

By letter dated April 29, 2015, the District responded to Vision's letter and Petition for Expedited Review arguing that there is no provision in the Charter School Law that would allow for the use of a temporary facility and that the use of such would be disruptive. The District further argued that CAB lacked jurisdiction to reverse the District's decision to deny the request to use a temporary facility, and that such a request by Vision was not a request to amend its charter.

After another exchange of letters from Vision and the District on May 4 and May 12, respectively, counsel for CAB scheduled a conference call on May 19, 2015. During this conference call, the parties were given until close of business on May 22, 2015 to attempt to resolve the issues amicably and withdraw the pleadings. Alternatively, it was determined that Vision's Petition for Expedited Review would be deemed a Petition to Appeal and a Motion for Expedited Review, and the District's response would be deemed an Answer to the Petition and Motion to Dismiss.³ A briefing schedule was set whereby Vision would submit its brief in support of its appeal on or before May 28, 2015 and the District would submit its brief on or before June 4, 2015. These briefs were filed and, because the parties were unable to reach an amicable solution, the case was placed on the June 9, 2015 CAB agenda.

II. Jurisdiction

The District argues that CAB has no jurisdiction over the instant matter because Vision's request to use a temporary facility was not a request to amend its charter. Additionally, the

³ CAB notes that the District objected to the vote on the Petition for Appeal at the June 9, 2015 CAB meeting on the basis that it was not provided notice that the Petition for Appeal would be voted upon. To the contrary, the results of the conference call referenced above were memorialized by an email dated May 19, 2015 to the parties, clearly indicating that the Petition for Expedited Review would be deemed a Petition to Appeal and a Motion for Expedited Review. Additionally, the parties have fully briefed the merits of the appeal and argued the merits at the meeting. As such, there is no basis for the District's objection to CAB voting on the Petition for Appeal at the June 9, 2015 meeting and such objection is overruled.

District argues that CAB could not grant Vision's request unless CAB would approve a charter which proposes a temporary address for the first year.

The Commonwealth Court held that CAB has jurisdiction to hear appeals from school district denials of charter amendments. *Northside Urban Pathways Charter School v. CAB*, 56 A.3d 80, 85 (Pa. Cmwlth. 2012). Similarly, the Court has held that “[a]ny adverse government decision with respect to a license . . . must be subject to review, under due process and the Pennsylvania Constitution.” *Pocono Mountain Charter School v. Pocono Mountain School District*, 88 A.3d 275, 285 (Pa. Cmwlth. 2014).

In recognizing the need for charter schools to be able to amend their charters when circumstances change, the Commonwealth Court even used the example of the need for flexibility with regard to the facility of the charter school.

A charter school's application, which is ultimately incorporated into the terms of the charter, is a very detailed document. The Charter School Law contains no less than 17 requirements for the application. Section 1719–A of the Charter School Law, 24 P.S. § 17–1719–A. Inevitably, though, these details will have to be adjusted during the life of a school . . . [For example,] a charter school may not have any choice but to change its location. Its landlord may choose to not renew the lease, or the building itself could be damaged and rendered unsafe. . . .

Id. at 85-86. While *Northside* did not deal with the specific matter at hand, the Court did acknowledge that a charter school may need to relocate due to various circumstances.

Vision submitted a request to the District to use a temporary facility while its permanent location was undergoing renovations. It is inexplicable how the District can construe this as anything other than a request to amend Vision's charter application. By its very definition a charter amendment is a change in a term from its original charter application.⁴ *Id.* at 86. As

⁴ The District's other jurisdictional argument, relating to whether an application could contain a temporary location, is more appropriately addressed with the merits of the appeal below.

such, the District's denial of Vision's request for an amendment to change its location is properly before CAB.⁵

III. Use of Temporary Facility

The Charter School Law does not directly address whether a charter school may operate out of a temporary facility. The Charter School Law does require that a charter application include: "a description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements." 24 P.S. § 17-1719-A((11)). The Commonwealth Court has repeatedly held that "where a provision of the Charter School Law is unclear, we must interpret it to effectuate the purposes of the Charter School Law" *New Hope Academy Charter School v. School District of City of York*, 89 A.3d 731, 739 (Pa. Cmwlth. 2014) (citing *Northside*, 56 A.3d at 83-87). Prohibiting a charter school from opening to provide new learning opportunities to students because of an issue related to the facility would be inapposite of the intent of the Charter School Law. Moreover, just as a charter school applicant may lose its intended facility during the course of the application review process and must be permitted to offer an alternative, likewise in this case, Vision should be permitted to amend its charter to utilize a temporary facility in its first year of operation while renovations to its permanent facility are completed so that facility can be used in its second year.⁶

The Charter School Law contains specific requirements related to the information pertaining to the facility. The parties do not dispute the fact that Vision submitted a description of the

⁵ CAB notes that the question of its jurisdiction over any and all charter amendment disputes has been taken up by the Pennsylvania Supreme Court in another case, but acknowledges that *Northside* is the controlling precedent at this point in time. See, *Lehigh Valley Dual Language Charter School v. Bethlehem Area School District*, 756 MAL 2015 (allowance of appeal granted May 6, 2015).

⁶ CAB's decision in this appeal is based upon the specific facts of this case, which are that a new school with an approved charter is unable to open in the facility specified in its application but the school locates an alternative facility that it can use until the originally proposed facility becomes usable. This temporary facility must meet all legal requirements for occupancy as a school building.

proposed facility, an address of the proposed facility, and lease arrangements. Therefore, Vision has met all the requirements of the Charter School Law.

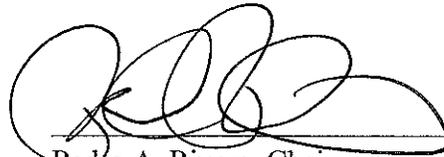
Based upon the above we make the following:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

VISION ACADEMY CHARTER SCHOOL :
v. : CAB Docket No. 2015-03
WILLIAM PENN SCHOOL DISTRICT :

ORDER

AND NOW, this 17th day of June, 2015, in accordance with the vote of this Board at its meeting of June 9, 2015⁷, it is hereby ordered that the William Penn School District's Motion to Dismiss the charter school's appeal is **DENIED**; and Vision Academy Charter School's Petition to Appeal the District's denial of its amendment request is **GRANTED**.



Pedro A. Rivera, Chairperson

Date Mailed: 6/19/15

⁷ At its June 9, 2015 meeting the Board voted to deny the District's Motion to Dismiss with Board Members Bracey, Munger, Yanyanin, and Cook voting to deny and Chairman Rivera and Board Member Peri voting to grant. The Board voted to grant Vision's Petition for Appeal with Board Members Bracey, Munger, Yanyanin, and Cook voting to grant and Chairman Rivera and Board Member Peri voting to deny.