

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

Northside Urban Pathways Charter School :
: **Docket No. 2010-01**
:
Motion to Dismiss by Pittsburgh Public School District :
:

OPINION

This matter comes before the Pennsylvania State Charter School Appeal Board (“CAB”) on appeal by the Northside Urban Pathways Charter School (“Northside”) from Pittsburgh Public School District’s (“Pittsburgh”) denial of Northside’s request for an amendment of its charter. Pittsburgh has filed a Motion to Dismiss Northside’s appeal. The parties agreed to submit their respective positions to CAB on briefs and waived oral argument.

Findings of Fact

1. Pittsburgh granted Northside a charter on July 1, 1998 for a term of three years.
2. Pittsburgh renewed Northside’s charter in 2001 for a five-year term and again in 2006 for another five-year term.
3. Northside’s charter authorizes it to operate a charter school for grades six through twelve.
4. On December 16, 2009, Northside provided Pittsburgh with a request to amend its charter to add grades K-5 at an additional location.
5. On December 22, 2009, Pittsburgh acknowledged receipt of Northside’s requested amendment.

6. By letter dated February 2, 2010, Pittsburgh informed Northside that its request for amendment of the charter to add grades K-5 was denied. The letter further advised that a proposal to add grades K-5 in a new facility required submission of a charter school application.

7. On March 4, 2010, CAB received Northside's Petition to Appeal the Denial of Northside Urban Pathways Charter School's Application to Expand.

8. By letter dated March 12, 2010, CAB's counsel acknowledged receipt of Northside's Petition and advised Pittsburgh to file an answer within ten (10) days of its receipt of the letter.

9. On March 29, 2010, Pittsburgh filed with CAB, an Answer to the Petition and a Motion to Dismiss.

10. In its Motion to Dismiss, Pittsburgh argues that CAB does not have jurisdiction over an appeal from the denial of an amendment to a charter.

11. On April 8, 2010, CAB received Northside's Answer to the Motion to Dismiss.

12. By letter dated April 7, 2010, CAB's counsel asked that the parties submit briefs supporting their positions with regard to the Motion to Dismiss and to advise counsel if either party wanted to present oral argument to CAB.

13. Northside and Pittsburgh submitted briefs supporting their respective positions with regard to the Motion to Dismiss but did not request oral argument before CAB.

14. At its meeting on April 27, 2010, CAB voted 6-0 to grant the Motion to Dismiss.

Discussion

The Motion to Dismiss relates to Northside's request to amend its existing charter to add grades K-5 at an additional location. The District argues that CAB does not have jurisdiction over an appeal from the denial of an amendment to a charter. In contrast, Northside argues that

CAB should overrule its prior decisions in *Bucks County Montessori Charter School*, Docket No. CAB 2003-4 and *Montessori Regional Charter School*, Docket No. CAB 2009-05 and hold that it has jurisdiction over charter amendments.

As CAB has stated previously, its jurisdiction is specifically limited to four areas: (1) appeals from school district denials of applications to form a charter school (24 P.S. § 17-1717-A(i)(1)); (2) appeals because a school district has failed to timely act upon a charter application (24 P.S. § 17-1717-A(g)); appeals from school district decisions to revoke a charter (24 P.S. § 17-1717-A(d)); and (4) appeals from school district decisions to nonrenew a charter (24 P.S. § 17-1717-A(d)). *See, Bucks County Montessori Charter School and Montessori Regional Charter School.* The instant matter before CAB does not fall within any of these areas.

CAB does not have jurisdiction over actions taken by school districts regarding requested amendments to a charter. In the *Bucks County Montessori* case, the charter school initially asked the Pennsbury School District to allow it to amend its charter to add grades 7 and 8. The Pennsbury School District denied the request. Bucks County Montessori then tried to get around this denial by filing a charter school application to operate a charter school for grades 7 and 8. CAB determined that it did not have jurisdiction over that appeal because it was clearly an attempt by Bucks County Montessori to circumvent Pennsbury's denial of its request to amend its charter to add grades 7 and 8. Bucks County Montessori was not trying to open a new charter school but was trying to add classes to its already operating charter school.

In the *Montessori Regional Charter School* case, Montessori was seeking renewal of its charter. Included in its renewal was a request to amend the charter to allow Montessori to add a second building to accommodate a substantial increase in Montessori's enrollment. One of the chartering school districts deferred action on Montessori's amendment request and the other

chartering school district denied its amendment request. When Montessori appealed to CAB, it argued that CAB had jurisdiction over an appeal from the deferring of action on the amendment and the denial of the amendment because the amendment was within the renewal process. However, CAB held that it did not have jurisdiction over the deferring or denial of the amendment even if the amendment was requested in the renewal process.

As stated in *Montessori*, "The charter school law is notably silent regarding charter amendments. In light of the otherwise clear direction from the General Assembly regarding CAB's jurisdiction, we cannot but conclude that the General Assembly did not intend for CAB to have any role in the case of amendments." CAB has not found anything new in the parties' briefs that would change its position on this issue. Thus, the following Order is entered:

ORDER

AND NOW, this 8th day of June, 2010, based upon the foregoing and the vote of this Board¹, the Motion to Dismiss of the Pittsburgh Public School District is granted.



Thomas Gluck²
Chairman

¹ The Motion to Dismiss was granted by a vote of 6-0 with members Aker, Barker, Green, Reeves, Shipula, and Zahorchak voting to grant.

² Former Secretary Zahorchak resigned as Secretary of Education effective May 7, 2010. Thomas Gluck was appointed as Acting Secretary by Governor Rendell, effective May 10, 2010, and thus became a member of CAB by operation of law. 24 P.S. §17-1721-A. He has also been designated as chairperson by Governor Rendell and signs this order in that capacity.