, if at all.

Montessori's position is that this is a proper appeal. First, Montessori argues that it is a proper applicant under the law and that its application should thus be treated as a proper application within the jurisdiction of this Board. Section 1717-A(a) states that a charter school may be established

by an individual; one or more teachers who will teach at the proposed charter school; parents or guardians of students who will attend the charter school; any nonsectarian college, university or museum located in this Commonwealth; any nonsectarian corporation not-for-profit, as defined in 15 Pa.C.S. (relating to corporations and unincorporated associations); any corporation, association or partnership; or any combination thereof...

24 P.S. §17-1717-A(a). Montessori is undeniably a proper applicant, however, determination of the jurisdictional question does not end here. For example, is Montessori seeking to "establish" a charter school or is it simply trying to find an alternative way to change its existing charter school?

Montessori next argues that CAB should treat this matter in the same manner as did both Montessori and Pennsbury – as a valid charter application. In support thereof, Montessori notes that it originally approached Pennsbury and asked to amend its existing K-6th grade charter. Because the district allegedly did not respond, Montessori subsequently prepared and filed an application for what it alleges to be an independent charter school. Montessori developed and filed the application consistent with the requirements of law. Moreover, the charter school points out that, in all respects, Pennsbury treated and reviewed the application consistent with the procedural and substantive provisions of the Charter School Law. Thus, because the application and the process consistently followed the applicable requirements and criteria of the Charter School Law, Montessori asserts that it is

a proper appeal. However again, the issue here is neither how Montessori designated what it filed with the district nor what process both Montessori and Pennsbury followed in addressing this filing. The question for CAB is whether a reasonable interpretation of the law would permit this appeal to go forward to the merits. Montessori's arguments are not responsive to this question.

In contrast, Pennsbury contends that this application should be considered to be a request for an amendment or modification of the school's existing charter.² Pennsbury notes that this is clearly what Montessori originally sought to do and that agreement of the parties to changes in the charter is clearly contemplated in the language of the very charter agreement to which Montessori and Pennsbury are signatories. As such, Pennsbury argues that this dispute is a local matter for negotiation and resolution between the parties.

The school district also points out several reasons, including the potential for different charter termination dates, why treatment of Montessori's request as a new application would be absurd and not consistent with the requirements of the Charter School Law. Because the statute and the charter itself both specifically provide for the school district and the charter school to negotiate changes to their contractual agreement – the charter - the district contends that this local negotiation is the exclusive process for making changes such as the addition of grade levels. Thus, the district now asks that the appeal be dismissed for lack of jurisdiction.

CAB concludes that the position of the district is the more reasoned approach to interpreting the statute. Although Montessori is a *bona fide* applicant for a charter, it already has a charter and that charter is a contract. *See generally*, 24 P.S. §17-1720-A. As a contract, as argued by the

² For completeness sake, CAB notes that counsel for the district admitted that the district did not entertain the question of whether Montessori's application was indeed a proper application for a new charter under the applicable statute until the issue was raised by CAB. However, the position of the district is in no way dispositive, because administrative bodies may raise and consider their jurisdiction in matters brought before them *sua sponte*. *Mercy*

district and as not contested by Montessori, the existing charter is subject to amendment or modification, which amendment or modification could include the addition of grades 7 and 8. In fact, this is the route first attempted by Montessori. However, the position posited by Montessori is that the General Assembly intended the absurd result of allowing a charter school an alternative means of modifying its charter, at least if grades are to be added to the school, of applying for a new charter. This is an absurd result in the case of Montessori, for example, because the K-6th grade charter may expire on June 30, 2004, whereas a 7th and 8th grade charter would most likely not commence until July 1, 2004. Thus, even though some of the driving force behind creation of a 7th and 8th grade charter school option for families was so that students could continue in the Montessori curriculum, the “feeder” school for this proposed charter middle school could be closed before the new school has opened its doors.

It is a well-established rule of statutory construction that legislation should not be interpreted so as to produce an absurd result. 1 Pa.C.S. §1922; Federation of State Cultural and Educational Professionals v. Dept. of Education, 546 A. 2d 147, 149 (Pa. Commw. 1988). Based upon the above, CAB concludes that it lacks jurisdiction in this matter because it would produce an absurd result for this appeal to be heard and for this application to be considered as a charter application, rather than a request to amend an existing charter. Thus, the following order is entered:

Hosp. of Pittsburgh v. Pennsylvania Human Relations Com'n, 451 A.2d 1357 (Pa. 1982).

ORDER

AND NOW, this 16th day of January, 2004, based upon the foregoing and the vote of this Board³, the September 15, 2003 appeal of the Bucks County Montessori Charter School is dismissed for lack of jurisdiction. This order neither upholds nor reverses the Pennsbury School District's February 20, 2003 decision denying the purported charter application.

For the State Charter School Appeal Board,

/s/
Vicki L. Phillips
Chairperson

³ At the Board's December 2, 2003 meeting, the appeal was dismissed by a vote of 4-1 with members Bunn, Reeves, Shipula and Phillips voting to dismiss the appeal, and Mr. Giorno voting to grant. Mr. Melnick and Ms. Salinger were not in attendance.