

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

Lehigh Valley Dual Language	:	
Charter School	:	
	:	
v.	:	Docket No. 2013-07
	:	
Bethlehem Area School District	:	

DECISION ON MOTION TO QUASH

On August 19, 2013, the Charter School Appeal Board (“CAB”) received a Notice of Appeal filed by the Lehigh Valley Dual Charter School (“Lehigh Valley”) appealing the denial by the Bethlehem Area School District (“Bethlehem”) of its request to amend its charter and expand its operation to an additional location.¹ On September 17, 2013, the District filed a Motion to Quash the Appeal. The parties were directed to and did file briefs regarding the Motion to Quash, and the Motion was argued before CAB on October 15, 2013.

The issue raised by Bethlehem’s Motion to Quash is whether the Charter School Law (“CSL”) allows a charter school to open a second location. Bethlehem argues that the CSL only authorizes first class school districts to permit charter schools to open second locations. Because Bethlehem is not a first class school district, it argues that it lacks authority to permit Lehigh Valley to operate out of two locations, and that CAB does as well. On the other hand, Lehigh Valley argues that it may seek amendment of its original charter to open a second location.

¹ Currently, Lehigh Valley operates a K-7 school. The amendment, if granted, would have permitted the charter school to operate separate elementary and middle schools at two separate locations. *See* Notice of Appeal, Exhibit A.

The CSL requires that an 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). There is no explicit provision allowing a charter school to open a second location, except when authorized by first class school districts. Section 1722-A(d) states that “[n]otwithstanding any other provision of this act, a school district of the first class may, in its discretion, permit a charter school to operate its school at more than one location.” 24 P.S. § 17-1722-A(d).

Thus, the General Assembly specifically allowed a first class school district to permit a charter school to operate its school at more than one location. However, the General Assembly did not provide a similar, corresponding provision for other classes of school districts. The Rules of Statutory Construction provide that specific provisions in a law control the general, and every statute shall be construed, if possible, to give effect to all its provisions. 1 Pa.C.S. §§ 1933; 1921(a). Therefore, the fact that the General Assembly specifically permitted charter schools authorized by first class school districts to operate a second location, but did not provide a specific provision allowing other charter schools to operate a second location, must be given meaning. It is CAB’s conclusion that the General Assembly intended only to permit charter schools authorized by first class school districts to operate at more than one location. If the General Assembly had intended all charter schools to be allowed to operate at more than one location, section 1722-A(d) would be superfluous.

We note that, as argued by Lehigh Valley, the Commonwealth Court did permit a charter school to open a second location via an amendment in *Montessori Regional Charter*

School v. Millcreek Township School District, 55 A.3d 196 (Pa. Cmwlth. 2012).² However, the majority opinion contains no discussion of whether the CSL allows a charter school to open a second location. Instead, the Court only examined whether the charter school included sufficient information related to the location, as required by the CSL, in its amendment request. *Id.* at 200-01; *see also* 24 P.S. § 17-1719-A(11) (requiring a charter school application to contain a description of and address of the physical facility and ownership and any lease arrangements). Most significantly, this issue was not raised by the school district in this case. *See* Brief of Millcreek Township School District and School District of the City of Erie, Docket No. 354 CD 2011, 2011 WL 10795494, filed June 16, 2011. Generally, the Commonwealth Court cannot raise issues *sua sponte* on appeal, but must limit itself to issues preserved in appellant's brief. Pa. R.A.P. 2116 (stating that “[n]o question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby”); *see also* *Barr v. City and County of Philadelphia*, 653 A.2d 1374 (Pa.Cmwlth.1995) (*rev'd on other grounds*). As such, the outcome of the *Montessori* case is not binding on this Board because the issue was not raised by the parties and the Commonwealth Court appropriately did not raise the issue *sua sponte*.³

² While the *en banc* majority opinion did not discuss this issue, President Judge Pellegrini, in his dissent, stated that the Charter School Law does not allow a charter school to open a second location via an amendment. The one exception is that first class school districts may permit charter schools to open a second location. *Montessori Regional Charter School*, 55 A.3d. at 196, 203-06 (Pellegrini, P.J., concurring and dissenting).

³ In *Northside Urban Pathways Charter School v. CAB*, a charter school attempted to make significant changes to its charter via an amendment to, among other things, add an additional facility. *Northside Urban Pathways Charter School v. CAB*, 56 A.3d 80 (Pa. Cmwlth. 2012). However, the Commonwealth Court decided the case on procedural grounds and remanded the case back to CAB to determine the case on the merits.

Based upon the above, in consideration of the pleadings filed herein and of the argument of counsel presented at the CAB meeting, CAB voted to grant the Motion to Quash and orders the following:

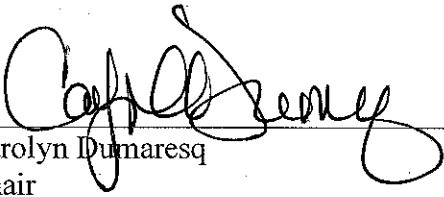
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ORDER

AND NOW, this 23rd day of OCTOBER, 2013, based upon the foregoing and the vote of this Board⁴, it is hereby ordered that the Motion to Quash filed by Bethlehem Area School District is GRANTED; and Lehigh Valley Dual Charter School's appeal is DISMISSED.

For the State Charter School Appeal Board


Carolyn Dumaresq
Chair

Date Mailed: 10/24/13

⁴ At the Board's meeting of October 15, 2013, the appeal was granted by a vote of 6 to 0 with members Barker, Dumaresq, Lawrence, Magnotto, Munger and Yanyanin voting.