

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

Montessori Regional Charter School :
: Docket No. CAB 2009-05
Motions to Dismiss by Erie City :
School District and Millcreek :
Township School District :

OPINION

Background

This matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on appeal by the Montessori Regional Charter School (“Montessori”) from Millcreek Township School District’s (“Millcreek”) denial of Montessori’s request for renewal of its charter.¹ In addition, Montessori is appealing Millcreek’s denial of an amendment to Montessori’s charter and appealing the Erie City School District’s (“Erie”) refusal to act on an amendment to Montessori’s charter. The Districts have filed Motions to Dismiss regarding the appeals concerning amendment of Montessori’s charter. These Motions were argued before CAB at its meeting of October 27, 2009 and will be addressed herein.

Findings of Fact

1. Montessori was granted a charter in 2004, which expired on June 30, 2009.
2. In September 2008, Montessori notified Millcreek and Erie (collectively, “the Districts”) that Montessori intended to seek renewal of its charter.

¹ Montessori’s contemporaneous renewal application to its other chartering school district, the Erie City School District, had been approved

3. In October 2008, the Districts acknowledged receipt of Montessori's notice and asked that Montessori provide the Districts with additional information, which Montessori provided.

4. Montessori included in its request for renewal of its charter, an amendment that would allow Montessori to add a second building to accommodate a substantial increase in Montessori's enrollment.

5. On March 23, 2009, Montessori informed the Districts that Montessori had signed a lease for a second building, which was located in Erie.

6. On March 25, 2009, the Districts held a public hearing for the charter renewal application submitted to the Districts by Montessori.

7. On June 29, 2009, Erie voted to renew Montessori's charter but voted to defer action on Montessori's amendment.

8. Also on June 29, 2009, Millcreek voted 4-3 to renew Montessori's charter but voted to deny Montessori's amendment. However, the Board President and Secretary signed a document purporting to deny Montessori's renewal.

9. On July 24, 2009, CAB received a Petition to Appeal the Nonrenewal of Montessori Regional Charter School's Charter.

10. On September 8, 2009, CAB received, *inter alia*, the Districts' Motions to Dismiss the Petition to Appeal regarding the amendment of Montessori's charter.

11. In its Motion to Dismiss, Millcreek argues that CAB does not have jurisdiction over an appeal from the denial of an amendment to a charter.

12. In its Motion to Dismiss, Erie argues that CAB does not have jurisdiction over the deferring of action on an amendment to a charter.

13. On September 17, 2009, CAB received Montessori's response to the Motions to Dismiss. Montessori argues that CAB has jurisdiction over an appeal from the denial of an amendment to a charter and over the deferring of action on an amendment to a charter when the amendment is made within the renewal process.

14. The Districts and Montessori filed briefs in support of their respective positions regarding the Motions to Dismiss.

15. On October 27, 2009, the Districts and Montessori presented arguments to CAB in support of their positions regarding the Motions to Dismiss.

16. After holding an executive session regarding the Motions to Dismiss, CAB voted to grant the Districts' Motions to Dismiss.

Discussion

The Motions to Dismiss relate to Montessori's requested amendment to its charter to add a second building to its operation in order to accommodate an anticipated substantial increase in students. The Districts argue that CAB does not have jurisdiction over amendments regardless of whether they are requested during the renewal process. In contrast, Montessori argues that CAB has jurisdiction over its amendment to add a second building because it is part of the renewal process.

CAB has stated previously that its jurisdiction is "specifically limited to four areas: (1) appeals from school districts 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. §17-1717-A(d)), and (4) appeals from school district decisions to nonrenew a charter (24 P.S.

§17-1717-A(d)).” *Re: Bucks County Montessori Charter School, CAB 2003-4, pg. 2.*² The instant matter before CAB does not fall within any of these areas.

CAB has jurisdiction over the appeal of the nonrenewal of a charter. CAB does not have jurisdiction over actions taken by school districts regarding requested amendments to a charter. *See Re: Bucks County Montessori Charter School, CAB 2003-4.* This is the case regardless of when the charter amendment is sought. An amendment remains so and remains a matter between the chartering district and the charter school, even if the charter school attempts, as here, to interpose the amendment as part of the renewal process. The charter school law is notably silent regarding charter amendments. In light of the otherwise clear direction from the General Assembly regarding CAB’s jurisdiction, we cannot but conclude that the General Assembly did not intend for CAB to have any role in the case of amendments. Therefore, CAB will not extend the jurisdiction it has over the nonrenewal of a charter to actions taken by school districts regarding requested amendments to a charter even though the charter amendment is requested during the renewal process.

Extending CAB’s jurisdiction to include jurisdiction over charter amendments that were presented during a renewal process would produce an absurd result. If a charter school requested amendments to its charter during the renewal process and if the charter was nonrenewed by the school district, CAB would have jurisdiction to not only decide whether to affirm or reverse the nonrenewal but also to decide whether to grant all the requested amendments. However, if a school district renewed a charter school’s charter but denied any requested amendments, CAB would not have jurisdiction to hear an appeal of the denial of the amendments because CAB only has jurisdiction over an appeal of a nonrenewal of the charter.

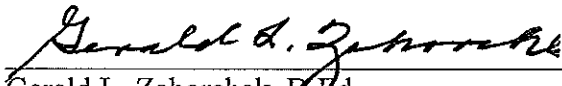
² For the sake of clarity, we add that CAB also has jurisdiction over these matters as they relate to cyber charter schools and the Department of Education.

Therefore, CAB's jurisdiction over amendments to a charter would depend on whether the school district renewed the charter or nonrenewed the charter. In essence, CAB would be using the nonrenewal of a charter to extend its jurisdiction beyond what is explicitly permitted under the Charter School Law and CAB refuses to do so. Thus, the following Order is entered:

ORDER

AND NOW, this 24th of November 2009, based upon the foregoing and the vote of this Board³, the Motions to Dismiss of the Millcreek Township School District and the Erie City School District are granted. CAB's jurisdiction is limited to the issues regarding the nonrenewal of Montessori Regional Charter School's charter by the Millcreek Township School District and argument on these issues will be held before CAB at its December 15, 2009 meeting.

For the State Charter School Appeal Board


Gerald L. Zahorchak, D.Ed.
Chairman

³ The Motions to Dismiss were granted by a vote of 4-0 with members Akers, Green, Shipula and Zahorchak voting to grant. Member Barker recused himself from the executive session and from the vote and members Reeves and Schweighofer were not present.