

The appointed Hearing Officer addressed preliminary matters including supplementing the record and setting the briefing schedule. The Hearing Officer issued an August 23, 2018 Order setting a briefing schedule. Briefing was concluded on December 7, 2018. On December 28, 2018, the Hearing Officer certified the Record. Argument before CAB was held on January 22, 2019. A vote on the matter was taken by a five (5) member Board, which constituted a quorum, and resulted in a 3-2 decision by those members who were present to grant Catalyst's Appeal, which result was communicated to Catalyst and the School District. Following the February 24, 2019 vote, but prior to issuance of CAB's Opinion and Order, CAB counsel advised CAB that the 3-2 vote was nonactionable because the vote to grant Catalyst's appeal did not comprise a majority of the sitting board members. CAB counsel contacted the parties to inform them of CAB's intended revote on the matter. Catalyst filed a Petition for Relief in Commonwealth Court seeking mandamus to require CAB to issue an Order and Opinion based upon the February 24, 2019 vote and stay a revote by CAB scheduled for May 21, 2019. Subsequent to the resolution of the matter filed in Commonwealth Court, Catalyst then filed a Petition for Administrative Relief directly with CAB asking CAB to issue an Order and Opinion based upon the February 24, 2019 vote and stay a revote by CAB scheduled for May 21, 2019. CAB heard argument on Catalyst's Petition for Administrative Relief on May 21, 2019 and voted 6-0 to deny Catalyst's requested relief.

Discussion

In seeking to have CAB issue an Order and Opinion based upon the February 24, 2019 vote, Catalyst's argues that Charter School Law (CSL) as well as available case law requires only a majority of the quorum of CAB to act and asserts that the CAB vote taken on February 24,

2019, was an actionable vote. In making this assertion, Catalysts asks CAB to accept its interpretation of the 24 P.S. 17-1721-A(b) of the CSL which states as follows: "The appeal board shall meet as needed to fulfill the purposes provided in this subsection. A majority of the members of the appeal board shall constitute a quorum, and a majority of the members of the appeal board shall have the authority to act upon any matter before the appeal board." However, CAB finds Catalyst's asserted interpretation of the CSL to be in error. As written, the statutory provision mandates that a majority vote of the members of the board is needed to take any action on a matter before it. In this matter, CAB is currently comprised of six (6) members, and in accordance with the plain language of the statute a vote of four (4) members of the board is needed to have requisite authority to act.

Pennsylvania courts have addressed this statutory provision and provided some clarity regarding the statute's intent that any matter before CAB needs a majority vote of all sitting board members to permit the board to act on a matter. In *Keystone Central School District v. Sugar Valley Concerned Citizens*, 799 A.2d 209, (Cmwlth. Ct. 2002), the Commonwealth Court took the opportunity to address the voting requirements related to CAB. Specifically, *Keystone Central* appealed an order of CAB overturning its denial of *Sugar Valley's* charter school application. The initial vote was tied at 3-3, so the matter was tabled and a revote was held at the next CAB meeting. *Keystone Central* argued that CAB erred by categorizing the 3-3 vote as no action. The Court disagreed and took the opportunity to analyze the voting provision of the Section 1721-A(b) of the CSL and determined that "it is clear from the language of the statute that CAB must have a majority of its members to act or decide any issue properly before it. For example, CAB which consists of six members, may hear an appeal with only four members considering it but cannot reach a decision unless all four members agree." In addition, the

Keystone Court took the opportunity to further address CAB's actions in the event of a tie stating, "there is nothing in the CSL that precludes CAB from tabling a matter for further consideration for any reason; since a quorum of the appeal board is necessary to act on any matter before it."

Furthermore, and contrary to Catalyst's position, CAB finds that the matter of *Ronald H. Brown Charter School v. Harrisburg City School District*, 928 A.2d 1145 (Cmwlth. Ct. 2007), supports *Keystone* and at the very least does not overturn or directly conflict with the opinion proffered by the *Keystone* Court. In *Ronald H. Brown*, the Court held that with only 5 seated members of CAB and two seats vacant, a vote of 3-0 was a final binding vote because it consisted of a "majority of the members of the appeal board" and therefore, CAB could act to decide the appeal. Although there is dicta which discusses the common law rule, the ultimate holding of *Ronald Brown* is consistent with the Court's prior decision in *Keystone*.

Under the holdings in both *Ronald H. Brown* and *Keystone*, the Commonwealth Court has consistently held that a majority of the members of the CAB must be a numerical majority of the current seated members of CAB. In the present matter, a majority vote of at least 4 was needed to take any action in Catalyst's appeal. Accordingly, CAB's current nonmajority board member vote of 3-2 to grant Catalyst's charter application must be considered as no action in accordance with the holdings in *Keystone* and *Ronald H. Brown*. Accordingly, Catalyst's request for Administrative Relief must be denied and a re-vote taken in order for CAB to have a majority member vote under current law to take any action in this matter.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

CATALYST ACADEMY CHARTER SCHOOL :

v.

CAB Docket No. 2018-03

SCHOOL DISTRICT OF PITTSBURGH :

ORDER

AND NOW this 15th day of JULY, 2019, in accordance with the 6-0 vote of the Charter School Appeal Board, Catalyst's Petition for Administrative Relief is denied.

For the State Charter School Appeal Board



Pedro A. Rivera,
Chair

Date of mailing:

7/15/19