

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

New Hope Academy Charter School,	:	
Petitioner	:	
	:	
v.	:	Docket No. CAB 2012-13
	:	Application for Stay
School District of the City of York,	:	
Respondent	:	

OPINION

On October 29, 2012 the State Charter School Appeal Board (“CAB”) issued an Opinion and Order denying the Appeal of New Hope Academy Charter School (“New Hope”) from the nonrenewal decision of the School District of the City of York (“York”). CAB made its Order effective on January 15, 2014 to allow New Hope students to complete the fall term at the school. On November 6, 2013 New Hope filed an Application for Stay. York filed an Answer on November 12, 2013 and also filed a Memorandum of Law in Opposition to the Application for Stay. The Application was argued before the CAB and voted upon on November 14, 2013.

Rule 1781 of the Pennsylvania Rules of Appellate Procedure states, “[a]pplication for a stay or supersedeas of an order or other determination of any government unit pending review in an appellate court on petition for review shall ordinarily be made in the first instance to the government unit.” Pa.R.A.P. 1781. This rule provides CAB with jurisdiction to entertain the instant Application.

In considering the Application, CAB must determine whether the four criteria for granting a stay have been met. These criteria are: (1) whether irreparable harm will be suffered by the applicant if the stay is not granted; (2) whether granting a stay will harm the other party – York; (3) whether granting a stay will harm the public interest; and (4) whether the applicant

presents a substantial case on the merits. Pa. Pub. Util. Comm'n v. Process Gas Consumers Grp., 502 Pa. 545, 467 A.2d 805 (Pa. 1983). New Hope must make a strong showing in regard to each of these criteria in order to be granted a stay. *Id.*, at 807.

New Hope asserts that it satisfies each of these criteria. First, New Hope asserts that students, their families and school staff will be irreparably harmed if the school closes in the middle of its school year. In particular, New Hope singles out the 82 seniors who will graduate and are making college plans, the families who rely on the charter's 21st Century afterschool program and the 171 special education students whose individualized education programs will have to be revised upon their transition to another school. In regard to the school itself, New Hope asserts that closure in January would be irreversible in that the law would require the school to dissolve.¹

Second, New Hope argues that York will not be harmed because New Hope will continue to educate its students and because York is required to pay for the education of resident students whether they continue at New Hope or move to the district. Third, New Hope contends that a stay will not harm the public interest, but rather that the public interest will be served by the granting of a stay. New Hope contends that the Charter School Law² gave families the right of choice in public school placements through the creation of charter schools and, particularly, those families who chose to enroll their children in New Hope; and only by granting a stay will that right be protected. Conversely, it suggests that the rights and interests of the families of the 758 students at New Hope will be jeopardized. Moreover, New Hope suggests that the public interest will not be harmed if it remains open because the academic performance of York's

¹ "When a charter is ... not renewed ... the charter school shall be dissolved. After disposition of any liabilities and obligations ... any remaining assets ... shall be distributed on a proportional basis to the school entities with students enrolled in the charter school..." 24 P.S. §1711729-A (i).

² 24 P.S. §§17-1701-A, *et seq.*

schools is not superior to that of New Hope's. New Hope noted that the transition plan prepared by York is inadequate in that it does not address the 50+ students from other districts who are enrolled at New Hope. Finally, regarding the merits, New Hope avers that its appeal will present a substantial case on the merits. See, Witmer v. Dep't of Transp., Bureau of Driver Licensing, 889 A.2d 638 (Pa. Commw. Ct. 2005). In particular it points to defenses that were ignored, improvements in the performance of its students and the alleged inapplicability of the Ethics Act.

York's response contests New Hope's assertions and argues that New Hope has failed to satisfy the *Process Gas* criteria and should not be granted a stay. York first argues that the public interest will be adversely affected and that other interested parties will be substantially harmed if the stay is granted. In contrast to New Hope's assertions, York argues that the academic performance of its schools exceeds that of New Hope, and, thus, New Hope's students would be better served and the public interest in their education be furthered by denying the stay. York notes that New Hope's poor performance was established in the findings made by CAB which New Hope does not contest. Moreover, York points to the unpublished decision of Commonwealth Court concerning a stay request by Graystone Academy Charter School. Graystone Academy Charter School v. Coatesville Area School District, No. 1336 C.D. 2013 (Pa. Commw. Ct. August 15, 2013). That case is similar in that it involved a nonrenewal that was upheld by CAB, in part also because of the charter school's poor academic performance. In that case, the Court denied the stay by concluding that the public interest would be better served by ensuring students receive a proper education. Finally, York notes that it, tax-payers and other districts whose students are at New Hope will continue to be harmed if the school remains open because the fiscal improprieties that also supported the nonrenewal decision will continue and because New Hope students can be educated more economically in York's own facilities and

with York's own teachers. Second, York contends that New Hope has not shown that it will prevail on the merits. York notes that CAB carefully and completely addressed all of the issues before it and did not ignore any of the information on the hearing record. In addition, New Hope did not attempt to rebut key findings made by CAB in support of its decision. Instead, for example, New Hope raised a curricular issue for the first time, which issue was not even in the nonrenewal proceeding. Finally, York contests the assertion that irreparable harm will be visited upon New Hope if it must close on January 15, 2014. York contends that New Hope's specific assertions of harm to students, staff and families are speculative at best. York avers that it is preparing to accept New Hope's students, that it must employ approximately 60 additional staff and will likely hire staff terminated by New Hope, and that it will be able to make an afterschool program available for families of former New Hope students in January. In addition, York asserts that no evidence was presented that it would be unable to properly transition and serve students with disabilities from New Hope.

CONCLUSION

The State Charter School Appeal Board ("CAB") finds that the *Process Gas* criteria have all been met and that New Hope should be granted a stay, but only until June 4, 2014, the end of the current school year. CAB finds that New Hope, and particularly its students, will be harmed if the school is closed in January. Although the harm may be somewhat speculative, it is difficult to be certain before the fact, and these students deserve and are entitled to a thorough and efficient education. Seniors and students from districts other than York may indeed be hurt by a mid-year transition, as may some of the significant number of students with disabilities who will have to be evaluated and programmed for by York in a fairly short period of time. This conclusion is in no way meant to denigrate the steps that York has initiated to prepare for student

transition for which it is congratulated. For the same reasons, allowing New Hope to remain open until June will serve the interests of the public. York and the other districts will also not be harmed by the stay. Thus, having met the other criteria, New Hope needs only to present a substantial case on the merits, which it does, even if CAB disagrees with New Hope's legal position and does not believe it will succeed on appeal. See, Witmer v. Dep't of Transp., Bureau of Driver Licensing, 889 A.2d 638 (Pa. Commw. Ct. 2005) (holding that a stay may be warranted when an applicant presents a substantial case on the merits, even if the Court disagreed with the legal position and did not believe it would succeed). Although York cites to the Graystone matter, that case is distinguishable in that CAB's decision in Graystone was issued during the summer, and the school sought to open in the fall rather than simply to remain open through the end of the school year as in this case.

Based on the above, CAB finds that New Hope has satisfied the criteria for granting of a stay³ and makes the following:

³ In its Brief in Opposition, York asked that CAB require New Hope to post security if a stay were granted. CAB finds no support in the Charter School Law or in the General Rules of Practice and Procedure which it has adopted for the proposition that it is authorized to Order such relief, and, thus, refrains from doing so. 24 P.S. §17-1701-A, *et seq.*, 1Pa. Code, Chapters 31, 33 and 35.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

New Hope Academy Charter School,
Petitioner

v.

School District of the City of York,
Respondent

:
:
:
:
:
:
:

Docket No. CAB 2012-13

ORDER

AND NOW, this 21st day of NOVEMBER, 2013, based upon the foregoing and the vote of this Board⁴, the application for stay of the New Hope Academy Charter School is GRANTED until June 4, 2014.

For the State Charter School Appeal Board


Chairman

For Petitioner: Jeffrey R. Stacey, Esquire
O'DONNELL ASSOCIATES
1601 Market Street
Suite 2310
Philadelphia, PA 19103

For Respondent: Allison Petersen, Esquire
LEVIN LEGAL GROUP, P.C.
1301 Mason's Mill Business Park
1800 Byberry Road
Huntingdon Valley, PA 19006

Date of mailing: 11/21/13

⁴ At the Board's meeting of November 14, 2013 the Board voted 4 to 2 to grant a stay with members Barker, Dumaresq, Magnotto and Munger voting to grant the stay and members Lawrence and Yanyanin voting to deny the stay.