

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

OLNEY CHARTER HIGH SCHOOL,	:	
Petitioner	:	
	:	
v.	:	Docket No. CAB 2019-05
	:	Application for Stay
THE SCHOOL DISTRICT OF PHILADELPHIA,	:	
Respondent	:	

OPINION

On April 18, 2022, the Charter Appeal Board (CAB) issued an Opinion and Order denying the Appeal of Olney Charter High School (“Olney”) from the nonrenewal decision of the School District of Philadelphia (“District”). CAB made its Order effective immediately. On May 10, 2022, Olney filed an Emergency Application for Stay, the District filed its Answer opposing the granting of a stay on May 20, 2022. CAB heard argument and voted on Olney’s Application for Stay on June 14, 2022.

Olney argues that because it is a Renaissance School,¹ the District will have to immediately take control of the school based upon the Order of April 18, 2022, and that the District is not currently in the position to do so. The District counters that although it has no objection to Olney remaining open through the end of the 2021/2022 school year, it asserts that it is taking all the necessary steps to assume operations of Olney for the 2022/2023 school year. Despite the assertions of the District, Olney requests that CAB’s April 18, 2022, Order be stayed pending the outcome of any appeal in Commonwealth Court.

¹ A Renaissance Charter School is a neighborhood school that is operated as a public charter school and can only enroll students from the neighborhood, also known as a catchment zone.

The CSL, 24 P.S. § 17-1729-A(f), explicitly provides for the charter to remain in effect “until final disposition by the appeal board.” There is no language in the CSL that gives a charter school that has been denied renewal an absolute right to remain open pending any appeal. Despite the assertions of Olney that the District lacks the ability to assume operation of the high school in a timely and efficient manner, the primary determination to be made by CAB is whether Olney has made a strong showing in each of the criteria for stay outlined by the Supreme Court in *Pa. Public Util. Comm’n v. Process Gas Consumers Grp.* 502 Pa. 545, 467 A.2d 805 (Pa. 1983) (“Process Gas”).

In considering the *Process Gas* analysis for the purposes of granting a stay of its April 18, 2022 Order, CAB must determine the following: (1) whether irreparable harm will be suffered by the applicant (“Olney”) if a stay is not granted; (2) whether granting a stay will harm the other party (“District”); (3) whether granting a stay will harm the public interest; and (4) whether the applicant presents the likelihood of success on the merits. *Id.* Olney has the burden of establishing that it satisfies these criteria and making a strong showing regarding each of these criteria in order to be granted a stay.

Olney asserts that it satisfies all the criteria established in *Process Gas*. First, Olney argues that it will be irreparably harmed because failure to obtain a stay will force Olney to dissolve the Charter High School and dismiss all its employees. Olney further asserts that it will not be able to recover all former employees after a period of closure even if they should prevail in the appeal before the Commonwealth Court. In addition, Olney argues that enrollment has increased in the building since becoming a charter and students may not want to stay in the school once the District retakes control and thus disenroll. Olney asserts that these students may not wish to switch schools yet again if Olney should prevail in its appeal.

Second, Olney asserts that issuance of a stay will not harm the District. The stay will simply maintain the status quo. The District will have to pay for the costs of educating these students whether they are in the District school or remain in the charter school pending the appeal. Olney further asserts that the best interest of the students is served by the stay and point to the fact that in 2018/2019 school year, Olney scored in the median of all public high schools in Philadelphia. Olney also asserts that a stay would actually benefit the District by giving it more time to prepare if it should prevail in this matter.

Third, Olney asserts that a stay will not harm the public interest; but in fact, not granting a stay will harm the public interest. The District will not be able to make all the necessary hiring, curricular and academic decisions necessary before the end of the school year and the return of the school to the District will jeopardize student safety given that Olney improved building safety after its takeover of the school. Olney further claims that the District's transition plan is lacking and says nothing about how the District will address problems that existed in the buildings when under District control. More importantly, the District has difficulty staffing their existing schools and is seeking over 900 teachers for the coming school year let alone being able to staff for high school.

Olney also argues that it is in a better position to meet federal law requirements and the educational needs of students with disabilities including providing 2022 ESY summer services for these students. Olney claims that the District has no real plan or ability to address the needs of special education students this summer or in the fall which will harm these students. Olney asserts that it is better positioned to continue to serve these students during the appeal than the District.

Finally, Olney argues that it is likely to be successful on the merits and points to CAB's action in *New Hope Academy Charter School*, CAB docket No. 2012-13 as support. Olney argues that like in *New Hope*, CAB ignored many of the schools' defenses, and yet CAB found in the Charter School's favor and allowed CAB's order to be stayed through the end of the school year. Olney also argues that the change of accountability systems from School Performance Index to the School Progress Report was not addressed by CAB and that CAB did not provide any guidance on how they did not meet state accountability standards. Olney claims that CAB's finding that it committed material violations of its charter related to insufficient certified special education teachers improperly relied on years not included in the Nonrenewal Resolution, thereby denying Olney's due process rights. Olney also claims that CAB improperly relied on provisions of a Basic Education Circular ("BEC") when it found Olney's enrollment materials violated Pennsylvania law, thereby using guidelines to hold a charter school accountable to a violation of law. In addition, Olney claims that CAB's discussion of its decision regarding loan guarantees ignored un rebutted testimony that these were allowable charter school spending. Olney asserts that the Board's decision ignored undisputed evidence that the School Reform Commission voted to approve the Nonrenewal Resolution and also voted to close Olney thereby creating unconstitutional commingling of the prosecutorial and adjudicatory functions. Finally, Olney asserts that CAB ignored numerous motions regarding evidentiary items that its own hearing officer deferred to CAB's decision.

The District argues that despite all of Olney's claims, it has failed to establish a strong showing in each area that satisfies the *Process Gas* criteria and therefore CAB should not stay its order during the pendency of the appeal. Specifically, the District counters that Olney's claims of harm are merely speculation and conjecture. As a Renaissance Charter School, Olney knew

that if its charter was revoked or not renewed that the District would re-open in the building or determine what would happen to the school building. Although enrollment in the high school has increased since becoming a charter school, neither the District nor Olney know if students will enroll in other schools or stay in the school which shall be operated by the District. Olney could not speak to any actual specific harm that would befall Olney that would satisfy this first prong of *Process Gas*.

The District denies that Olney's claim that the its interest or the public interest would not be harmed. CAB has already determined that students will be better served by returning the school to the District. Considering CAB's findings, the issuance of a stay will adversely impact the District's interest, those of the students, and the families. Allowing an underperforming charter school to continue operation is not in the interest of students or the taxpayers. Also, the District does know that if the stay is granted, significant amounts of taxpayer dollars will continue to flow to a charter school that has been determined to fail to meet the material requirements of its charter and failed to meet the student performance requirements set forth in Chapter 4 as well as other multiple violations of applicable laws. CAB has already rejected Olney's claims of academic improvement and the more recent data available for Olney does not support Olney's assertions. In addition, for both the 2019/2020 and the 2020/2021 school years, Olney did not have 100% certification for its special education teachers.

Finally, the District contends that Olney provides no real arguments supporting success on the merits. The District stated that Olney did not dispute or raise concerns for several of CAB's findings including failure to have 100% of its special education teachers certified in the 2015/2016 and 2016/2017 years and failure to ensure student expulsion requirements were met.

The District argues that CAB clearly indicated that it found that Olney's academic performance throughout the terms of its charter did not warrant renewal in accordance with caselaw and Chapter 4. This finding has nothing to do with academic goals in Olney's charter or what school district accountability system was in use at the time. Olney's claim of a due process violation because CAB relied on violations of special education certification beyond the years listed in the nonrenewal notice is erroneous. Olney had reasonable notice of the certification violation allegations and no contrary evidence was ever presented by the charter school to dispute the certification findings. In addition, CAB correctly found that Olney's enrollment violations were not in compliance with the law. In doing so, CAB cited the legal citations found in the District's brief which clearly identifies the law. While it is true that the Department's BEC summarizes what can and cannot be required for enrollment, it is based upon these cited legal requirements and not simply the BEC as asserted by Olney. CAB correctly identified that Olney engaged in improper actions with respect to guarantees and intercompany transfers. The allegedly un rebutted testimony of the Charter School's witness was rebutted by the District because it was a legal conclusion offered by a lawyer without any basis in established law. The Charter School's witness never proffered an opinion that the intercompany loans did not violate 24 P.S. § 17-1714-A. He also stated that the intercompany loans violated the Sunshine Act.

Finally, CAB did not fail to consider the evidence and did not err in refusing to overturn evidentiary rulings and findings made by the District Hearing Officer through motions seeking a redo of the hearings below. The only items of evidence identified by Olney from these motions is admission of expert reports. However, these experts testified at length during the hearing below and this testimony was already in the record.

In reviewing whether the Olney should be granted a stay of CAB's April 18, 2022, Order, Olney is required to demonstrate a strong showing in all four *Process Gas* criteria. Based on the argument presented by the parties, CAB agrees with the District's position that Olney has failed to present arguments that would support the issuance of a stay. Olney argues CAB's actions in *New Hope* as support for issuance of a stay in this matter. However, it is important to note that CAB in *New Hope* allowed for the stay to only extend through the end of the school year given the timing of the initial Order (October). This is clearly not the case in the present matter. As of the vote on June 14, 2022, on the Application for Stay, Olney had completed the school year, making any comparison to *New Hope* non-persuasive related to harm to the Charter School or its student population. In addition, CAB does not agree with Olney's argument that there is no harm to the District or the public interest. CAB agrees with the District related to a stay's impact on the District. The District will suffer harm if the transition is halted until some unknown date in the future. The District has taken significant steps to prepare for the transition of the charter school to a district school. The District conducted internal meetings, met with the charter school and relevant third parties to discuss and implement transition planning. Staff has already been hired for the school. More than 75 staff members have been hired. Community engagement and transition meetings with families have occurred. Negotiations and contracts have been readied for the Board of Education's approval of behavioral intervention services at Olney. All these District efforts would be delayed or halted if a stay is granted. Moreover, the end of the school year is a reasonable time for any such transition to occur which will have the least negative impact on students and their families.

CAB also agrees with the District's position that a stay will harm the public interest. Specifically, delaying this transition will harm students and their families by creating more

uncertainty and turmoil over the Charter School's status. CAB has already rejected Olney's claims related to academic performance and the more recent data available does not support its assertions. In addition, if the Stay is granted, students will lose access to District programs that they never had access to before (i.e., CTE certification and college and career readiness programing). CAB believes that the issuance of a stay will adversely impact the District's interest and those of the students and their families. Most importantly, allowing a substandard underperforming charter school to continue operation is never in the interest of Commonwealth students.

Finally, CAB finds that Olney failed to demonstrate a strong showing that supports the likelihood that Olney's appeal will be successful on the merits that would justify a stay.² As the District correctly points out, Olney's arguments are not supported in the record, nor does Olney clearly articulate how CAB erred in its conclusions supporting its argument of success on the merits. Olney has not demonstrated a likelihood of success on the merits regarding all the grounds for nonrenewal. Accordingly, Olney's Application for Stay is denied and CAB enters the following:

² Stays have not been issued in at least three other CAB nonrenewal decisions in which stays were ultimately filed with and rejected by the appellate tribunal including most recently in *Eastern University Academy Charter School v The School District of Philadelphia*, Docket No. 2018-04. In all of these cases, the appeals continued through Commonwealth Court even after a denial of a supersedeas at Commonwealth Court. *Ronald H. Brown Charter School v. Harrisburg City School District*, No. 1436 C.D. 2006 (unreported decision from August 14, 2006). In this case, CAB denied Ronald Brown Charter School's appeal related to its Request for Renewal in July of 2006 and the final decisions was not issued by Commonwealth Court until July 2007. Similarly, in *Graystone Academy Charter School v. Coatesville Area School District* No. 1336 C.D. 2013 (unreported), CAB denied the appeal of non-renewal in 2013 without a supersedeas and the Commonwealth Court's final decision was not issued until August 2014.

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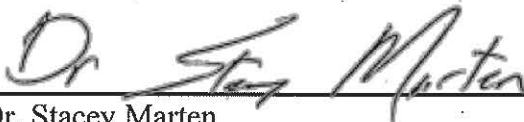
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ORDER

AND NOW, this 9th day of August, 2022, based upon the foregoing
Opinion and the vote of this Board³, the Application for Stay of the Olney Charter High School is
DENIED.

For the State Charter School Appeal Board



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Chairman

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Date of mailing:

8/11/22

³ At the Board's meeting of June 14, 2022, the Board voted 3-1 to deny the application for stay.