

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

Sto-Rox Public School District,	:	
Petitioner	:	
	:	
v.	:	Docket No. CAB 2013-09
	:	APPLICATION FOR STAY
Propel Charter School - West,	:	
Respondent	:	

OPINION

On September 5, 2014, the State Charter School Appeal Board (“CAB”) issued an Opinion and Order granting the Appeal of Propel Charter School - West (“Propel”) from the denial of its charter application by the Sto-Rox Public School District (“Sto-Rox”). The Order provided that the granting of Propel’s charter was conditioned upon Propel constructing a school building, on the vacant site it proposed using for its school, in full compliance with all legal requirements. On September 15, 2014 Sto-Rox filed an Application for Stay of CAB’s decision. Propel filed an Answer on September 23, 2014. The parties agreed to submit the matter on their pleadings, and CAB considered and voted upon the Application on September 30, 2014. The Application was denied.

Rule 1781 of the Pennsylvania Rules of Appellate Procedure states that an “[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.¹

¹ Propel argued that the Application should be dismissed for failure to state the proper basis for jurisdiction because Sto-Rox cited to section 1729-A of the Charter School Law in the introductory paragraph of its 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 (Sto-Rox) if the stay is not granted; (2) whether granting a stay will harm the other party (Propel); (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). Sto-Rox has the burden of establishing that it satisfies these criteria and making a strong showing in regard to each of these criteria in order to be granted a stay. *Id.*, at 807.²

Sto-Rox contends that it satisfies all of the criteria for granting a stay. Regarding the irreparable harm it will allegedly suffer, it asserts that its staff, students and their families will be irreparably harmed in two respects. First, Sto-Rox suggests that Propel might, once having obtained its charter, revert to its alternative choice for a school site, which is a site that is owned by the Sto-Rox Public School District. However, Sto-Rox offers no legal basis for this proposition. Sto-Rox appears to ignore the fact that it must agree to lease its facility to Propel, as must any prospective school district landlord. *See, In re: Lincoln-Edison Charter School*, CAB Docket No. 2002-3. Since Propel was proceeding with alternative non-school-district-owned sites at the time of its appeal to CAB, it appears that Sto-Rox was unwilling to lease the facility to Propel; and nothing in the Charter School Law (CSL) would enable Propel to force Sto-Rox's hand. Second, Sto-Rox argues that by granting the charter, its student population will be

However, the citation in the subsequent jurisdictional statement was accurate. Thus, the Application could not be dismissed on this basis.

² In addition to contesting Sto-Rox's assertions that it meets the *Process Gas* tests, Propel argues, based upon *West Chester Area School Dist. v. Collegium Charter School*, 812 A.2d 1172 (Pa. 2002), that the Application for Stay should be dismissed. It essentially suggests that the Application is moot because its charter has been deemed approved by operation of law, and that the granting of a charter cannot now be stayed. However, CAB finds *West Chester* to be inapposite, because the issue there was whether the Secretary had abused his discretion in issuing a charter after a stay request had been denied. Because the facts here are different, the appeal will not be dismissed on this procedural basis.

significantly depleted and its funds diverted to the charter school such that it will be forced to shut its doors. Sto-Rox makes similar arguments in regards to the third prong of the test: harm to the public interest. However, the extent to which Sto-Rox students will enroll in Propel and the fiscal impact of an operating charter school upon the School District are mere speculation on the part of Sto-Rox. Speculative harm is insufficient to establish irreparable harm. *See, Re Limerick Nuclear Generating Station* 1982 WL 993119 (P.U.C. Comm. Oct. 15, 1982).

Moreover, it is well established that the financial condition of a school district and any fiscal impact that a charter school may have on the school district are inadequate grounds for denial of a charter. *In re: Chester Charter School for the Arts*, CAB Docket No. 2012-02, pp. 6-7.

Similarly, CAB finds these financial concerns to be an insufficient basis to establish harm to Sto-Rox or the general public.

Next, Sto-Rox argues that Propel will not be harmed by a stay because it does not plan to open during this school year and because a stay will afford it time to purchase the lot it intends to occupy and commence construction of its school building. In contrast, Propel contends that there is much it must do in preparation of opening and that it would be harmed by a stay. Specifically, Propel asserts that it must obtain financing both to purchase the school site and to engage in construction, and that such financing will be unavailable absent a charter. CAB finds these assertions to be reasonable and agrees that granting a stay will harm Propel.

Finally, Sto-Rox 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). However, in support of this contention, Sto-Rox only offers the same arguments it made before CAB, and it does not point to any egregious errors in CAB's analysis. Thus, CAB concludes that this final prong of the test is also not satisfied.

In summary, based upon the above discussion, CAB finds that the *Process Gas* criteria have not been satisfied by Sto-Rox and makes the following:

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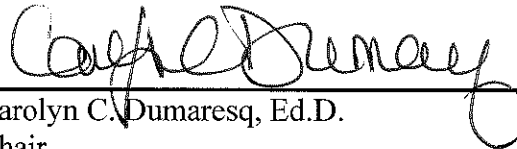
Propel Charter School – West,
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ORDER

AND NOW, this 7th day of October, 2014, based upon the foregoing and the vote of this Board³, the Application for Stay of the Sto-Rox Public School District is DENIED.

For the State Charter School Appeal Board



Carolyn C. Dumaresq, Ed.D.
Chair

Date of mailing: Oct. 8, 2014

³ At the Board's meeting of September 30, 2014 the Board voted 5 to 0 to deny a stay with members Bracey, Dumaresq, Peri, Miller, and Yanyanin voting to deny the stay. Member Munger recused herself from participation in this matter.