

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION**

**STATE CHARTER SCHOOL APPEAL BOARD**

<b>Discovery Charter School</b>	:	
<b>Petitioner,</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. CAB 2013-06</b>
	:	<b>SRC and School District's</b>
<b>School Reform Commission and</b>	:	<b>Motion to Quash</b>
<b>The School District of Philadelphia</b>	:	
<b>Respondents</b>	:	

**OPINION**

**I. Background**

This matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on appeal by the Discovery Charter School (“Discovery”). Discovery has operated since September of 2003; and on December 17, 2012 it applied for renewal of its charter. At the same time, Discovery filed a modification request, seeking to increase its enrollment gradually over the five-year renewal term. Discovery filed this appeal with CAB on November 15, 2013.<sup>1</sup> The appeal is based on various actions of the Philadelphia School Reform Commission (“SRC”) regarding Discovery’s application. Discovery argues that CAB should deem these actions as a denial of its application and as a denial of its amendment request; and further argues that CAB should direct the SRC to grant renewal with modifications. The SRC filed an Answer to the appeal, but also filed a Motion to Quash (Dismiss) the appeal for lack of jurisdiction. Discovery responded, and the motion was argued before CAB on March 25, 2014.

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<sup>1</sup> An initial appeal was actually filed on July 30, 2013; however, additional appeals were subsequently filed to incorporate actions taken by the School District of Philadelphia after that date, which actions Discovery deemed relevant. The parties ultimately agreed, however, to proceed with the appeal based solely upon the “Amended Petition for Appeal” filed on November 15, 2013.

Discovery operates a charter school within the Philadelphia School District (“District”). It received its original charter approval in 2003, and its charter was renewed in 2008. Discovery again sought renewal of its charter late in 2012. The District is presently governed by a School Reform Commission (SRC)<sup>2</sup> which is the body empowered by law to authorize charter schools within the District. The SRC has not voted upon Discovery’s renewal application; nor has the SRC voted upon the amendment request. However, Discovery has come to CAB seeking to force the District to act.

The SRC responded to the appeal and also filed a Motion to Quash the appeal on jurisdictional grounds. The SRC argues that CAB does not have jurisdiction over Discovery’s appeal because the SRC must first act on the application, and it has not yet done so. CAB’s jurisdiction in a charter renewal case is statutorily limited to reviewing the denials of a renewal application, and the SRC has not denied the application. Moreover, as the SRC points out, Discovery has been permitted to continue to operate. The SRC also contends that CAB lacks injunctive power and cannot grant the relief requested: to order the SRC to grant renewal and to modify Discovery’s charter.

Discovery filed an answer and brief in opposition to the motion. In essence what Discovery seeks is equitable relief. Discovery takes a rather broad view of the decision of the Commonwealth Court in *Northside Urban Pathways Charter School v. State Charter School Appeal Board*, 56 A.3d 80 (Pa. Cmwlth. 2012), and contends that CAB “has jurisdiction to review every significant decision that *could be* made by a school district with respect to a charter school.” *Id.* at 85 (emphasis added). Thus, it first complains that on several occasions the

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<sup>2</sup> Upon a declaration that a first class school district is distressed, pursuant to section 6-691, a School Reform Commission is established. 24 P.S. § 6-696(a). The School Reform Commission is an instrumentality of a first class school district and exercises the powers of the school board. Id.

District has offered it a charter to sign, including the existing enrollment limit of 620 students.

Discovery argues that this action is tantamount to a denial of its renewal request and also its request to increase its enrollment. It urges CAB to review and reverse these actions.

Secondarily, Discovery challenges certain resolutions of the SRC that nullify provisions of the Charter School Law.<sup>3</sup> It seeks to have CAB enjoin the implementation of these resolutions.<sup>4</sup>

Discovery also argues that a time limit to act upon its applications should be imposed upon the SRC, yet it can point to no clear source for that limitation.

## II. Discussion

The SRC's Motion to Quash is premised upon the proposition that CAB lacks jurisdiction because the SRC, very simply, has not acted upon either of Discovery's applications and that they remain pending before the SRC. CAB's jurisdiction is limited to the exclusive review of decisions not to renew or revoke a charter in cases of an existing charter school. 24 P.S. §17-1729-A(d). Additionally, the Commonwealth Court has held that CAB has jurisdiction to hear appeals of adverse decisions on proposed charter amendments. *Northside Urban Pathway Charter School v. Pittsburgh Public Sch. Dist.*, 56 A.3d 80 (Pa. Cmwlth. 2012). Here, the SRC has taken no action not to renew the charter and has taken no action to deny the modification request. In *Community Academy of Philadelphia Charter School*, CAB Docket No. 2011-05, CAB previously held, in part, that it lacked the jurisdiction to hear an appeal when the SRC had failed to take action on a renewal application (there was only a 2-1 vote of a 5-member SRC). The Commonwealth Court affirmed CAB's position, holding that "in the absence of formal action renewing or non-renewing the charter (i.e. signing the renewed charter or issuing a final

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<sup>3</sup> An SRC resolution abrogates section 1723-A(d) of the Charter School Law, which prohibits enrollment caps at charter schools unless agreed to by the charter school in its charter.

<sup>4</sup> Discovery challenges the constitutionality of these resolutions, which is a determination beyond CAB's purview.

determination of nonrenewal), we must conclude that an application to renew remains pending until a renewed charter is signed or a final determination of nonrenewal issued without any effect on the continued operation of the charter school.” *Community Academy of Phila. Charter Sch. v. Phila. Sch. Dist. School Reform Commission*, 65 A.3d 1023, 1030-1031 (Pa. Cmwlth. 2013).

Additionally, CAB cannot order the SRC to renew Discovery’s charter because CAB, as an administrative appellate body, does not have injunctive powers under law. Again, CAB has already decided this issue in *Community Academy* when it held that the renewal application in that case “remain[ed] pending before the SRC until the SRC acts upon the application by either approving or denying it.” *Community Academy of Philadelphia Charter School*, at 3; *see also Community Academy of Phila. Charter Sch.*, 65 A.3d at 1025-26.

In both the instant case and in *Community Academy*, the SRC failed to take final action with regard to an application for renewal. The difference here is that *Discovery Charter School* also submitted an amendment request. However, the principles underlying the decision in *Community Academy* dictate that the outcome must be the same. CAB only has jurisdiction over nonrenewals and amendment requests when there is a final action taken by a school district’s governing body.<sup>5</sup> Until the SRC takes action to either approve or deny the renewal application and subsequently the modification request<sup>6</sup>, they remain pending before the SRC. If the SRC denies either request, then the charter school could appeal that denial to CAB. However, CAB does not have jurisdiction at this time.

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<sup>5</sup> This is in contrast to CAB’s jurisdiction over an initial charter school application when a school district’s governing body fails to grant or deny the application within the statutory timeframe. In that situation, the law specifically allows a proposed charter school to appeal to CAB. 24 P.S. § 17-1717-A(g). There is no parallel provision in the Charter School Law that allows for a charter school to appeal a nonrenewal or amendment request when the school district has failed to act.

<sup>6</sup> CAB notes that logic would appear to dictate that action on the charter renewal request should precede action on the request for modification, since absent a renewed charter, there is nothing to amend.

### **III. Conclusion**

Based upon the above discussion, CAB finds that the SRC did not vote not to renew Discovery's charter; nor has the SRC voted to deny Discovery's charter modification request. Therefore, CAB concludes that it lacks jurisdiction over Discovery's appeal and grants the SRC's Motion to Quash. Because of this conclusion it is unnecessary for CAB to address, if it even has jurisdiction to do so, the constitutional issues which may have been raised in the pleadings; and thus Discovery's Motion to Strike is rendered moot.

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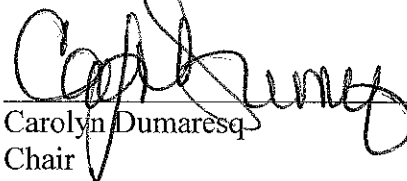
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The School District of Philadelphia,	:	
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**ORDER**

AND NOW, this 16<sup>th</sup> of April, 2014, based upon the foregoing and the vote of this Board,<sup>7</sup> the School District of Philadelphia's and the School Reform Commission's January 10, 2014 Motion to Quash for lack of jurisdiction **IS GRANTED**.

For the State Charter School Appeal Board,

  
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Carolyn Dumaresq  
Chair

*Mailed: 4/17/14*

<sup>7</sup> At the Board's March 25, 2014 meeting, the Motion to Quash for lack of jurisdiction of the School District of Philadelphia and the School Reform Commission was granted by a vote of 4 to 0, with members Dumaresq, Henry, Munger and Yanyanin voting to grant.