

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

JOHN B. STETSON CHARTER	:	
SCHOOL,	:	
Petitioner	:	
	:	
v.	:	Docket No. CAB 2019-06
	:	Application for Stay
THE SCHOOL DISTRICT	:	
OF PHILADELPHIA,	:	
Respondent	:	

OPINION

On April 18, 2022, the Charter Appeal Board (CAB) issued an Opinion and Order denying the Appeal of John B. Stetson Charter School (“Stetson”) from the nonrenewal decision of the School District of Philadelphia (“District”). CAB made its Order effective immediately. On May 10, 2022, Stetson filed an Emergency Application for Stay, the District filed its Answer opposing the granting of a stay on May 20, 2022.

Stetson argues that because it is a Renaissance School,¹ the District will have to immediately take control of the school based upon the Order of April 18, 2022, and that the District is not currently in the position to do so. The District counters that although it has no objection to Stetson remaining open through the end of the 2021/2022 school year, it asserts that it is taking all the necessary steps to assume operations of Stetson for the 2022/2023 school year. Despite the assertions of the District, Stetson requests that CAB’s April 18, 2022, Order be stayed pending the outcome of any appeal to Commonwealth Court.

¹ A Renaissance Charter School is a neighborhood school that is operated as a public charter school and can only enroll students from the neighborhood, also known as a catchment zone.

The Charter School Law (CSL), 24 P.S. § 17-1729-A(f), explicitly provides for the charter to remain in effect “until final disposition by the appeal board.” There is no language in the CSL that gives a charter school who has been denied renewal an absolute right to remain open pending any appeal. Despite the assertions of Stetson that the District lacks the ability to assume operation of the school in a timely and efficient manner, the primary determination to be made by CAB is whether Stetson has made a strong showing in each of the criteria for stay outlined by the Supreme Court in *Pa. Public Util. Comm’n v. Process Gas Consumers Grp.* 502 Pa. 545, 467 A.2d 805 (Pa. 1983) (“Process Gas”).

In considering the *Process Gas* analysis for the purposes of granting a stay of its April 18, 2022 Order, CAB must determine the following: (1) whether irreparable harm will be suffered by the applicant (“Stetson”) if a stay is not granted; (2) whether granting a stay will harm the other party (“District”); (3) whether granting a stay will harm the public interest; and (4) whether the applicant presents the likelihood of success on the merits. *Id.* Stetson has the burden of establishing that it satisfies these criteria and making a strong showing regarding each of these criteria in order to be granted a stay.

Stetson asserts that it satisfies all the criteria established in *Process Gas*. First, Stetson argues that it will be irreparably harmed because failure to obtain a stay will force Stetson to dissolve the Charter School and dismiss all its employees. Stetson further asserts that it will not be able to recover all the employees after a period of closure even if they should prevail in the appeal before the Commonwealth Court. In addition, Stetson argues that enrollment has increased in the building since becoming a charter and students may not want to stay in the school once the District retakes control and thus disenroll. Stetson asserts that these students may not wish to switch schools yet again if Stetson should prevail in its appeal.

Second, Stetson asserts that issuance of a stay will not harm the District. A stay will simply maintain the status quo. The District will have to pay for the costs of educating these students whether they are in the district school or remain in the charter school pending the appeal. Stetson also asserts that a stay would actually benefit the District by giving it more time to prepare if it should prevail in this matter.

Third, Stetson asserts that a stay will not harm the public interest; but in fact, not granting a stay will harm the public interest. The District will not be able to make all the necessary hiring, curricular and academic decisions necessary before the end of the school year and the return of the school to the District will jeopardize student safety given that Stetson improved building safety after its takeover of the school. Stetson further claims that the District's transition plan is lacking and says nothing about how the District will address problems that existed in the buildings when under District control. More importantly, the District has difficulty staffing their existing schools and is seeking over 900 teachers for the coming school year let alone being able to staff for the school.

Stetson also argues that it is in a better position to meet the student needs related to learning and emotional support as well as the needs of any ESL and the educational needs of students with disabilities including providing 2022 Extended School Year (ESY) summer services for these students. Stetson believes that it is better positioned to continue to serve these students during the appeal than the District.

Finally, Stetson argues that it is likely to be successful on the merits and points to the CAB's action in *New Hope Academy Charter School*, CAB docket No. 2012-13 as support. Stetson argues that like in *New Hope*, CAB ignored many of the school's defenses, and yet CAB found in the Charter School's favor and allowed CAB's order to be stayed through the end of the

school year. Stetson also argues that the change of accountability systems from School Performance Index to the School Progress Report was not addressed by CAB and that CAB did not provide any guidance on how they did not meet state accountability standards. Stetson claims that CAB's finding that it committed material violation of its charter related to insufficient certified special education teachers improperly relied on years not included in the Nonrenewal Resolution, thereby denying Stetson's due process rights. Stetson also claims that CAB improperly relied on provisions of a Basic Education Circular ("BEC") when it found Stetson's enrollment materials violated Pennsylvania law thereby using guidelines to hold a charter school accountable to a violation of law. In addition, Stetson claims that CAB's discussion of its decision regarding loan guarantees ignored unrebutted testimony that these were allowable charter school spending. Stetson asserts that the Board's decision ignored undisputed evidence that the School Reform Commission voted to approve the Nonrenewal Resolution also voted to close Stetson, thereby creating unconstitutional commingling of the prosecutorial and adjudicatory functions. Finally, Stetson asserts that CAB ignored numerous motions regarding evidentiary items that its own hearing officer deferred to CAB's decision.

The District argues that despite all of Stetson's claims, it has failed to establish a strong showing in each area that satisfies the *Process Gas* criteria and therefore CAB should not stay its order during the pendency of the appeal. Specifically, the District counters that Stetson's claims of harm are merely speculation and conjecture. As a Renaissance Charter School, Stetson knew that if its charter was revoked or not renewed that the District would re-open in the building or determine what would happen to the school building. Although enrollment in the school has increased since becoming a charter school, neither the District nor Stetson know if students will enroll in other schools or stay in the school which shall be operated by the District. Stetson

could not speak to any actual specific harm that would befall Stetson that would satisfy this first prong of *Process Gas*.

The District denies that Stetson's claim that its interest or the public interest would not be harmed. CAB has already determined that students will be better served by returning the school to the District. Considering CAB's findings, the issuance of a stay will adversely impact the District's interest, those of the students and the families. Allowing an underperforming charter school to continue operation is not in the interest of students or the taxpayers. Also, the District does know that if the stay is granted, significant amounts of taxpayer dollars will continue to flow to a charter school that has been determined to fail to meet the material requirements of its charter and failed to meet the student performance requirements set forth in Chapter 4 as well as other multiple violations of applicable laws. CAB has already rejected Stetson's claims of academic improvement and the more recent data available for Stetson does not support Stetson's assertions.

Finally, the District contends that Stetson provides no real arguments supporting success on the merits. The District stated that Stetson did not dispute or raise concerns for several of CAB's findings including failure to have 100% of its special education teachers certified in the 2015/2016 and 2016/2017 years and failure to ensure student expulsion requirements.

The District further argues that CAB clearly indicated that it found that Stetson's academic performance throughout the terms of its charter did not warrant renewal in accordance with caselaw and Chapter 4. This finding has nothing to do with academic goals in Stetson's charter or what school district accountability system was in use at the time. Stetson's claim of a due process violation because CAB relied on violations of special education certification beyond the years listed in the nonrenewal notice is erroneous. Stetson had reasonable notice of the

certification violation allegations and no contrary evidence was ever presented by the charter school to dispute the certification findings. In addition, CAB correctly found that Stetson's enrollment violations were not in compliance with the law. In doing so, CAB cited the legal citations found in the District's brief which clearly identifies the law. While it is true that the Department's BEC summarizes what can and cannot be required for enrollment, it is based upon these cited legal requirements and not simply the BEC as asserted by Stetson. CAB correctly identified that Stetson engaged in improper actions with respect to guarantees and intercompany transfers. The allegedly un rebutted testimony of the Charter School's witness was rebutted by the District because it was a legal conclusion offered by a lawyer without any basis in established law. The Charter School's witness never proffered an opinion that the intercompany loans did not violate 24 P.S. § 17-1714-A. He also stated that the intercompany loans violated the Sunshine Act.

Finally, CAB did not fail to consider the evidence and did not err in refusing to overturn evidentiary rulings and findings made by the District Hearing Officer through motions seeking a redo of the hearings below. The only items of evidence identified by the Charter School from these motions is admission of expert reports. However, these experts testified at length during the hearing below and this testimony was already in the record.

In reviewing whether Stetson should be granted a stay of CAB's April 18, 2022, order, Stetson is required to demonstrate a strong showing in all four *Process Gas* criteria. Based on the arguments presented by the parties, CAB agrees with the District's position that Stetson has failed to present arguments that would support the issuance of a stay. Stetson argues CAB's actions in *New Hope* as support for issuance of a stay in this matter. However, it is important to note that CAB in *New Hope* allowed for the Stay to only extend through the end of the school

year given the timing of the initial Order (October). Clearly, this is not the case in the present matter. As of the vote on June 14, 2022 on the Application for Stay, Stetson had completed the school year making any comparison to *New Hope* non-persuasive related to harm to the Charter School or its student population. In addition, CAB does not agree with Stetson's argument that there is no harm to the District or the public interest. CAB agrees with the District related to a stay's impact on the District. The District will suffer harm if the transition is halted until some unknown date in the future. The District has taken significant steps to prepare for the transition of the charter school to a district school. The District conducted internal meetings, met with the charter school and relevant third parties to discuss and implement transition planning. Staff has already been hired for the school. Community engagement and transition meetings with families have occurred. Negotiations and contracts have been readied for the Board of Education approval of behavioral intervention services at Stetson. All the District's efforts will be delayed or halted if a stay is granted. Moreover, the end of the school year is a reasonable time for any such transition to occur which will have the least negative impact on students and their families.

CAB also agrees with the District's position that a stay will harm the public interest. Specifically, delaying this transition will harm students and their families by creating more uncertainty and turmoil over the Charter School's status. CAB has already rejected Stetson's claims related to academic performance and the more recent data available does not support its assertions. CAB believes that the issuance of a stay will adversely impact the interest of both students and their families. Most importantly, allowing a substandard underperforming charter school to continue operation is never in the interest of Commonwealth students.

Finally, CAB finds that Stetson failed to demonstrate a strong showing that supports the likelihood that Stetson's appeal will be successful on the merits that would justify a stay.² As the District correctly points out, Stetson's arguments are not supported by the record, nor does Stetson clearly articulate how CAB erred in its analysis and conclusions that would support its asserted success on the merits. Stetson has not demonstrated a likelihood of success on the merits regarding all the grounds for nonrenewal. Accordingly, Stetson's Application for Stay is denied and, CAB enters the following:

² Stays have not been issued in at least three other CAB nonrenewal decisions in which stays were ultimately filed with and rejected by the appellate tribunal including most recently in *Eastern University Academy Charter School v. The School District of Philadelphia*, Docket No. 2018-04. In all these cases, the appeals continued through Commonwealth Court even after a denial of a supersedeas at Commonwealth Court. *Ronald H. Brown Charter School v. Harrisburg City School District*, No. 1436 C.D. 2006 (unreported decision from August 14, 2006). In this case, CAB denied Ronald Brown Charter School's appeal related to its Request for Renewal in July of 2006 and the final decision was not issued by Commonwealth Court until July 2007. Similarly, in *Graystone Academy Charter School v. Coatesville Area School District* No. 1336 C.D. 2013 (unreported), CAB denied the appeal of non-renewal in 2013 without a supersedeas and the Commonwealth Court's final decision was not issued until August 2014.

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COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 9th day of August, 2022, based upon the foregoing
Opinion and the vote of this Board³, the Application for Stay of the John B. Stetson Charter School
is DENIED.

For the State Charter School Appeal Board



Dr. Stacey Marten
Chairman

For Petitioner: Kevin McKenna, Esquire
Mark Morford, Esquire
350 Eagleview Blvd
Suite 100
Exton, PA 19341

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

Date of mailing:

8/11/22

³ At the Board's meeting of June 14, 2022, the Board voted 3-1 to deny the application for stay.