

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION**

STATE CHARTER SCHOOL APPEAL BOARD

In Re: Graystone Academy Charter School :

**Appeal from revocation of charter by: Docket No. CAB 2002-1
the Coatesville Area School District :**

I. BACKGROUND

This matter is before the Pennsylvania State Charter School Appeal Board (“CAB”) on an appeal filed by the Graystone Academy Charter School (“Graystone”). Graystone contests the action taken by the Board of Directors of the Coatesville Area School District (“Coatesville”) to revoke Graystone’s charter. The reason for the revocation was Graystone’s alleged lack of a facility in which to operate commencing with the 2002-2003 school year.

II. FINDINGS OF FACT

1. On July 24, 2000, Graystone, a Pennsylvania not-for-profit corporation, was granted a three-year charter by the Coatesville in accordance with the Charter School Law, 24 P.S. §§17-1701-A et seq. (“CSL”). (Exhibit P-2).¹

2. On October 25, 2000, Coatesville voted to extend the charter granted to Graystone to a five-year charter. (Exhibit P-3).

3. In Graystone’s charter application, Graystone stated that the proposed site of the facility was at the Highland Corporate Center in Valley Township (the “Highland property”), or another acceptable site in the district. (Exhibit P-1).

4. By letter dated January 2, 2001, Graystone informed Mr. Ronald Scott, President of Coatesville’s Board of Directors, that Graystone had a new site for its school, which would be located “on

¹ References to Exhibits are exhibits identified in the Certified Record.

the new section of G.O. Carlson Boulevard, adjacent to Barley Sheaf Road in Thorndale, Caln Township.” (the “Thorndale property”). (Reproduced Record, Exhibit B).²

5. On or about January 30, 2001, Mr. Scott contacted Ms. Sylvie Neill, President of Graystone’s Board of Trustees and informed her that Coatesville was planning to close the Benner Elementary School and offered to lease the building (the “Benner building”) to Graystone. (N.T., 2/21/02 at p. 68).³

6. Between February and May 2001, active negotiations took place between Graystone and Coatesville regarding Coatesville leasing the Benner building to Graystone. (Exhibit D-3).

7. On or about April 24, 2001, a proposed lease was provided to Coatesville for the Benner building. (N.T., 2/21/02 at p. 69).

8. Mr. Scott informed Ms. Neill that the proposed lease would be placed on Coatesville’s May 8, 2001 public meeting agenda for a vote. (N.T. 2/21/02 at p. 71).

9. The proposed lease was not placed on the May 8, 2001 agenda, and was never signed. (N.T. 2/21/02 at p. 72).

10. On May 24, 2001, Coatesville voted that the Benner Elementary School should continue in operation and voted to revoke, terminate and/or suspend Graystone’s charter. (Exhibit P-4).

11. On June 28, 2001, Coatesville voted that the charter granted to Graystone to operate a charter school during the 2001-2002 school year should be deferred, that the charter previously granted should commence during the 2002-2003 school year, provided that, within six months of June 28, 2001, Graystone provided to Coatesville “a location of the physical facility, in conformity with the Pennsylvania Charter School Law, at which it will operate.” (Exhibit P-5).

² The Reproduced Record provided to CAB by Graystone is a part of the Certified Record.

³ N.T. refer to Notes of Testimony from the February 21, 2002 or the March 25, 2002 revocation hearing, as designated, before the Coatesville Board of School Directors.

12. In a letter dated December 28, 2001, Graystone stated that “the Board of Graystone Academy is pleased to inform the CASB of its location for the 2002/2003 school year.” Graystone informed Coatesville that Graystone was in active negotiations with Bethlehem Steel Corporation to locate Graystone on Bethlehem’s Administration Resource Center (“ARC”) campus, Modena Road in the borough of South Coatesville. In addition, Ms. Neill provided the name and phone numbers of contacts at Bethlehem Steel and of Bethlehem Steel’s realtor. (Exhibit P-6).

13. On February 8, 2002, Coatesville’s solicitor sent notice to Graystone that a revocation hearing would be held on February 21, 2002 because it had abandoned the location that was the basis of the granting of the charter and because Graystone did not have, at that time, a definitive location for its operation. (Exhibit B-1).

14. On February 10, 2002, Coatesville published a notice in the Daily Local News and in the community regarding the revocation hearing. (Exhibits B-2, B-3).

15. A revocation hearing was held on February 21, 2002.

16. In a letter to Coatesville’s solicitor prior to the hearing, Graystone’s solicitor stated that he reserved the right to call every member of the school board as witnesses, including Ronald Scott and Eric Brown. Graystone’s solicitor additionally reserved the right to call Dr. James Scarnati as a witness, and asked that all be in attendance at the hearing. (Exhibit D-4).

17. Mr. Scott and Mr. Brown did not attend the February 21, 2002 revocation hearing. (N.T. 2/21/02 at p.1).

18. Coatesville’s only witness to testify at the hearing was the Board Secretary who identified a portion of Graystone’s charter application, minutes of various school board meetings, and a letter from Graystone to Coatesville dated December 28, 2001. (N.T. 2/21/02 at pp. 11-46; Exhibits P-1 through P-6).

19. Graystone’s witnesses at the hearing included Ms. Neill, Mr. Bonner, an architect, and Mr. Scarnati. (N.T. 2/21/02 at pp. 65-126).

20. Pursuant to the CSL, Coatesville permitted a 30-day period from the February 21 hearing date for public input regarding the revocation of Graystone's charter. (N.T. 2/212/02 at pp. 130-33).

21. On March 25, 2002, Coatesville held another public meeting at which time a copy of a Letter of Intent and the proposed lease with Bethlehem Steel was admitted into the record as an exhibit. (Reproduced Record, Vol. II at p. 3; Exhibit D-9). In addition, copies of public comments that had been received by Coatesville were admitted into the record. (Reproduced Record, Vol. II at p. 4; Exhibits B-4, B-5).

22. After discussion by Coatesville board members, and comments from the public in attendance at the March 25, 2002 meeting, Coatesville voted 5-4, to revoke Graystone's charter. (Reproduced Record, Vol. II).

23. On March 26, 2002, Graystone filed an appeal with the Charter School Appeal Board ("CAB") of Coatesville's revocation of its charter.

24. On April 10, 2002, CAB heard argument regarding Coatesville's revocation of Graystone's charter.

III CONCLUSIONS OF LAW

1. The Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, 24 P.S. §17-1701-A et seq. ("CSL"), governs the application process, the approval process, the operation and revocation of charter schools in Pennsylvania.

2. Pursuant to the CSL, a charter may be revoked during or at the end of the term of the charter. 24 P.S. §17-1729-A.

3. The Notice of Revocation sent to Graystone by Coatesville's attorney, states that Graystone identified a specific location in its charter application but abandoned that location and, as a result, Coatesville required Graystone to inform Coatesville, within six months of June 28, 2001, of its location. The Notice further states that Graystone's letter stating that it was in active negotiations for a

site was not the same as having a definite site, and therefore, Coatesville would conduct a hearing on whether to revoke Graystone's charter. (Exhibit B-1).

3. Coatesville's Notice of Revocation sent to Graystone implies that its basis for possible revocation of Graystone's charter is Graystone's material violation of a condition, standard or procedure contained in the written charter signed pursuant to the CSL. 24 P.S. §17-1729-A(a)(1).

4. The CSL requires a charter applicant to provide in its application "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).

5. On June 28, 2001, Coatesville required Graystone to provide Coatesville, within six months of that date, "a location of the physical facility, in conformity with the Pennsylvania Charter School Law, at which it will operate." (Exhibit P-5).

6. Graystone's letter of December 28, 2001 stated that "the Board of Graystone Academy is pleased to inform the CASB of its location for the 2002/2003 school year." Graystone identified the address of the facility, ownership information and that it was in active negotiations with the landlord. (Exhibit P-6).

7. Graystone's letter of December 28, 2001, complied with Coatesville's request to identify a location of the physical facility in conformity with the CSL.

8. CAB concludes that the record does not support Coatesville's revocation of Graystone's charter.

IV. DISCUSSION

Although this case involves the revocation of a charter, CAB's standard of review is de novo. The Commonwealth Court previously held that CAB's review of the denial of an application is de novo because the CSL provides that CAB shall give due consideration to the findings of the local board and will specifically articulate its reasons for agreeing or disagreeing with those findings. 24 P.S. §17-1717-

A(i)(6); *Souderton Area School District v. Souderton Charter School Collaborative*, 764 A.2d 688, 693-95 (Pa. Commw 2000). This same language is found in the section of the CSL pertaining to revocation of a charter. See, 24 P.S. §17-1729-A(d). Therefore, CAB will review the evidence submitted to Coatesville and determine whether, based on that evidence, to accept or reject Coatesville's findings and conclusions and its decision to revoke Graystone's charter.

The CSL requires a charter applicant to provide in its application "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). In its charter application, Graystone stated that the proposed site of its facility was at the Highland Corporate Center in Valley Township, or another acceptable site in the district. (Exhibit P-1). In a letter dated January 2, 2001, Graystone notified Coatesville that it had a new site for its school, which would be located "on the new section of G.O. Carlson Boulevard, adjacent to Barley Sheaf Road in Thorndale, Caln Township." (Reproduced Record, Exhibit B).

On or about January 30, 2001, Coatesville's then Board President, Mr. Scott, contacted Graystone's Board President, Ms. Nellie, and informed her that Coatesville was planning to close the Benner building and offered to lease the building to Graystone. (N.T., 2/21/02 at p. 68). Between February and May 2001, active negotiations took place between Graystone and Coatesville regarding Coatesville leasing the Benner building to Graystone. (Exhibit D-3). Although Coatesville was presented with a proposed lease, and Mr. Scott informed Ms. Nellie that the lease would be placed on the May 8, 2001 agenda, the lease was never signed and was never placed on Coatesville's Board's agenda. (N.T. 2/21/02 at pp. 69-72).

At its May 24, 2001 meeting, Coatesville voted to have the Benner building continue in operation, and voted to revoke, terminate and/or suspend Graystone's charter. (Exhibit P-4). However, on June 28, 2001, Coatesville voted that the charter granted to Graystone to operate a charter school during the 2001-2002 school year should be deferred, that the charter previously granted should commence during the 2002-2003 school year provided that within six months of June 28, 2001,

Graystone provided to Coatesville “a location of the physical facility, in conformity with the Pennsylvania Charter School Law, at which it will operate.” (Exhibit P-5).

By letter dated December 28, 2001, Graystone stated that “the Board of Graystone Academy is pleased to inform the CASB of its location for the 2002/2003 school year.” (Exhibit P-6). Graystone informed Coatesville that Graystone was in active negotiations with Bethlehem Steel Corporation to locate Graystone on Bethlehem’s Administration Resource Center (“ARC”) campus, Modena Road in the borough of South Coatesville. In addition, Ms. Neill provided the name and phone numbers of contacts at Bethlehem Steel and of Bethlehem Steel’s realtor. (Exhibit P-6).

On February 8, 2002, Coatesville’s solicitor sent notice to Graystone that a revocation hearing would be held on February 21, 2002 because Graystone did not have, at that time, a definitive location for its operation. (Exhibit B-1). Coatesville’s Notice of Revocation did not explicitly state whether the basis for the revocation proceeding was an alleged violation of the CSL, or an alleged material violation of a condition, standard or procedure contained in the written charter. See, 24 P.S. §17-1729-A(a)(1), (4). The Notice of Revocation implied that the basis for possible revocation of Graystone’s charter was Graystone’s material violation of a condition, standard or procedure contained in the written charter signed pursuant to the CSL because it stated that the location of the charter school identified in the original charter had been abandoned and a new definitive location had not been identified as required by the Board. (Exhibit B-1).

There is no evidence in the record that when Graystone abandoned the Highland property and on January 21, 2001 notified Coatesville that it had a new location for its facility in Thorndale that Coatesville considered this to be a violation of Graystone’s charter or a violation of the CSL. In fact, on January 30, 2001, Coatesville’s Board President offered to lease the Benner building to Graystone. (N.T. 2/21/02 at p. 68). At the revocation hearing on February 21, 2002, Coatesville failed to produce any witness to rebut Ms. Neill’s testimony that Coatesville’s Board President offered to lease the Benner building to Graystone. In addition, Coatesville stipulated that between February and May 2001 it was in

active negotiations with Graystone to lease the Benner building to Graystone. (Exhibit D-3). There is no evidence in the record that during the time Coatesville was negotiating to lease the Benner building to Graystone that Coatesville believed Graystone's abandonment of the Highland property or the Thorndale property constituted a violation of Graystone's charter or a violation of the CSL.

It was at Coatesville's May 24, 2001 meeting that Coatesville decided to continue the operation of the Benner building as a district school. (Exhibit P-4). It was also at this meeting that Coatesville passed a resolution that Graystone could not operate under the terms of its charter because of its abandonment of the Highland property. (Exhibit P-4). Based on the record certified to CAB, May 24, 2001 was the first time Coatesville raised abandonment of the Highland property as a basis for revocation. There is no evidence in the record that prior to May 24, Coatesville had identified abandonment of the Highland property as a violation of the CSL or of Graystone's charter. Thus, CAB finds it difficult to reconcile Coatesville's finding that abandonment of the Highland property constituted a basis for revocation with the fact that after Graystone had abandoned the Highland property, Coatesville offered to lease Graystone the Benner building. It was only after negotiations failed and/or Coatesville decided to keep the Benner building open that Coatesville stated that abandonment of the Highland property was a basis for revocation.

Notwithstanding the motion of May 24, 2001 to revoke, terminate and/or suspend Graystone's charter, Coatesville voted on June 28, 2001 to allow the charter to begin operations in the 2002/2003 school year rather than the 2001-2002 school year. However, Graystone was required to inform Coatesville within six months of "a location of the physical facility, in conformity with the Pennsylvania Charter School Law, at which it will operate." (Exhibit P-5). In conformity with the CSL, Graystone had to provide a description and address of the physical facility at which it would be located and the ownership of the facility and any lease arrangements. 24 P.S. §17-1719-A(11). Coatesville accepted Graystone's initial identification of a facility in the charter application that stated the proposed site of the facility was at the Highland Corporate Center in Valley Township or another acceptable site in the

district. (Exhibit P-1). When Graystone abandoned the Highland property and identified another facility located “on the new section of G.O. Carlson Boulevard, adjacent to Barley Sheaf Road in Thorndale, Caln Township”, Coatesville did not object that this description did not conform to the CSL. The description Graystone provided of the Bethlehem property was as descriptive as what Graystone had provided about the Highland and the Thorndale properties. Therefore, CAB believes that Coatesville has no basis to find that Graystone’s description of the Bethlehem site violated the CSL.

Thus, CAB does not accept Coatesville’s implicit finding that Graystone’s identification of the Bethlehem Steel property in its December 28, 2001 letter was not in conformity with the CSL. In addition, Coatesville’s motion that Graystone identify a location by December 28, 2001 did not require that there be a signed lease by December 28, 2001. (Exhibit P-5). Coatesville’s motion that Graystone identify a location by December 28, 2001, did not require that all renovations be identified and/or completed by December 28, 2001. Therefore, CAB does not accept Coatesville’s finding that Graystone’s identification of the Bethlehem Steel property failed to comply with Coatesville’s motion of June 28, 2001.

In addition, Coatesville deferred the beginning of the charter school year from 2001/2002 to 2002/2003 provided Graystone identified a location within six months. (Exhibit P-5). Since CAB believes that Graystone met Coatesville’s requirement of identifying a location in conformity with the CSL, Graystone must be allowed to open its charter school for the 2002/2003 school year, if it is able to do so.

Both parties referenced the *Souderton* case as support for their respective positions in this case. CAB finds that the *Souderton* opinion is not relevant to this case because *Souderton* involved the denial of a charter, not revocation. In *Souderton*, the charter school applicant was denied a charter and it was not clear that the facility that had been identified in the application as the site for the charter school remained available. Therefore, the Court indicated that if the old facility was no longer available, the charter school

would have to submit a new application to the district so the district could consider whether the facility was appropriate under the CSL. *Souderton*, 764 A.2d at 698.

Graystone's initial application provided information about the site where the charter school was to be located and the charter was approved. Graystone later abandoned this site and informed Coatesville of a new site. Coatesville then offered Graystone another site, which was one of the district's buildings that it planned to close. When Coatesville decided to keep its building, Graystone had to look for a new location. This is a completely different scenario than *Souderton* and CAB does not find the *Souderton* case relevant.

In summary, CAB finds that Coatesville failed to provide sufficient evidence in the record that Graystone had violated its charter or the CSL. Therefore, CAB reverses Coatesville's decision to revoke Graystone's charter.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

STATE CHARTER SCHOOL APPEAL BOARD

In Re: Graystone Academy Charter School :

Appeal from revocation of charter by: Docket No. CAB 2002-1
the Coatesville Area School District :

ORDER

AND NOW, this 25th day of July, 2002, based upon the foregoing and the vote of this Board,⁴ the appeal of Graystone Academy Charter School is granted and the revocation of Graystone's charter by the Coatesville Area School District is reversed. In addition, Graystone's April 10, 2002 Petition for Attorney's Fees and Costs is denied.⁵

For the State Charter School Appeal Board:

_____/s/_____
Charles B. Zogby,
Chairman

⁴ At the Board's June 11, 2002, meeting the appeal was granted by a vote of 5-0, with members Aliota, Bunn, Reeves, Shipula and Zogby voting to grant the appeal.

⁵ At the CAB hearing in this matter, Graystone filed the noted petition, which was subsequently considered. Graystone contends that Coatesville's revocation action was without legal basis, and was arbitrary, obdurate and vexatious. However, Graystone pointed CAB to no statutory authority for the fee award sought. Thus, the petition must be denied. It is well settled that a claim for attorney's fees from an adverse party must, in the first instance, be based on express statutory authorization. Merlino v. Delaware County 778 A.2d 499 at 951 (Pa. 1999).