

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

| | | |
|---------------------------------------|---|-------------------------------|
| John B. Stetson Charter School | : | |
| Petitioner, | : | |
| | : | |
| v. | : | |
| | : | |
| The School District | : | |
| of Philadelphia, | : | CAB Docket No. 2019-06 |
| Respondent | : | |

OPINION

Before the Charter Appeal Board (CAB) is an appeal from the School District of Philadelphia’s (District) non-renewal of the charter for John B. Stetson Charter School– CAB Docket 2019-06. The matter has a sibling filing with the same issues and procedural history.

Procedural History

On December 14, 2017, the School Reform Commission of the School District of Philadelphia (“SRC”)¹ adopted Resolution SRC-8 (“SRC-8”), which resolved to conduct a public hearing regarding a recommendation by the School District’s Charter Schools Office (“CSO”) not to renew the charter of John B. Stetson Charter School (“Stetson” or “Charter School”) (“Stetson”).

¹ On July 1, 2018, the Board of Education (“BOE”) replaced the SRC and became its successor with respect to this proceeding. See 24 P.S. § 6-696(n) (“after dissolution the board of school directors shall have the powers and duties of the School Reform Commission”).

Resolution SRC-8 listed 37 grounds for the proposed nonrenewal (not including numerous subparagraphs), including *inter alia* low proficiency rates on Keystone exams, poor School Performance Profile scores, failure to meet academic growth standards, failure to meet Annual Measurable Objectives, poor graduation rates, poor federal accountability designations, failure to meet commitments in its charter, failure to meet program requirements for English language learners, noncompliant student admission policies, failure to meet Renaissance targets regarding student retention and violent incident rates, failure to comply with student expulsion requirements, failure to identify actions that could lead to in-school alternative placement, failure to meet student attendance commitments, failure to operate in accordance with bylaws and applicable law, failure to meet Highly Qualified Teacher requirements, failure to meet certification requirements for special education instructors, untimely issuance of audited financial statements, failure to make required payments to the Public School Employees' Retirement System, and failure to meet generally accepted standards of fiscal management and audit requirements.

The matter went to a hearing, in front of a District appointed hearing officer, which began on March 12, 2019, and went sixteen non-consecutive days. The District called 5 witnesses and Stetson called multiple witnesses. Stetson also cross-examined all of the District's witnesses.

The District hearing officer issued his report on September 19, 2019. He agreed with the District that the schools' charters should be revoked. The hearing officer provided several reasons for the revocation including the failure to: 1.) comply with material provisions of its charter; 2.) meet applicable requirements for student performance; 3.) comply with generally accepted standards of fiscal management and audit requirements; and, 4.) violation of applicable laws from which the charter school has not been exempted from. (Hearing Officer report at page 91).

Stetson appealed the decision to the Charter Appeal Board (CAB). Stetson claims that there was a lack of fair process; that the District did not identify material violations; and, that it met any fiscal and audit requirements.

FINDINGS OF FACT

The CAB adopts by reference and incorporates herein the Findings of Fact set forth in the Hearing Officer's September 19, 2019, decision and order.

CONCLUSIONS OF LAW

1. The CAB has jurisdiction over this matter. 24 P.S. §17-1729-A.
2. The Charter School Law, Act of June 9, 1997, P.L. 225, No. 22, governs the nonrenewal of a charter by a school district in the Commonwealth of Pennsylvania. 24 P.S. §§17-1701-A *et. seq.* (“CSL”/ “Law”).
3. John B. Stetson Charter School is a charter school operating pursuant to the CSL within the School District of Philadelphia. 24 P.S. §17-1701-A *et. seq.*
4. In determining whether a school district's nonrenewal of a charter is appropriate, the CAB shall give due consideration to the findings of the school district's board of directors and specifically articulate its reasons for agreeing or disagreeing with the board of directors. 24 P.S. §17-1729-A(d); See also, *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (Pa. Cmwlth. 2000).
5. The intent of the Pennsylvania General Assembly in enacting the Charter School Law was, *inter alia*, to establish and maintain schools that improve pupil learning, to increase learning opportunities for all pupils, to encourage the use of different and innovative teaching standards and to hold charter schools accountable for meeting measurable academic standards. 24 P.S.

§17-1701-A. See, *New Hope Academy Charter School v. School District of the City of York*, 89 A.3d 731 (Pa. Cmwlt. 2014).

6. During the term of a charter or at the end of the term of a charter, the local board of school directors of a school district may choose not to renew the charter of a charter school based on any of the following:

- (a) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 17-1720-A.
- (b) Failure to meet the requirements for student performance set forth in 22 Pa.Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa.Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.
- (c) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (d) Violation of provisions of this article.
- (e) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
- (f) The charter school has been convicted of fraud.

24 P.S. §17-1729-A(a).

7. The local board of school directors must give notice of nonrenewal of the charter to the governing board of the charter school, which notice must state the grounds for such action with reasonable specificity and must give reasonable notice of the date on which a public hearing concerning the written nonrenewal will be held. 24 P.S. §17-1729-A(c).

8. The local board of school directors of a school district must conduct a hearing, present evidence in support of the grounds for nonrenewal stated in its notice and give the charter school reasonable opportunity to offer testimony before taking final action. 24 P.S. §17-1729-A(c).
9. The local board of school directors must take formal action regarding the nonrenewal of a charter school at a public meeting pursuant to the Act of July 3, 1986 (P.L. 388, No. 84), known as the “Sunshine Act,” after the public has had thirty (30) days to submit comments to the school board. All proceedings of the school board pursuant to this subsection are subject to the Local Agency Law, 2 Pa.C.S. Ch.5 Subchapter B. 24 P.S. §17-1729-A(c).
10. The School District complied with the procedural requirements of the CSL set forth at 24 P.S. §17-1729-A(c) by having provided the notice of nonrenewal to Stetson and by having conducted a nonrenewal hearing at which the School District presented evidence to support its grounds for nonrenewal of the Charter and where Stetson was provided a reasonable opportunity to cross-examine witnesses and present testimony and public comment was obtained prior to the School District’s decision. 24 P.S. §17-1729-A(c).
11. In determining whether the nonrenewal of a school’s charter was appropriate, the CAB shall review the record made in the proceedings below and may supplement the record at its discretion with information that was previously unavailable. 24 P.S. §17-1729-A(d).
12. In addition to the record, the CAB may consider the charter school plan, annual reports, student performance, and employee and community support for the charter school. 24 P.S. §17-1729-A(d).
13. Because the statutory standards for the CAB’s review of charter nonrenewal decisions are the same as those for the review of charter denials, CAB shall make a *de novo* review of the School District’s/SRC’s determination not to renew Olney’s charter. Compare 24 P.S. §17-1717-A(i)(6)

with 24 P.S. §17-1729-A(c); See also, *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (Pa. Cmwlth. 2000).

14. Once a charter is granted, the charter school is required to comply with the terms and conditions contained in the charter, as well as the school's charter school application, which is incorporated into the charter. 24 P.S. §17-1720-A.
15. The Charter School Law permits a school district not to renew a school's charter if the charter school has committed a material violation of the charter. 24 P.S. §17-1729-A(a)(1).
16. The Charter School Law allows a school district not to renew a school's charter if the charter school fails to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5, or if the charter school fails to meet any performance standard set forth in the written charter signed pursuant to Section 1716-A. 24 P.S. §17-1729-A(a)(2).
17. The School District has the burden of proof to present sufficient evidence to substantiate its reasons for nonrenewal. 24 P.S. §17-1729-A(c).
18. The School District has satisfied its burden of proving the following grounds for the nonrenewal of John B. Stetson's Charter by a preponderance of the evidence:
 - a. Stetson failed to meet material requirements of its Charter. 24 P.S. §17-1729-A(a)(1);
 - b. Stetson failed to meet applicable requirements for student performance. 24 P.S. §17-1729-A(a)(2);
 - c. Stetson violated provisions of law from which it was not exempted. 24 P.S. §17-1729-A(a)(5).

19. Following an independent review of the record before the CAB, and after giving due consideration to the findings of the CSO/School District, the CAB finds that the nonrenewal of Stetson's Charter was proper, and, that it is supported by sufficient evidence of record. 24 P.S. §17-1729-A.

DISCUSSION

The General Assembly has provided the exclusive remedy for the revocation or termination of a charter at 24 P.S. § 17-1729-A. As set forth above, the CSL at 24 P.S. § 17-1729-A permits a local board of school directors to revoke or not renew a school charter based upon several enumerated grounds, including violations of a charter, violations of the CSL, or violations of any provision of law for which the charter school has not been exempted. 24 P.S. §§ 17-1729-A(a)(1)-(5). 24 P.S. §17-1729-A(d) also provides, in part, that the CAB may consider the charter school plan, annual reports, student performance and employee and community support for the charter school in addition to the record and shall give due consideration to the findings of the local board of directors. *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002).

Here, 24 P.S. §17-1729-A(c) required the School District to produce evidence in support of the grounds for the nonrenewal stated in its notice and provide the Charter with a reasonable opportunity to present testimony and other evidence in favor of renewal. *Thurgood Marshall Academy Charter School*, CAB No. 2007-03. The CAB applies a de novo standard of review entertaining appeals from a school district's nonrenewal of a charter. See, *Graystone Academy Charter School*, CAB No. 2012-01. The burden of proof before CAB is a preponderance of the evidence. For the foregoing reasons, the Charter School's appeal is denied.

Issues

Stetson raises three main issues on appeal: that there was a lack of fair process; that the District did not identify material violations; and, that Stetson met fiscal and audit requirements.

Due Process

Reviewing the record as a whole, both at the District level and on appeal, Stetson had ample opportunity to know the District's claims and to respond, i.e. due process. In Community Academy of Philadelphia Charter School, CAB No. 2013-12 at 38, this Board stated that: "[T]he CSL imposes no temporal limitations on the filing of a revocation notice." Community Academy of Philadelphia Charter School v. Philadelphia School District School Reform Commission, 65 A.3d 1023 (Pa. Cmwlth. 2013). Additionally, the Charter School received notice and has litigated these matters extensively.

Material Violations

The School District points to a series of violations regarding certifications, reporting, and testing. The number of special education teachers who were appropriately certified in each of the following years is as follows: 2014-2015 – 10 of 11 special education teachers; 2016-2017 – 11 of 12 special education teachers; and 2017-2018 – 8 of 12 special education teachers. (Hearing Officer Report, FF 296; Exs. JE[S] 46-47, at 4; Ex. SD[S] 11, at 4; Tr. vol.10, at 58:18-63:15). In the 2018-2019 schoolyear, only 9 of 12 special education teachers (75%) were appropriately certified. (2019-2020 ACE report, at 12). These issues constitute violations of both the Charter and law. (Hearing Officer Report, at 15, 42). The Charter School does not dispute that not having all of its special education teachers appropriately certified is a violation of its Charter and 22 Pa. Code § 711.5. Special education teachers must be 100% certified. Nonrenewal may be based upon a failure to ensure that all special education staff are appropriately certified. *Ronald Brown Charter School*, CAB No. 2005-08, at 26-27; *Khepera*, at 48-49; *Eastern CAB*, at 31-32 The undisputed evidence in the record from the Charter School establishes that multiple special education teachers employed by the Charter School in 2014-2015, 2016-2017, 2017-2018

and 2018-2019 were not appropriately certified in special education in violation of 22 Pa. Code § 711.5.

Student Performance

Next, the School District argues that the Charter School has failed to meet requirements for student performance found in the CSL. (Id. at 50.) The Pennsylvania Department of Education (“PDE”) published Stetson’s PSSA data for the 2018-2019 school year following the Board of Education’s nonrenewal vote. The PSSA data for 2018-2019 has been supplemented into the record before CAB. In English Language Arts (“ELA”), the percentage of Stetson students who scored proficient or advanced fell approximately 4 percentage points from the prior school year, to 12.8%. (2018-2019 PSSA data attached to the School District’s Motion to Supplement as Exhibit B). In Math, the percentage of Stetson students who scored proficient or advanced fell from the prior school year, to 3.2%. (2018-2019 PSSA data). In grade 8 Science, the percentage of Stetson students who scored proficient or advanced rose approximately 1.6 percentage points from the prior school year, to 11.6%. (2018-2019 PSSA data). Stetson’s School Performance Profile (“SPP”) score reported out by PDE for 2018-2019 fell to 50.5, which was below the Charter School average of 58.6 and below the District School average of 54.1. (2019-2020 ACE Report, at 3).

The CSL, as interpreted through “the myriad” of CAB and appellate cases creates applicable standards which the Charter School knew it must meet. (Id. at 50.) The General Assembly, with the purpose of providing quality public education, requires charter schools to participate in the PSSA, Keystone Exams, and other accountability systems under Chapter 4. (S.D. Brief at 51.) If charter schools fail to meet the requirements of student performance in Chapter 4, the school district is authorized to revoke or not renew the charter (Id.) The School

District has provided sufficient evidence to demonstrate that Stetson failed to meet the requirements for student performance, as set forth in the CSL, Chapter 4 of the State Board of Education regulations. 24 P.S. § 17-1729-A(a)(2). (2019-2020 ACE Report, at 3).

Fiscal/Financial

The School District asserts that the “record . . . is replete with evidence” that the Charter School violated the CSL, the Public Officials and Employees Ethics Act, the Pennsylvania Nonprofit Corporation Law, the Sunshine Act, and other applicable laws. (S.D. Brief at 61.) Further, the School District claims that the Charter School had poor fiscal management practices that resulted in violations of law and generally accepted standards of fiscal management. (Id.) The School District further argues that the Charter School engaged in poor accounting practices and weak internal controls, which contributed to a failure to properly document transactions, along with improper intercompany loans. (Id. at 66.)

Issues evidencing poor financial management was the fact that the Charter School did not timely make payments to PSERS on a few occasions and did not ensure that timely audits were completed for four separate school years. (Hearing Officer Report, at 26-27). Timely audits are requirements under the School Code; failure to complete timely audits is grounds for nonrenewal for failure to meet generally accepted standards of fiscal management. *Graystone Academy Charter School*, 99 A.3d at 140-141.

The School District argues that the Charter School violated the CSL in relation to two loans it guaranteed for ASPIRA and ACE/Dougherty. (Id. at 72.) The School District alleges that in October 2011, shortly after the Charter School was granted its charter, it pledged its assets and revenues as collateral towards a bond financing, loan, and various lines of credit for the benefit of ASPIRA and ACE/Dougherty. (Id.) The total amount of the bank financing was over \$18 million.

(Id.) ASPIRA and ACE/Dougherty used these funds to purchase a facility so that another charter school managed by ASPIRA could operate out of the facility. (Id. at 73.) Not only does the School District argue that this was an illegal use of funds for non-charter purposes, but that the transaction was never public, or reflected in the minutes of the Charter Board. (Id. at 72.)

Next, the School District maintains that the Charter School allowed its funds to be used for non-charter school purposes through inter-company loans with ASPIRA and other charter schools managed by ASPIRA. (Id. at 80.) Several of the grounds for nonrenewal revolve around the manner in which the Charter Board permitted the Charter School's funds and assets to be used for non-charter school purposes. In October 2011, on behalf of the Charter School, individuals on the Charter Board took steps to pledge the Charter School's assets and revenues as collateral towards a bond financing, loan and various lines of credit that the Charter School's management company, ASPIRA; a related entity, ACE/Dougherty; and other entities obtained through PNC Bank. The total amount of the PNC Bank financing for which the Charter School pledged its assets as collateral was over \$18 million. The bond financing and loan had nothing to do with the Charter School's operations, as the Charter School operates out of a building owned by the School District. (*See e.g.* Hearing Officer Report, at 27-34; A-96 to A-136; Supplemental Report).

Stetson pledged assets and revenues as collateral for bond financing, loan, and various other lines of credit that Aspira, ACE/Dougherty LLC ("ACE/Dougherty"), and other entities obtained from PNC Bank ("PNC loans"). In fact, the total financing that the Charter School guaranteed exceeded \$18,000,000.00. Further, the record indicates that the Charter School shifted funds to Aspira and other Aspira managed charter schools, but without Board approval.

At the outset, it must be stated that our General Assembly, in stating the public policy of the Commonwealth, required that charter schools be operated by nonprofit corporations. 24 P.S. Education §17-1703-A. In fact, the Pennsylvania Legislature stated, "... A charter school must be organized as a public, nonprofit corporation. Charters may not be granted to any for-profit entity." Id. The legislative intent was clear regarding the operation of charter schools by nonprofit entities. The Department, in turn, has been very clear in its public pronouncements, as well:

In the event that a for-profit entity plays a role in the establishment of a charter school, a charter applicant must further demonstrate that the charter school's board of trustees will retain real and substantial authority over the operation of the school, educational decisions, and staff. *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400 (Pa. Cmwlth. 2003); *School District of York v. Lincoln-Edison Charter School*, 798 A.2d 295 (Pa. Cmwlth. 2002); *Brackbill v. Ron Brown Charter Sch.*, 777 A.2d 131 (Pa. Cmwlth. 2001); and *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (Pa. Cmwlth. 2000), *aff'd* 812 A.2d 1172 (Pa. 2002).

The Legislature's policy decision was not altruistic but pragmatic. It represents the incorporation of relevant portions of *Part II, Subpart C Nonprofit Corporations* of the Corporations and Associations Code, Title 15. 15 Pa. C.S. §§5101 – 6146. In that Subpart there is a panoply of requirements, conditions, and strictures for nonprofit corporations. The most important of these is stated to wit:

Standard of care and justifiable reliance.

(a) Directors.--A director of a nonprofit corporation shall **stand in a fiduciary relation** to the corporation and shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances.

15 Pa. C.S. §5712(emphasis added). The fiduciary status to charter school directors must color every aspect of their service.

Judge John P. Flaherty, then of the Allegheny Orphans' Court,² quoted U.S. Supreme Court

Justice Benjamin N. Cardozo:

A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior ... Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd.

Waldman v. Weisenberg, 75 Pa. D.&C. 2d 779 (O.C. Allegheny 1975). Thus, fiduciaries must perform to a higher level with duties well beyond that of a mere custodian of funds or business-person. "A director has a fiduciary duty to act in the corporation's best interests. The duty of the directors is solely to the corporation...." *Summary of Pennsylvania Jurisprudence*, §8:61. *Fiduciary relationship of directors*. A director of a corporation owes his or her undivided loyalty to that corporation. *Franklin Music Co. v. American Broadcasting Companies, Inc.*, 616 F.2d 528 (3d Cir. 1979). Extending a loan to a vendor, indeed even for the benefit of the vendor's other client schools, is a breach of the duty of loyalty.

The loan guarantees and transfers between Aspira other charter schools were violative of the CSL. Therefore, the charter schools' approval of loan guarantees between Aspira and other charter schools are sufficient grounds for the revocation of that charter.

Based on the extensive evidence of record documenting multiple issues involving Stetson's material violations of its charter and legal requirements, deficient student performance, and documented fiscal and financial problems, there are multiple grounds for the District's decision not to renew the charter in this case.

Considering the above the following order shall enter:

² He would eventually become Chief Justice of the Pennsylvania Supreme Court.

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ORDER

AND NOW this 18th day of April 2022, the appeal of Stetson Charter School is hereby **DENIED.**

BY ORDER:



Noe Ortega, Secretary of Education
Chairperson

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Date of mailing: April 18, 2022