

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

In the Matter Of:	:	
	:	
Lehigh Valley Academy Regional Charter School	:	
	:	Docket No. 2011-06
v.	:	
	:	
Bethlehem Area School District	:	

OPINION AND ORDER

The State Charter School Appeal Board (Board) met on July 26, 2011 and accepted the record in this appeal. The Lehigh Valley Academy Regional Charter School (Lehigh Valley) is a regional charter school serving students from the Bethlehem Area and Saucon Valley School Districts (“Bethlehem” and “Saucon Valley”). Lehigh Valley applied to both districts for a renewal of its charter on March 2, 2011. Saucon Valley’s Board of School Directors voted to renew the charter on April 12, 2011. Bethlehem’s Board voted not to renew on May 23, 2011. However, Bethlehem did not provide Lehigh Valley with notice of its proposed action, an opportunity for a hearing, or a written notice of its decision and its reasons therefore. On June 7, 2011 Lehigh Valley filed a Petition to Appeal with the State Charter School Appeal Board (CAB). Lehigh Valley subsequently filed a Motion for Expedited Hearing on June 16, 2011, which Motion has been granted. On June 29, 2011 counsel for Bethlehem responded to our request that it file an Answer to the Petition to Appeal and submit the record of proceedings before the district. Counsel’s letter stated:

[T]he Board [of School Directors] will not be filing an answer to the appeal. No proceedings were held before the District so no record of proceedings will be forwarded. The exhibits attached to the pleadings filed by the Lehigh Valley Academy Charter School set forth the extent of the proceedings.

(Letter from Donald F Spry, II, Esq. to Ernest N. Helling, dated June 29, 2011).

On July 1, 2011 Lehigh Valley filed a Motion to Deem Respondent in Default and a supporting brief.

Lehigh Valley's motion is now before CAB for disposition. It is well established that the proceedings before CAB are governed by Pennsylvania's General Rules of Administrative Practice and Procedure which are found in Title 1 of the Pennsylvania Code. Section 35.35 of those Rules provides the School District a period of 20 days to file an answer to an appeal. If the school district fails to answer, it "may be deemed in default, and relevant basic facts stated in the ... petition [to appeal] may be deemed admitted." 22 Pa. Code § 35.35.

The certified record in this appeal, in addition to the three pleadings filed with us by Lehigh Valley and as accepted by CAB at its meeting, is comprised of the following:

1. Letter from Aldo Cavalli to Dr. Joseph Roy dated March 2, 2011 requesting renewal of Lehigh Valley Academy Charter School's charter and attached Resolution (2 pages).
2. Memorandum of Board Secretary Stacy M. Gober to Board of School Directors regarding May 23, 2011 meeting and attachments (4 pages).
3. Letter from Donald F. Spry, II, Esquire, to Nicole D. Snyder dated June 3, 2011 informing her of the Board's vote denying renewal (1 page).

4. Letter from Donald F. Spry, II, to Ernest N. Helling dated June 29, 2011 (1 page).

Although Bethlehem's letter was filed within the prescribed time permitted for filing answers, the letter did not constitute an answer either admitting or denying the averments of Lehigh Valley's Petition to Appeal. Thus, as argued by the charter school, the issue before the CAB was whether Bethlehem should be deemed in default because it opted not to answer the averments of the Petition. Were Bethlehem to be deemed in default, then the facts averred in the appeal would be deemed admitted, and as a result, the appeal would of necessity be granted and the charter renewed. To deem Bethlehem in default under these circumstances is consistent with the position taken by CAB in prior cases. *See, In the Matter of Lehigh Valley Academy Regional Charter School v. Bethlehem Area School District and Saucon Valley School District, Docket No. 2005-04 and 2005-06.* A motion to deem Bethlehem in default was made and seconded at the meeting, and the motion was adopted. Thus, CAB enters the following Order:

COMMONWEALTH OF PENNSYLVANIA
STATE CHARTER SCHOOL APPEAL BOARD

In the Matter Of: :
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Lehigh Valley Academy Regional :
Charter School :
: Docket No. 2011-06
v. :
:
Bethlehem Area School District :

ORDER

AND NOW, this 5th day of August, 2011, based upon the foregoing, the Bethlehem Area School District is deemed to be in default in this matter, and the appeal of the Lehigh Valley Academy Regional Charter School is granted. A renewal charter will be granted within ten (10) days of the date of this Order, if the Bethlehem Area School District's Board of School Directors fails to execute a renewal charter.

For the State Charter School Appeal Board



Ronald J. Tomalis
Chairman

Date Mailed: August 5, 2011