

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

STATE CHARTER SCHOOL APPEAL BOARD

In Re: Pocono Mountain Charter School :
:
Appeal from the Decision :
to Nonrenew by : **Docket No. CAB 2011-02**
Pocono Mountain School District :

OPINION AND ORDER

I. Background

Pocono Mountain Charter School (“PMCS”) is a nonprofit corporation incorporated under the laws of the Commonwealth of Pennsylvania. PMCS filed an appeal with the Charter School Appeal Board (CAB) on November 4, 2010 at Docket No. CAB 2010-06. This appeal challenged an October 6, 2010 decision of the Pocono Mountain School District’s Board of Directors (“Board of Directors”) to revoke PMCS’s charter. During the course of the CAB revocation proceedings, PMCS submitted a notice of its intention to seek renewal of the charter to Pocono Mountain School District (“District”). On March 16, 2011, the Board of Directors issued a notice of nonrenewal to PMCS with an opportunity to be heard at a May 26, 2011 evidentiary hearing. PMCS construed the Board of Director’s decision to hold a nonrenewal hearing as a decision to nonrenew its charter. Therefore, on April 4, 2011, PMCS filed both an appeal from the March 16 notice and a Motion to Consolidate its nonrenewal appeal with the revocation appeal that was already pending before CAB. In addition, PMCS sent a letter to CAB on April 12, 2011 detailing the basis for its Motion to Consolidate. On April 13, 2011, the District filed an answer to

the nonrenewal appeal, requesting that CAB dismiss PMCS's appeal for lack of jurisdiction. The parties then argued this question before CAB at its meeting on June 7, 2011.

II. Discussion

Charters are granted for terms of 3 to 5 years and may be renewed for additional 5-year terms by approval of the District. 24 P.S. § 17-1720-A. The Board of Directors may choose to non-renew at the end of the term of the charter. 24 P.S. § 17-1729-A(a). CAB has jurisdiction over appeals of decisions not to renew a charter. 24 P.S. § 17-1729-A(a).

The instant matter involves a dispute over whether CAB has jurisdiction over PMCS's non-renewal appeal. The District argues that CAB does not have jurisdiction because the Board of Directors has not held a nonrenewal hearing, but merely scheduled a hearing on the issue. The District asserts that CAB lacks jurisdiction until the Board of Directors renders a formal adjudication on the issue. On the contrary, PMCS construed the Board's March 26, 2011 notice of nonrenewal with an opportunity to be heard at a May 26, 2011 hearing as a decision by the District not to renew the charter.

The record is clear that the Board of Directors has yet to conduct a nonrenewal hearing to determine whether or not to renew the charter. CAB only has jurisdiction after a formal adjudication by the Board of Directors. 24 P.S. § 17-1729-A(d). Here, the CAB lacks jurisdiction because the District did not make a decision whether or not to renew the charter. Section 17-1729-A(c) states:

[a]ny notice of . . . nonrenewal of a charter given by the local board of school directors of a school district shall state the grounds of such action with reasonable specificity and give reasonable notice to the governing body of the charter school of the date on which a public hearing concerning the . . . nonrenewal will be held. The local board of school directors shall conduct such hearing, present evidence in support of the grounds for revocation or nonrenewal stated in its notice and give the charter school reasonable opportunity to offer testimony before taking final action. Formal action revoking or not renewing a charter shall be taken by the

local board of school directors at a public meeting . . . after the public has thirty days to provide public comment.

24 P.S. § 17-1729A(c). Therefore, Section 17-1729-A(c) mandates that a school district, before deciding not to renew a charter, provide the following: (1) notice of grounds for nonrenewal of a charter; (2) notice of the date on which a public hearing concerning the nonrenewal will be held; (3) an evidentiary hearing; (4) a thirty-day period for public comment; and (5) formal action not to renew the charter at public meeting. 24 P.S. § 17-1729A(c). CAB has held in In re: Bucks County Montessori School, Docket No. CAB 2003-4, that a school district does have the discretion to circumvent the procedural requirements of the law.

Here, the District has not completed the procedural steps necessary to make a decision not to renew the charter because it did not conduct an evidentiary hearing. PMCS incorrectly assumed that the Board of Directors voted not to renew the charter. The Board of Directors cannot decide whether or not to renew the charter until an evidentiary hearing is held, public comment is received, the Board of Directors reviews the evidence, and adjudication is issued.

The District also asserts, and CAB agrees, that the pending nonrenewal decision is separate and distinct from its previous decision to revoke the charter which was appealed to CAB on November 5, 2010. In its letter to the CAB, PMCS requests that CAB consolidate the appeals for three reasons.¹ First, PMCS states that CAB should consolidate the appeals because the District attached to the nonrenewal notice its October 6, 2010 decision to revoke as setting forth reasons for issuing the nonrenewal notice. Second, the letter argues that CAB should consolidate the appeals because PMCS was not asked for any information in response to its request for renewal and, as such, the record on renewal must be closed and be limited to the record of the revocation

¹ CAB notes that PMCS, in relying upon its letter, does not address the question of jurisdiction.

proceeding. Lastly, PMCS argues that failure to consolidate would be too costly and time consuming.²

III. Conclusion

For the reasons stated above, CAB concludes that it lacks jurisdiction in this matter and grants the District's Motion to Dismiss. PMCS's Motion to Consolidate is thus rendered moot.

² For completeness sake, we note that the record of the revocation proceeding before the District has been closed and the District asserts that it will be introducing and relying upon more recent evidence of actions that occurred or were discovered since the close of the revocation proceeding in the nonrenewal proceeding. In addition, the fact that the Board of Directors used evidence from the revocation hearing as a basis to give notice of nonrenewal with an opportunity to be heard at a May 26, 2011 hearing is also not sufficient basis for consolidation. Furthermore, revocation and nonrenewal proceedings are both factually and legally distinct.

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ORDER

AND NOW, this 7/25 day of July, 2011, based upon the foregoing and the vote of this Board,³ the District's April 13, 2011 Motion to Dismiss the Appeal from the Decision to Nonrenew of PMCS, for lack of jurisdiction, **IS GRANTED.**

For the State Charter School Appeal Board,



Ronald J. Tomalis
Chairman

³ At the Board's June 7, 2011 meeting, the motion was granted by a vote of 5 to 0 with members Chairman Ronald J. Tomalis, Mr. Michael G. Akers, Ms. Marcia R. Reeves, Mr. David A. Shipula and Dr. James E. Barker voting to grant the motion.