

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

OLNEY CHARTER HIGH SCHOOL,	:	
Petitioner,	:	
	:	
v.	:	CAB Docket No. 2019-05
	:	MOTION TO QUASH PETITION
THE SCHOOL DISTRICT	:	TO APPEAL
OF PHILADELPHIA,	:	
Respondent.	:	

**MEMORANDUM ORDER ON DISTRICT’S MOTION TO QUASH PETITION FOR
APPEAL FILED BY ASPIRA, INC.**

In accordance with the Charter School Law¹ (“CSL”), this matter comes before the Pennsylvania State Charter School Appeal Board (“CAB and/or the Board”) on appeal of November 15, 2019 by the Olney Charter High School (“Olney Charter School”), an ASPIRA, Inc. of Pennsylvania School (“ASPIRA”), from a October 17, 2019 decision by The School District of Philadelphia (“District”) to deny Olney Charter School’s renewal request. However, on November 18, 2019, ASPIRA, as proposed Petitioner-Intervenor, filed the instant Petition to Appeal and/or Intervene in Appeals from the District’s Denial of the Application to Renew the Charter Olney Charter High School.²

On December 4, 2019, the District, as Respondent in this proceeding, filed its Answer opposing ASPIRA’s Petition to Appeal and/or Intervene in Appeals. Additionally, on December 4, 2019, the District filed the instant Motion to Quash Petition of ASPIRA to Appeal

¹ Act of June 19, 1997, P.L. 225, No. 22, as amended, 24 P.S. § 17-1701-A *et. seq.*

² The instant Petition to Appeal and/or Intervene in Appeals was also filed by ASPIRA in the matter of *John B. Stetson Charter School v. The School District to Philadelphia*, CAB Docket No. 2019-06.

and/or Intervene (“Motion to Quash”), and a Memorandum of Law in Support, requesting CAB not allow ASPIRA to file its own appeal or otherwise intervene in the current appeals.

On December 13, 2019, Olney Charter School, as Petitioner in this proceeding, filed its Answer to ASPIRA’s Petition to Appeal and/or Intervene in Appeals. Additionally, Olney Charter School filed its Answer in Opposition to the Motion to Quash and a Memorandum of Law in Support of its Answer in Opposition to the District’s Motion to Quash.³

On December 16, 2019, ASPIRA, as proposed Petitioner-Intervenor, filed its Answer, and Memorandum in Opposition, to the District’s Motion to Quash. On December 23, 2019, the District filed a Reply Brief in Support of its Motion to Quash and responded to the arguments made by Olney Charter School and ASPIRA. And, on December 24, 2019, Olney Charter School filed a Surreply Brief in Opposition to the District’s Motion to Quash.⁴

The Petition to Appeal and/or Intervene in Appeals that was filed by ASPIRA is a single filing but has two components for consideration by CAB: (1) Petition to Appeal, and in the alternative, (2) Petition to Intervene. Likewise, the District’s Motion to Quash has two components for consideration by CAB: (1) Motion to Quash ASPIRA’s Petition to Appeal and (2) Motion to Quash ASPIRA’S Petition to Intervene. Because ASPIRA filed a combined Petition to Appeal and Petition to Intervene, and the District filed a corresponding Motion to

³ Olney Charter School does not oppose ASPIRA’s Petition to Appeal and/or Intervene in Appeals. Olney Charter School asserts that ASPIRA has not been afforded notice of an opportunity to be heard in the nonrenewal proceedings, yet the proceedings relate to and impact the rights of ASPIRA, as the management company for Olney Charter School. Olney Charter School is of the position that ASPIRA has a legitimate interest in the outcome of this matter, an interest which may vary, at times, from those of Olney Charter School itself. Olney Charter School, however, asserts that to deny ASPIRA the opportunity to *intervene* would be a continued denial of basic due process. Eligibility to intervene in an agency proceeding is not at issue in CAB’s consideration of the instant Motion to Quash ASPIRA’s Petition to Appeal.

⁴ Olney Charter School is of the position that the District was not permitted to file a reply brief, and requested that it be stricken from the record, however, Olney Charter School proffered its surreply brief in response should CAB consider the District’s reply. CAB will consider both the District’s reply brief and Olney Charter School’s surreply brief as part of the record.

Quash both matters, CAB considered and voted upon the matters separately. Accordingly, argument on ASPIRA's Petition to Appeal and the District's Motion to Quash was heard before CAB on January 14, 2020, and CAB voted to grant the District's Motion to Quash ASPIRA's Petition to Appeal. CAB, through this Memorandum Order, seeks to address only the District's Motion to Quash ASPIRA's Petition to Appeal.

ASPIRA filed its Petition to Appeal the District's decision to deny Olney Charter School's application for renewal by relying upon, and fully incorporating, the grounds stated in the November 15, 2019 Petition to Appeal filed by Olney Charter School. ASPIRA seeks to be recognized as a Petitioner in this matter and cites to several grounds of interest in the subject matter, including ASPIRA's selection and role as a Renaissance School Turnaround Team ("Turnaround Team") for Olney Charter School and the District's treatment of ASPIRA as being in control of Olney Charter School.

ASPIRA suggests that it has the right to file its own appeal to CAB separate and apart from the petition to appeal filed by Olney Charter School. ASPIRA argues that the District's nonrenewal of Olney Charter School directly and negatively affects ASPIRA's rights, and the District's decision eliminates ASPIRA's status and rights as a Turnaround Team.

ASPIRA relies on its status as the Turnaround Team for the basis for standing to file such an appeal before CAB. ASPIRA contends that it has a direct interest at stake in the nonrenewal proceedings and in the pending appeal before CAB because ASPIRA is a Turnaround Team. ASPIRA obtained Turnaround Team status following a multi-stepped request for proposal process in which the District sought experienced charter school operators to serve as Turnaround Teams to oversee and manage distressed schools. On or about January 20, 2010, the Philadelphia School Reform Commission ("SRC") adopted the Renaissance Schools Initiative

Policy, which authorized the SRC to grant Renaissance charters. Olney Charter School was formed under the District's Renaissance Schools Initiative ("RSI"), a program designed by the District to convert District-operated schools into charter schools to effectuate improvements in academic achievement. The District sought experienced charter school operators to serve as Turnaround Teams to oversee and manage extremely distressed schools through RFP-286. ASPIRA was selected as a Turnaround Team based upon their response to RFP-286 in the form of submission of a Renaissance Charter Schools Charter Application. RSI schools are governed, operated, and staffed by the charter schools and not the District. Pursuant to resolution No. SRC-26, dated May 16, 2011, the SRC selected ASPIRA as a Turnaround Team, and accordingly, ASPIRA was responsible for all aspects of restructuring and managing the school awarded -- in this case, Olney Charter School.

ASPIRA contends that it was the charter school applicant for Olney Charter School because the SRC granted a charter to "Olney Charter School; an ASPIRA, Inc. of Pennsylvania School," based upon the Renaissance Charter Schools Charter Application submitted by ASPIRA. In other words, effective July 1, 2011, the District, through the SRC, and "Olney Charter School; an ASPIRA, Inc. of Pennsylvania School" entered into the charter for Olney Charter School.

ASPIRA asserts that as the Turnaround Team for Olney Charter School, the District interacted with ASPIRA as if ASPIRA was in actual control of Olney Charter School. ASPIRA argues that it has a contractual relationship with the District involving rights and obligations flowing from one party to another that will be unjustly terminated by the District's decision of nonrenewal of Olney Charter School's charter.

ASPIRA also seeks to appeal on the ground that the District allegedly improperly prevented ASPIRA from intervening in the nonrenewal proceedings. ASPIRA asserts that it enjoys a unique relationship with Olney Charter School, and the denial of ASPIRA's attempt to intervene in the nonrenewal proceedings renders the District's nonrenewal votes void. The District did not permit ASPIRA to participate in the District's nonrenewal proceedings. ASPIRA, citing to 2 Pa.C.S. § 553⁵, is of the position that the District's nonrenewal adjudication against Olney Charter School should not be valid since the decision is ultimately adverse to ASPIRA; and ASPIRA was denied the opportunity to participate as a party in the proceedings at the District-level.⁶

It is uncontroverted that ASPIRA is the Turnaround Team for Olney Charter School, and further, that ASPIRA is the charter management organization for Olney Charter School and submitted the charter application for Olney Charter School. The District, however, is of the position that the relationship between ASPIRA and Olney Charter School is not unique; and to the contrary, it is a typical relationship between a management company and its charter schools.

The District argued in opposition and in support of its Motion to Quash asserts that nothing in the CSL permits or contemplates appeals of a charter nonrenewal by individuals and entities other than the charter school itself. The District is of the position that the CSL allows the charter school to appeal to CAB the decision of a local board of school directors to revoke or not renew a charter. The District argues that ASPIRA has no right or standing to file its own appeal

⁵ Pursuant to 2 Pa.C.S. § 553, "No adjudication of a local agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard."

⁶ ASPIRA filed suit against the District on September 13, 2019 in the Philadelphia Court of Common Pleas challenging the validity of the adjudication citing breach of contract and violation of ASPIRA's due process rights. The District removed the action to the United States District court for the Eastern District of Pennsylvania.

with CAB. The charter was signed by the Board of Trustees (“Charter Board”) of Olney Charter School, and only Olney Charter School is authorized under CSL to appeal to CAB.

The District contends that its award of Turnaround Team status to ASPIRA did not create a contract. It was the first step in the multi-stepped process which led to the award of a charter between the District and Olney Charter School, not the District and ASPIRA. The District asserts that the charter was between the District and Olney Charter School, *an* ASPIRA Inc. of Pennsylvania School, **not** Olney Charter School *and* ASPIRA, Inc. of Pennsylvania School. The District acknowledges that ASPIRA is the management company for Olney Charter School, but asserts that it is not a party to the charter, and no one from ASPIRA is a signatory to the charter.

The District also argues that CAB should dismiss ASPIRA’s argument that the nonrenewal adjudication should be invalid because ASPIRA was not a party to the adjudication at the District-level and asserts that the issue is irrelevant as to whether ASPIRA can file a direct appeal with CAB. The District argues that as the Turnaround Team, ASPIRA did not become a party to the charter as the signed charter has a specific provision stating that there are no third-party beneficiary rights. The District argues that nothing in the contractual relationship authorizes ASPIRA to appeal to CAB. Further, the District asserts that ASPIRA participated in the proceeding below; but ASPIRA, however, argues that they were not a *participant* in the proceeding, and thus they were not in control of their own direct interests.

The School Code permits local school districts not to renew charters if a charter school is found to have failed to meet the academic performance requirements, to have failed to meet certain legal requirements, to have failed to comply with its charter, or to have committed certain other violations. *See* 24 P.S. § 17-1729-A(a). The CSL states a “charter school may appeal the decision of the local board of school directors to revoke or not renew the charter to the appeal

board.” *Id.* Any decision by the local board of school directors to not renew a charter may be appealed by the charter school to CAB, which has “the exclusive review of a decision not to renew . . . a charter.” *Id.*

The District acknowledges that ASPIRA was selected as the Turnaround Team for Olney Charter School under the charter model utilized as part of the RSI. However, the District asserts that ASPIRA, as the Turnaround Team, did not become a party to the charter. District schools were matched with a turnaround team, charter applications were submitted, and charters were then developed. Pursuant to the charter for Olney Charter School, it was to be operated by its Charter Board. The charter was granted to the Charter Board to operate the Olney Charter School as a public school under and pursuant to the RSI Policy, the CSL and other applicable laws. The individuals who signed the charter on behalf of Olney Charter School were the Chairman and Secretary of Olney Charter School’s Charter Board. ASPIRA is the management company for Olney Charter School, but it is not a party to the charter. On that basis, it is asserted that the parties to the Olney Charter School charter are the District and Olney Charter School.

Although ASPIRA seeks permission to appeal the nonrenewal of Olney Charter School, it cites no authority permitting such an appeal. ASPIRA argues that CAB is not limited to hearing appeals of nonrenewal decision filed solely by charter schools. ASPIRA concedes that the CSL does grant to charter schools an automatic right to appeal to the CAB from a district’s nonrenewal decision. *See* 24 P.S. § 17-1729-A(d). Despite recognizing the automatic right to appeal for charter schools, ASPIRA argues that the same provision is not exclusionary in that it neither states nor means that all others aggrieved by a district’s decision may not appeal to CAB.

ASPIRA argues that the CLS provides CAB with jurisdiction to review “a decision not to renew or revoke a charter.” 24 P.S. § 17-1729-A(d). On this basis, ASPIRA asserts that it is only asking CAB to take an action that CAB is already authorized to do.

The Board is unpersuaded, however, that the CSL supports ASPIRA’s assertion that it should be able to file a direct appeal of a charter nonrenewal. According to the plain language of the statute, any decision by the local board of school directors not to renew a charter may be appealed by the *charter school* to CAB. 24 P.S. § 17-1729-A(d). CSL is clear that charter schools may appeal. The language of the statute limits the right to appeal to the aggrieved charter school.

ASPIRA may have an interest in the appeal of Olney Charter School before CAB and may be aggrieved by the District’s nonrenewal decision, but ASPIRA, as a management company, is not tantamount to a charter school which has a clear right to file a direct appeal with CAB. ASPIRA recognizes as much given that it sought to file a combined Petition to Appeal and/or in the alternative, Intervene in Appeals. ASPIRA advances arguments that are more in keeping with ASPIRA’s position that it be granted intervenor status⁷ but do not support a position that it be permitted to file a direct appeal from a District’s nonrenewal decision, as is permitted by a charter school as the charter organizer.

As a management company, ASPIRA does not have standing to file its own appeal. ASPIRA is not the charter organizer nor are they a signatory to the charter. ASPIRA put forth an argument that the RFP award, ASPIRA’s response to the RFP and the resolution making

⁷ CAB may allow non-parties to intervene in proceedings before CAB under the General Rules of Administrative Practice and Procedures; as such CAB considered and voted upon ASPIRA’s Petition to Intervene pursuant to 1 Pa. Code § 35.28, filed in the alternative, as a separate matter.

ASPIRA the Turnaround Team are expressly incorporated into the Charter. The District acknowledges that the RFP itself was attached to and incorporated into the charter but argues that nothing in the RFP undermines the District's position and indicates that ASPIRA as the Turnaround Team is a party to the charter. Instead, the language in the RFP supports the District's position and states that the charter would be issued to the nonprofit corporation, the charter school. Olney Charter School's Charter Board was established, which was separate and apart from ASPIRA, and it was that nonprofit corporation that became the holder of the charter.

Based on the argument presented by the parties, CAB agrees with the District that it has no authority to permit an appeal by any party other than a charter school. Appeals to CAB are authorized under the CSL. The CSL states that appeals of charter nonrenewal are to be made to CAB by the affected charter school 24 P.S. § 17-1729(A)(d). The Board is unpersuaded that there is authority in the CSL for appeals to be filed by entities or individuals beyond charter schools. Accordingly, the District's Motion to Quash ASPIRA's Petition to Appeal is granted; and CAB enters the following:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

OLNEY CHARTER HIGH SCHOOL, :
Petitioner, :

v. :

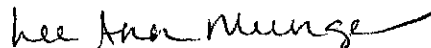
THE SCHOOL DISTRICT :
OF PHILADELPHIA, :
Respondent. :

CAB Docket No. 2019-05
MOTION TO QUASH PETITION
TO APPEAL

ORDER

AND NOW, this 12 day of March, 2020, based upon the foregoing and the vote of this Board⁸, The School District of Philadelphia's Motion to Quash the Petition to Appeal filed by ASPIRA, Inc. of Pennsylvania is hereby **GRANTED**.

For the State Charter School Appeal Board



Lee Ann Munger
Vice Chairperson

For Petitioner: Kevin M. McKenna, Esquire
Mark G. Morford, Esquire
Christine E. Reilly, Esquire
MCKENNA SNYDER LLC
350 Eagleview Boulevard, Suite 100

⁸ At the Board's meeting on January 14, 2020, the Board voted 5-0 to grant the District's Motion to Quash and Deny ASPIRA's Petition to Appeal with Vice Chair Munger, and Board Members, Cook, Miller, Peri and Yanyanin voting.

Exton, PA 19341

For Respondent: Allison Peterson, Esquire
Paul Cianci, Esquire
Levin Legal Group, P.C.
1301 Mansions Mill Business Park
1800 Byberry Road
Huntingdon Valley, PA 19006

For Proposed

Petitioner-Intervenor: Kenneth I. Trujillo, Esquire
Wendy Lappin Barragree, Esquire
300 Conshohocken State Road, Ste. 570
Conshohocken, PA 19428

John S. Stapleton, Esquire
3000 Atrium Way, Suite 200
Mount Laurel, NJ 08054

Date of Mailing: March 13, 2020