

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

Lehigh Valley Academy Regional Charter School	:	
	:	
	:	Docket No. 2016-014
v.	:	
	:	
Bethlehem Area School District and Saucon Valley School District	:	
	:	

OPINION

BACKGROUND

The State Charter School Appeal Board (CAB) met on February 21, 2017 and accepted the record in this appeal. The Lehigh Valley Academy Regional Charter School (Lehigh Valley) is a regional charter school, serving students from the Bethlehem Area School District (Bethlehem) and the Saucon Valley (Saucon Valley) School District. Lehigh Valley applied to both districts for a renewal of its charter on March 4, 2016 and sent a follow-up request on August 10, 2016. Bethlehem voted to renew the charter, but with certain conditions, on November 21, 2016. Saucon Valley did not vote at that time. Because Lehigh Valley objected to the conditions in Bethlehem’s proffered charter and needed approval of its renewal from both districts, it filed a Petition to Appeal with CAB on December 20, 2016. Subsequent thereto, on January 24, 2017 Saucon Valley voted to approve the charter renewal and executed a charter without objectionable conditions. Then, on January 26, 2017 Lehigh Valley filed an Amended Petition to Appeal. Lehigh Valley also approved and signed the charter proffered by Saucon Valley, and counsel for Saucon Valley sought information on whether and how it could be dismissed from the

appeal because of its approval of the renewal charter. On January 30, 2017 Bethlehem's solicitor filed an entry of Appearance and in his cover letter stated:

This letter shall also serve as official notification that the Bethlehem Area School District does not intend to file an Answer to the Amended Petition to Appeal on behalf of the Lehigh Valley Academy Regional Charter School, and, therefore the State Charter Appeal Board may act accordingly.

(Letter from Marc S. Fisher, Esq., to State Charter School Appeal Board dated January 30, 2017). As a result, a conference call was held with counsel during which it was agreed to bring this matter before the Board to consider: (1) whether Saucon Valley should be dismissed as a party to the appeal; and (2) whether Bethlehem should be held in default and the appeal dismissed.

DISCUSSION

It is well-established that the proceedings before CAB are governed by Pennsylvania's General Rules of Administrative Practice and Procedure which are found in Title 1 of the Pennsylvania Code. Section 35.35 of those Rules provides the school district a period of 20 days to file an answer to an appeal. If the school district fails to answer, it "may be deemed in default, and relevant basic facts stated in the ... petition [to appeal] may be deemed admitted." 22 Pa. Code § 35.35.

The certified record in this appeal is scant. It contains two pleadings (the original appeal and the amended appeal) filed by Lehigh Valley and accepted by CAB at its meeting and is also comprised of the following:

1. Letter from Susan Mauser, Lehigh Valley's Chief Executive Officer, to Dr. Joseph Roy, Bethlehem's superintendent, dated March 4, 2016 requesting renewal of Lehigh Valley's charter and attached Resolution. (2 pages)
2. Letter from Susan Mauser, Lehigh Valley's Chief Executive Officer, to Dr. Monica McHale-Small, Saucon Valley's superintendent, dated March 4, 2016 requesting renewal of Lehigh Valley's charter and attached Resolution. (2 pages)
3. Letter from Susan Mauser, Lehigh Valley's Chief Executive Officer, to Dr. Joseph Roy dated August 10, 2016 again requesting renewal of Lehigh Valley's charter and attached Resolution. (2 pages)
4. Letter from Susan Mauser, Lehigh Valley's Chief Executive Officer, to Dr. Monica McHale-Small dated August 10, 2016 again requesting renewal of Lehigh Valley's charter and attached Resolution. (2 pages)
5. E-mail message from Avery Smith, Bethlehem's solicitor, to Shawn Smith, counsel for Lehigh Valley, attaching a copy of a draft charter offered by Bethlehem. (8 pages).
6. Letter from Marc S. Fisher, Esquire, to the State Charter School Appeal Board dated January 30, 2017 entering his appearance on behalf of Bethlehem. (3 pages)

Because Bethlehem, by way of the letter from its solicitor, has indicated that it will not be filing an answer to the amended appeal, the issue before CAB is whether Bethlehem should be deemed in default because it opted not to answer the averments of the Petition. Were Bethlehem to be deemed in default, then the facts averred in the appeal would be deemed admitted, and as a result, the appeal would of necessity be

granted and the charter renewed. To deem Bethlehem in default under these circumstances is consistent with the position taken by CAB in prior cases. *See, In the matter of Lehigh Valley Academy Regional Charter School v. Bethlehem Area School District and Saucon Valley School District*, Docket No. 2005-04, 2005-06, 2011-06.

In addition, the appeal insofar as Saucon Valley is concerned has been rendered moot. This is because Saucon Valley voted to renew Lehigh Valley's charter, and the district and charter subsequently signed a charter that is part of the record herein. Therefore, at the meeting on February 21, 2017 a motion to deem Bethlehem in default was made and seconded, and the motion was adopted. Another motion was made to dismiss the appeal against Saucon Valley which was also seconded and adopted.

Thus, CAB enters the following:

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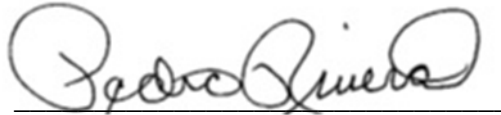
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ORDER

AND NOW, this 22nd day of March, 2017, based upon the foregoing, the Bethlehem Area School District is deemed to be in default in this matter, and the appeal of the Lehigh Valley Academy Regional Charter School as against Bethlehem is granted. The appeal as against Saucon Valley is dismissed.

The executed renewal charter should be presented to Bethlehem for signature.

For the State Charter School Appeal Board



Pedro A. Rivera
Chairman

Date Mailed: March 22, 2017