

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

Olney Charter High School	:	
Petitioner,	:	
	:	
v.	:	
	:	
The School District of Philadelphia,	:	CAB Docket No. 2019-05
Respondent	:	

OPINION

Before the Charter Appeal Board (“CAB”) is an appeal from the School District Of Philadelphia’s (“District”) non-renewal of a charter for Olney Charter High School – CAB Docket 2019-05. The matter has a sibling filing addressing 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 Olney Charter High School (“Olney” or “Charter School”).

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

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”).

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 hearing, in front of a District appointed hearing officer, which began on March 12, 2019, and went sixteen non-consecutive days. The District called five witnesses and Olney called multiple witnesses as well. Olney 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.

Olney appealed the decision. Olney claims that there was a lack of fair process, that the District did not identify material violations, and that the Charter School met 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. Olney Charter High 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. Cmwlth. 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 Olney 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 Olney 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 Olney's Charter by a preponderance of the evidence:

- a. Olney failed to meet material requirements of its Charter. 24 P.S. §17-1729-A(a)(1);
- b. Olney failed to meet the applicable requirements for student performance. 24 P.S. §17-1729-A(a)(2);
- c. Olney 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 School District, the CAB finds that the nonrenewal of Olney's Charter was proper and 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 School 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

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

Due Process

Reviewing the record as a whole, both at the District level and on appeal, Olney had ample opportunity to know the District's claims and to respond, i.e. due process. Olney argues that the District did not timely bring the non-renewal proceedings. 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).

Olney also asserts that the School District, and the Charter School, had agreed to set up a School Advisory Council ("SAC"). In any event, a parent council is not required in the CSL and is not a prerequisite to a non-renewal petition. This is not required by the CSL and there is no colorable argument to establish that Olney did not receive notice. 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. First, it argues that the Charter School failed to have the required number of highly qualified teachers and that some teachers at the Charter School were not appropriately certified special education teachers. (S.D. Brief at 95.) The number of special education teachers who were appropriately certified in each of the following years is as follows: 2013-2014 – 27 of 33 special education teachers; 2014-2015 – 34 of 35 special education teachers; 2015-2016 – 28 of 30 special education teachers; 2016-2017 – 27 of 34 special education teachers; and 2017-2018 – 26 of 41 special education teachers. (Hearing Officer's Report, FF 359; Exs. JE[O] 56-58, at 4; Ex. SD[O] 14, at 4; Ex.CS[O] 166, at 4; Tr. vol. 2, at 125-126, 131). However, 100% of special education

teachers must be certified under the charter and the Law. Deviation from the requirement that all special education teachers possess the requisite certification is a serious violation of legal requirements of and forms the basis for nonrenewal.

The School District also contends that the Charter School's student enrollment materials were not in compliance with Pennsylvania Law. (S.D. Brief at 97.) It alleges that the Charter School required documentation beyond what the law requires. Instead of the five types of enrollment documents allowed by law, the Charter School demanded much more. (Id.) Next, the School District asserts that the Charter Board failed to vote on expulsions, or give parents notice of students' discipline. (Id.) Regarding expulsions, the Charter Board took no action as required by Chapter 12 of the Pennsylvania Code for at least six expulsions each year for three different school years. (Id. at 97-98.) Because the rights of students during disciplinary proceedings are protected as a matter of law, the failure to abide by those requirements constitutes a material violation of Olney's charter and state law.

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 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 Charter School's academic performance through the term of its Charter and through

the time of nonrenewal did not warrant renewal of its Charter under the body of caselaw on student performance requirements under Chapter 4. For example, In Literature, the percentage of Olney students who scored proficient or advanced fell from the prior school year, to 19.3%. (2018-2019 Keystone Exam data attached to the School District’s Motion to Supplement as Exhibit B.

In Algebra I, the percentage of Olney students who scored proficient or advanced fell by approximately 8 percentage points from the prior school year, to 8.1%. (2018-2019 Keystone Exam data). In Biology, the percentage of Olney students who scored proficient or advanced fell from the prior school year, to 8.4%. (2018-2019 Keystone Exam data). The Board of Education for the District considered performance information available and did not solely rely on test scores. Such information included growth data, SPP scores, Future Ready Index measures, Charter School-specific internal assessment data, graduation information, and attendance information. Therefore, the record contains extensive evidence of inadequate student performance to support the nonrenewal of Olney’s charter.

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.) For example, (1) the Charter School twice guaranteed financing for ASPIRA and other ASPIRA-managed schools and related entities; (2)

the Charter School allowed its funds to be shifted to ASPIRA and other ASPIRA-managed schools through intercompany loans; and (3) the Charter School entered into a lease with ACE/Dougherty whereby the Charter School was paying 120% of the debt service obligation of ACE/Dougherty. In fact, the total financing that Olney guaranteed exceeded \$18,000,000.00. (Hearing Officer Report at 31-33).

Further, the record indicates that Olney shifted funds to ASPIRA and other ASPIRA-managed charter schools, but without Board approval. These intercompany loans began in 2014, shortly after ASPIRA began operations and rather quickly reached millions of dollars. Despite representations to the contrary by the Charter School, the loans were not repaid promptly and even restarted in 2018. The transfers were without collateral and without interest. Additionally, many of the actions associated with the guarantees and the intercompany loans were taken behind the scenes, outside of the public realm, without discussion at public Charter Board meetings, and without any evidence of arms-length transactions or informed decision-making by the individuals who were responsible for the Charter School's operations. Hearing Officer's Report and Supplemental Report. (*See e.g.* Report, at 30-44; A-114 to 159; Supplemental Report).

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

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

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.

Further, as mentioned in the Hearing Officer’s report:

In the charter school context, a board’s failure to discuss or consider the terms of management agreements, leases or contracts with the charter school’s management company through an open and public process violates the Ethics Act and the NCL. *New Hope*, at 741. Contracts or transactions between the management company and the charter school are subject to the Ethics Act requirements. *Id.*

Here, Olney’s Board members also cannot be said to have acted in good faith in the exercise of their fiduciary duties. Even if they were without knowledge of the problems associated with the PNC Bank transaction in 2011, they have certainly been on notice of the questionable legality of their actions since 2014. The CSO began taking steps in 2014 to demand that Olney’s guarantees be removed and the intercompany loans end and be repaid, and then raised those issues in its renewal recommendation. In complete disregard of those concerns, the Charter School went ahead with the Provident Bank guarantees in 2016 and then the Promissory Demand Notes in 2018.

Hearing Officer’s Report dated September 19, 2019, at 41.

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 Olney’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:

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

Olney Charter High School	:	
Petitioner,	:	
	:	
v.	:	
	:	
The School District of Philadelphia,	:	CAB Docket No. 2019-05
Respondent	:	

ORDER

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

BY ORDER:



Noe Ortega, Secretary of Education
Chairperson

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Date of mailing: April 18, 2022