

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

OLNEY CHARTER HIGH SCHOOL,	:	
Petitioner,	:	
	:	
v.	:	CAB Docket No. 2019-05
	:	MOTION TO QUASH PETITION
THE SCHOOL DISTRICT	:	TO INTERVENE
OF PHILADELPHIA,	:	
Respondent.	:	

MEMORANDUM ORDER ON DISTRICT'S MOTION TO QUASH PETITION TO INTERVENE FILED BY ASPIRA, INC.

In accordance with the Charter School Law¹ ("CSL"), this matter comes before the Pennsylvania State Charter School Appeal Board ("CAB and/or the Board") on appeal of November 15, 2019 by the Olney Charter High School ("Olney Charter School"), an ASPIRA, Inc. of Pennsylvania School ("ASPIRA"), from an October 17, 2019 decision by the School District of Philadelphia ("District") to deny Olney Charter School's renewal request. However, on November 18, 2019, ASPIRA, as proposed Petitioner-Intervenor, filed the instant Petition to Appeal and/or Intervene in Appeals from the District's Denial of the Application to Renew the Charter for Olney Charter High School.²

On December 4, 2019, the District, as Respondent in this proceeding, filed its Answer opposing ASPIRA's Petition to Appeal and/or Intervene in Appeals. Additionally, on December 4, 2019, the District filed the instant Motion to Quash Petition of ASPIRA to Appeal and/or

¹ Act of June 19, 1997, P.L. 225, No. 22, as amended, 24 P.S. § 17-1701-A *et seq.*

² The instant Petition to Appeal and/or Intervene was also filed by ASPIRA in the matter of John B. Stetson Charter School v. The School District of Philadelphia, CAB Docket No. 2019-06.

Intervene (“Motion to Quash”), and a Memorandum of Law in Support, requesting that CAB not allow ASPIRA to file its own appeal or otherwise intervene in the current appeal.

On December 13, 2019, Olney Charter School, as Petitioner in this proceeding, filed its Answer to ASPIRA’s Petition to Appeal and/or Intervene in Appeals. Additionally, Olney Charter School filed its Answer in Opposition to the District’s Motion to Quash and a Memorandum of Law in Support of its Answer in Opposition to the Motion to Quash.³

On December 16, 2019, ASPIRA, as proposed Petitioner-Intervenor, filed its Answer, and Memorandum in Opposition, to the District’s Motion to Quash. On December 23, 2019, the District filed a Reply Brief in Support of its Motion to Quash and responded to the arguments made by Olney Charter School and ASPIRA. And, on December 24, 2019, Olney Charter School filed a Surreply Brief in Opposition to the District’s Motion to Quash.⁴

The Petition to Appeal and/or Intervene in Appeals that was filed by ASPIRA is a single filing but has two components for consideration by CAB: (1) Petition to Appeal, and in the alternative, (2) Petition to Intervene. Likewise, the District’s Motion to Quash has two components for considerations by CAB: (1) Motion to Quash ASPIRA’s Petition to Appeal and (2) Motion to Quash ASPIRA’s Petition to Intervene. Because ASPIRA filed a combined Petition to Appeal and Petition to Intervene, and the District filed a corresponding Motion to Quash both matters, CAB considered and voted upon the matters separately. Accordingly,

³ Olney Charter School does not oppose ASPIRA’s Petition to Appeal and/or Intervene in Appeals. Olney Charter School asserts that ASPIRA has not been afforded notice of an opportunity to be heard in the nonrenewal proceedings, yet the proceedings relate to and impact the rights of ASPIRA, as the management company for Olney Charter School. Olney Charter School is of the position that ASPIRA has a legitimate interest in the outcome of this matter, an interest which may vary, at times, from those of Olney Charter School itself. Olney Charter School, however, asserts that to deny ASPIRA the opportunity to intervene would be a continued denial of basic due process.

⁴ Olney Charter School is of the position that the District was not permitted to file a reply brief, and requested that it be stricken from the record, however, Olney Charter School proffered its surreply brief in response should CAB consider the District’s reply. CAB will consider both the District’s reply brief and Olney Charter School’s surreply brief as part of the record.

argument on ASPIRA's Petition to Intervene and the District's Motion to Quash was heard before CAB on January 14, 2020, and CAB voted to grant the District's Motion to Quash ASPIRA's Petition to Intervene. CAB, through this Memorandum Order, seeks to address only the District's Motion to Quash ASPIRA's Petition to Intervene.

ASPIRA filed its Petition to Intervene in this current proceeding before CAB: *Olney Charter High School, an ASPIRA, Inc. of Pennsylvania School v. The School District of Philadelphia*, CAB Docket No. 2019-05. ASPIRA seeks to be recognized as an Intervenor in this matter and cites several grounds for asserting that it is eligible to intervene in this matter pursuant to the General Rules of Administrative Procedure ("GRAPP"), 1 Pa. Code §§ 31.1—35.251, specifically § 35.28 (a)(2)-(3).

"A person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought" may file a petition to intervene. 1 Pa. Code § 35.28. Section 35.28 of GRAPP governs eligibility to intervene in an action and provides that the right or interest may be (1) a right conferred by statute; (2) an interest that may be directly affected and which is not adequately represented by existing parties, and as to which petitioners may be bound by action of the agency; or (3) another interest of such nature that intervention may be in the public interest. 1 Pa. Code § 35.28 (a)(1)-(3). ASPIRA asserts that it is eligible to intervene pursuant to 1 Pa. Code § 35.28 (a)(2) and (3). As part of the basis for ASPIRA's Petition to Intervene, ASPIRA did not specifically address whether there is a right to intervene conferred by statute; however, there was discussion during oral argument about the CSL that CAB considered. "It is well established that granting or denying a petition to intervene is within the sound discretion of the

agency involved.” *W. Chester Area Sch. Dist. v. Collegium Charter Sch.*, 812 A.2d 1172, 1186 (Pa. 2002).

(1) Right Conferred by Statute

The CSL states that a “charter school may appeal the decision of the local board of school directors to revoke or renew the charter to the appeal board.” 24 P.S. § 17-1729-A (d). Sections 17-1719-A (d) and (e) authorize CAB to determine whether a charter should be revoked or renewed. Section 17-1719-A does not expressly authorize anyone other than the charter school to be involved in the appeal process when a local board of school directors chooses to revoke a charter school’s charter. Likewise, there are no other sections of the CSL that authorize anyone other than the charter school to appeal to CAB when a local board of school directors chooses to revoke or not renew a charter. Clearly, the CSL itself does not confer upon ASPIRA a right to intervene in the instant appeal before CAB. *See W. Chester Area Sch. Dist. v. Collegium Charter Sch.* 760 A.2d 452, 464 (Pa. Cmwlth. 2000) (“Other than the charter applicant and the local board of school directors, the CSL does not authorize any other parties’ involvement in the appeal process.”) Furthermore, ASPIRA has not argued that its professed right to intervene has been conferred by any other statute; therefore, ASPIRA does not have a statutory right to intervene in this appeal.

(2) An Interest That May Be Directly Affected and Is Not Adequately Represented In a Proceeding In Which Petitioners May Be Bound by Agency Action

GRAPP allows for intervention when a party has an interest that may be directly affected and which is not adequately represented by existing parties, and as to which petitioners may be bound by action of the agency. 1 Pa. Code § 35.28 (a)(2). ASPIRA asserts that it is eligible to intervene pursuant to Section 35.28 (a)(2) because of the following interests: (a) ASPIRA has a unique relationship with the District as the Renaissance Turnaround Team (“Turnaround Team”)

for Olney Charter School; (b) ASPIRA is the charter management company of Olney Charter School and has significant financial and business interests that will be affected by this proceeding; and (c) ASPIRA's reputation was attacked by the District in the proceedings at the District-level and the Hearing Officer denied ASPIRA's petition to intervene and opportunity to defend itself.

(a) Special Relationship as Turnaround Team

ASPIRA claims that it has an interest that may be directly affected as the Turnaround Team for Olney Charter School. ASPIRA asserts that it has a unique relationship with the District as a result of ASPIRA's response to a Request for Proposals ("RFP") issued by the District. ASPIRA obtained Turnaround Team status following a multi-stepped RFP process in which the District sought experienced charter school operators to serve as Turnaround Teams to oversee and manage distressed schools. On or about January 20, 2010, the Philadelphia School Reform Commission ("SRC") adopted the Renaissance Schools Initiative Policy ("RSI"), a program designed by the District to convert District-operated schools into charter schools to effectuate improvements in academic achievement which authorized the SRC to grant Renaissance charters. Olney Charter School was formed under the District's RSI program.

RSI schools are governed, operated, and staffed by the charter schools and not the District. By resolution No. SRC-286, dated May 16, 2011, the SRC selected ASPIRA as the Turnaround Team for Olney Charter School. ASPIRA asserts that the District solicited ASPIRA to participate in the RFP process and the District chose ASPIRA based on its application. ASPIRA claims that it has a long working relationship with the District as a Turnaround Team and that both ASPIRA and the District are bound by the terms of the RFP.

The District contests ASPIRA's claim that a special relationship was created between the District and ASPIRA based on ASPIRA's role as Turnaround Team. The District first asserts that the RFP did not create contractual rights between the District and ASPIRA citing the RFP which states: "Depending on the proposed school model, Finalists from this RFP may be selected to enter into a contract, charter, or other performance agreement with the School District." RFP-260 at 5. ASPIRA acknowledges this argument and asserts that submitting its proposal in response to the RFP alone does not create a contractual relationship, rather the special relationship is created through ASPIRA's selection as the Turnaround Team and through course of dealings with the District.

The District further argues that ASPIRA does not have a special relationship with the District as the Turnaround Team because the charter was made between the District and Olney Charter School. The District argues that ASPIRA itself is not the charter school, rather it is simply a vendor or contractor for the charter school. Referencing the CSL, the District contends that the right to challenge decisions of nonrenewal by school districts belongs to charter schools only.

The Board is unpersuaded that ASPIRA's role as Turnaround Team for Olney Charter School creates a special relationship between ASPIRA and the District that would warrant intervention pursuant to Section 35.28 (a)(2) of GRAPP. ASPIRA has not demonstrated how its interest in intervention as a Turnaround Team is any different than Olney Charter School's interest in this proceeding—for Olney Charter School to stay open and operating. Further, ASPIRA fails to demonstrate how such interest is not already adequately represented by Olney Charter School.

(b) ASPIRA's role as charter management company and its financial interest

ASPIRA asserts that it has an interest in intervening through its role as the charter management company for Olney Charter School and due to ASPIRA's significant financial interest in Olney Charter School. The District disputes that ASPIRA's role as a charter management company warrants intervention citing several CAB cases where the charter schools were run by a charter management company and emphasizing that there was no permission or expectation of intervention in those cases. See *New Hope Academy Charter School v. City of York School District*, CAB Docket No. 2012-13; *In Re: Ronal H. Brown Charter School, Appeal from Revocation/Denial of Renewal of Charter by Harrisburg City School District*, CAB Docket No. 2005-08.

ASPIRA claims that the District's mishandling of Olney Charter School's application for renewal has damaged ASPIRA by approximately \$5,000,000 in actual costs and opportunities lost, such as forbearance costs, higher interest rates, and other transaction costs. To support its claim that its financial interest warrants intervention in the current proceeding, ASPIRA cites several cases involving intervention under GRAPP in agency proceedings. ASPIRA references *Bensalem Racing Association* claiming that the Commonwealth Court held that the putative intervenor should have been allowed to intervene before the agency in part due to financial impacts on business. *Bensalem Racing Ass'n v. Pa. State Harness Racing Comm'n*, 19 A.3d 549 (Pa. Cmwlth. 2011). ASPIRA also cites *Pennsylvania Association of Independent Insurance Agents* where the Court stated: "The financial interests of a competitor may constitute an interest necessary to confer standing. . . . In *Pennsylvania Automotive Association [Pa. Auto Ass'n v. State Bd. of Vehicle Mfrs., Dealers and Salespersons]*, 550 A.2d 1041 (Pa. Cmwlth. 1988), we held that a financial interest which would be directly affected by the board's decision was

sufficient to confer standing.” *Pa. Ass’n of Indep. Ins. Agents v. Foster*, 616 A.2d 100, 102 (Pa. Cmwlth. 1992).

The District refutes ASPIRA’s intervention due to financial interest claims by highlighting that the cases referenced by ASPIRA held that a competitor’s financial interest may warrant intervention, but that here ASPIRA is not a competitor of Olney Charter School. Section 35.28 (a)(2) of GRAPP lists several parties that may have an interest warranting intervention, including: “consumers, customers or other patrons served by the applicant or respondent; holders of securities of the applicant or respondent; employes of the applicant or respondent; competitors of the applicant or respondent.” The District highlights that charter management companies are not identified among those having an interest as a potential intervenor in Section 35.28 (a)(2) of GRAPP, and the cases referenced by ASPIRA holding that a competitor may intervene do not demonstrate how ASPIRA’s intervention in this proceeding as a charter management company is warranted.

Furthermore, the District highlights that for intervention pursuant to Section 35.28 (a)(2) of GRAPP, the interest of a potential intervenor must not be adequately represented already by existing parties. The District argues that due to the nature of CAB proceedings, where CAB is tasked with granting or denying a charter or granting or denying a decision of nonrenewal, ASPIRA’s interests are adequately represented. The interest of Olney Charter School is seemingly to stay open and continue functioning as a charter school, which aligns with an interest ASPIRA has in this proceeding.

The Board is unpersuaded that ASPIRA’s role as charter management company for Olney Charter School warrants intervention pursuant to Section 35.28 (a)(2) of GRAPP. Other matters before CAB have involved charter management companies, and CAB has not allowed

charter management companies to intervene in the past. Charter management companies are not listed as potential intervenors in Section 35.28 (a)(2) of GRAPP, and ASPIRA has not explained how a charter management company is similar to any of the listed potential intervenors.

Although a financial interest may at times warrant intervention pursuant to Section 35.28 (a)(2) of GRAPP, the cases cited by ASPIRA specifically determined that a competitor with a financial interest may be allowed to intervene. In *Bensalem Racing Association* where Philadelphia Park was a competitor of Harrah's Chester, the Commonwealth Court held: "[i]t is clear to the Court that Philadelphia Park was eligible to intervene in the proceeding below on Harrah's Chester's application for approval of its AWS. And, while a person's eligibility to intervene in a proceeding before an administrative agency does not necessarily require the agency to grant intervention, the Harness Commission's conclusion that Philadelphia Park did not meet the eligibility requirements was the only reason it provided in the Intervention Order to support its denial of Philadelphia Park's intervention petition." *Bensalem Racing Ass'n*, 19 A.3d at 564.

Although ASPIRA also cites *Pennsylvania Association of Independent Insurance Agents* as a basis for intervention due to a financial interest, the case does not reference or utilize Section 35.28 (a)(2) of GRAPP as the framework to determine intervention. *See Pa. Ass'n of Indep. Ins. Agents v. Foster*, 616 A.2d 100 (Pa. Cmwlth. 1992). The Commonwealth Court did not analyze whether a competitor could intervene, rather the Court opined whether a competitor that was allowed to intervene in an agency proceeding has standing to appeal an appealable order of the agency. "The fact that PAIIA [Pennsylvania Association of Independent Insurance Agents] was granted intervention in the administrative proceeding also weighs in favor of a conclusion that

they have standing in this appeal.” *Id.* at 103. Again, this case stands for the proposition that competitors may be granted intervention in agency proceedings.

The Board is unpersuaded that ASPIRA’s financial interest in Olney Charter School warrants intervention in this proceeding pursuant to Section 35.28(a)(2) of GRAPP. ASPIRA is not a competitor of Olney Charter School, unlike in *Bensalem Racing Association* where Philadelphia Park was a competitor to Harrah’s Chester. Additionally, ASPIRA’s interest in keeping Olney Charter School open and operating is adequately represented by Olney Charter School, already a party to this proceeding. This interest in keeping Olney Charter School open and operating is the only interest of ASPIRA that will be affected by CAB’s adjudication in the appeal of Olney Charter School because CAB will only adjudicate whether to grant or deny the District’s decision not to renew the charter of Olney Charter School. Unlike in *Bensalem Racing Association* where the agency incorrectly determined that a competitor was not eligible to intervene and articulated this as the only basis for denying intervention, here ASPIRA may be eligible to intervene but CAB, in its discretion, has determined that intervention is unnecessary because the only relevant interest is already adequately represented by Olney Charter School—to renew the charter. The Board is unpersuaded that ASPIRA’s financial interest in Olney Charter School warrants intervention in this proceeding.

(c) ASPIRA was denied opportunity to intervene at the District-level

ASPIRA asserts that the decision of nonrenewal by the District targeted and attacked ASPIRA’s reputation, even though ASPIRA was denied the opportunity to intervene by the Hearing Officer. ASPIRA claims that it should have been allowed to intervene at the District-level in order to defend its name and reputation, as the decision contained many references to ASPIRA and ASPIRA’s conduct. This argument by ASPIRA appears to be a due process claim,

as the District highlights. ASPIRA argues that since it was denied intervention at the District-level, the decision of nonrenewal is not valid according to 2 Pa.C.S. § 553.⁵ ASPIRA does not elaborate how or why it should be allowed to intervene pursuant to GRAPP because it was denied intervention at the District-level. This argument by ASPIRA mirrors the argument that ASPIRA sets forth as the basis for which it believes it is entitled to file a direct appeal with CAB.

Absent elaboration by ASPIRA, the Board is unpersuaded that ASPIRA's exclusion from the proceedings at the District-level warrants intervention in this proceeding pursuant to GRAPP § 35.28 (a)(2).

Although ASPIRA is of the position that it is eligible to intervene pursuant to Section 35.28 (a)(2) because of the above-outlined interests, ASPIRA has not asserted an interest that is directly affected, not represented and potentially bound by the Board's actions.

(3) Intervention and the Public Interest

ASPIRA asserts two main arguments as to why its participation is in the public interest pursuant to Section 35.28 (a)(3): first, ASPIRA represents that the interests of the students and families enrolled at Olney Charter School and the public benefit by having a Turnaround Team participate in proceedings involving schools formed under the District's RSI program. ASPIRA claims that the District issued the RFP and solicited ASPIRA to become a Turnaround Team because certain schools were run poorly by the District. ASPIRA also asserts that it is in the public interest, particularly the interest of over 2,000 students and families served by Olney Charter School, for ASPIRA to have a voice and rights in this proceeding because ASPIRA is in a unique position to explain how it manages Olney Charter School. ASPIRA seems to combine its two public interest arguments by stating: "[o]f course it is in the public's interest for the CAB

⁵ Pursuant to 2 Pa.C.S. § 553, "No adjudication of a local agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard."

to allow ASPIRA to intervene so that the CAB can hear directly from the very organization leading the turnaround of these schools and the very organization that the District itself determined would serve the public's interest by taking over the schools in the first place." ASPIRA's Mem. in Opp'n. to District's Mot. to Quash 13.

The District refutes ASPIRA's public interest arguments by highlighting that ASPIRA fails to demonstrate how it would represent the interest of those students and families. In its public interest argument, ASPIRA claims that it is in a unique position to explain how it manages the schools and its finances. The District highlights that ASPIRA's management and financial interest may very well conflict with the public's interest and the interests of the students and families. The District also highlights that ASPIRA fails to show how the interests of the students and families attending Olney Charter School were not already represented—even though Section 35.28 (a)(3) of GRAPP does not require a party to demonstrate that the interest is not adequately represented already by existing parties. Nonetheless, the District emphasizes that Olney Charter School represents the interests of students and families who seek the continuation of the charter while the District represents the interests of students and families who seek nonrenewal of the charter. Thus, ASPIRA's participation in the proceeding as a Turnaround Team is not necessary to represent the interests of the students, families, and public.

The Board is unpersuaded that ASPIRA's intervention is in the public interest and that ASPIRA be allowed to intervene in this proceeding pursuant to Section 35.28 (a)(3) of GRAPP. ASPIRA does not specifically address why it is better situated to represent the interests of the students and families attending Olney Charter School or how it would represent the interests of the families any differently than Olney Charter School or the District. ASPIRA's desire to explain its management of Olney Charter School and its finances does not serve a public interest.

Based on the argument presented by the parties, CAB agrees with the District that ASPIRA does not have an interest warranting intervention in this proceeding that is not adequately represented already by existing parties. ASPIRA has not demonstrated how its intervention would further ensure the identified public interests, that being the interests of the students and families enrolled at Olney Charter School and any potential benefit to the public by having a Turnaround Team participate in proceedings involving schools formed under the District's RSI program. CAB reviews decisions to grant or deny a charter and decisions to renew or not renew a charter. CAB's review in this proceeding is limited to the decision of the local board of school directors not to renew Olney Charter School's charter. With CAB's review limited to the decision not to renew Olney Charter School's charter, ASPIRA's interest is the same as Olney Charter School—to renew the charter and continue operating. Olney Charter School is already a party to this proceeding and adequately represents the interest of renewing its charter and continuing operations in accord with the CSL, and ASPIRA's participation is not necessary to effectuate this interest or the connected identified public interests. ASPIRA's interests in this matter are not sufficient to compel intervention based on the public interests identified. Accordingly, the District's Motion to Quash ASPIRA's Petition to Intervene is granted; and CAB enters the following:

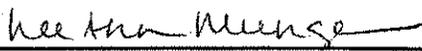
COMMONWEALTH OF PENNSYLVANIA
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ORDER

AND NOW, this 12 day of March, 2020, based upon the foregoing and the vote of this Board¹, the School District of Philadelphia's Motion to Quash the Petition to Intervene filed by ASPIRA, Inc. of Pennsylvania is hereby **GRANTED**.

For the State Charter School Appeal Board



Lee Ann Munger
Vice Chairperson

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¹ At the Board's meeting on January 14, 2020, the Board voted 5-0 to grant the District's Motion to Quash and Deny ASPIRA's Petition to Intervene with Vice Chair Munger, and Board Members Cook, Miller, Peri and Yanyanin voting.

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