

MONTESSORI REGIONAL CHARTER SCHOOL,

Plaintiff

v.

MILLCREEK TOWNSHIP SCHOOL DISTRICT and SCHOOL DISTRICT FOR THE CITY OF ERIE,

Defendant

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA

CIVIL DIVISION

No. 13329-2009

COMMON PLEAS COURT
ERIE, PA
2011 FEB 15 AM 9:30
CLERK OF RECORDS
PROTHONOTARY

OPINION

Procedural History

This matter commenced on July 24, 2009, when the Montessori Regional Charter School (hereinafter Plaintiff) filed an appeal of the Millcreek Township and City of Erie School Districts' (hereinafter Defendants) decisions denying the renewal of Plaintiff's school charter. Plaintiff also appealed Defendants' denial of its request for expansion into another building.

On July 13, 2010, the Court overruled Defendants' Preliminary Objections and granted Plaintiff's Preliminary Objections. In the same Order, the Court encouraged the parties to try and settle the matter before the next school year.

The Court heard nothing further from the parties until September 2010 when Plaintiff requested a briefing schedule. Briefs were submitted on or about October 20, 2010. After review of those briefs, the Court scheduled a status/settlement conference for January 5, 2011 with the hope that the parties could resolve their differences before the end of another school year.

On January 10, 2011, Plaintiff indicated to the Court that settlement appeared unlikely, and requested that the Court render a decision in this matter.

Findings of Fact

Montessori's Charters

- 1) On February 11, 2004, Plaintiff Montessori Regional Charter School (MRCS) was granted a charter to operate a school at 2910 Sterrettania Road, Millcreek. The charter was in effect from July 1, 2004 through June 30, 2009.

- 2) The charter was granted after the Pennsylvania Commonwealth Court reversed Defendants' denial of Plaintiff's initial charter school application. See *Montessori Regional Charter School v. Millcreek Township School District and City of Erie School District*, 810 A.2d 718 (2002).

- 3) On September 17, 2008, Plaintiff MRCS submitted its request for renewal of the 2004 charter.

- 4) On September 19, 2008, Defendants requested documentation from Plaintiff, including financial statements, test scores, special education reports, goal achievement, etc. Plaintiff complied with the request on November 21, 2008 and supplemented the information on December 2, 2008. See Millcreek Township School District's Supplemental Certification of the Record Volume I and II.

- 5) On January 23, 2009, Defendants notified Plaintiff that a hearing on the charter renewal would be held on March 25, 2009.

- 6) On January 30, 2009, a site visit was conducted at MRCS by Defendants' architects.

- 7) The Erie School District's architect, Roth Marz Partnership, submitted a report to Erie on February 2, 2009. Millcreek School District's architect, Hallgren Restifo Loop & Coughlin, submitted a report to Millcreek on

- February 5, 2009. The architects reported some accessibility problems with the building; but nothing that violated the law.
- 8) On March 23, 2009, Defendants requested more information from Plaintiff, including responses to complaints, copies of attendance policies, etc.
 - 9) The same day, Plaintiff informed Defendants of its intent to open a second K-6 school at the former parochial St. Andrew's School (hereinafter SAS), located at 606 Raspberry Street, Erie.
 - 10) Plaintiff entered into a lease for the SAS building with the Roman Catholic Diocese of Erie. *Id.* at 277-283.
 - 11) Defendant Erie School District had previously used SAS to house students from J.S. Wilson Middle School while that building underwent renovation.
 - 12) Perseus House Charter School once signed a lease for SAS with the Roman Catholic Diocese of Erie, but chose not to use the location. *Id.* at 106.
 - 13) The joint hearing on MRCS's renewal was held on March 25, 2009. *Id.* at 24-141.
 - 14) At the joint hearing, the Defendant School Boards heard argument from the parties' counsel, Montessori CEO Anthony Pirrello, and several members of the public.
 - 15) Members of the public were limited to three minutes of speaking time. *Id.* at 37.

- 16) Four people who spoke out against Montessori were parents with special needs children, who were also signatories to a letter of complaint sent to the Defendants from the Local Right to Education Task Force (LTF). *Id.* at 141, 251-253. See also LTF's letter to Anthony Pirrello, pp. 307-308.
- 17) Two people spoke in favor of Montessori. One was part of the "founding families" who supported MRCS's first charter. The other person was the Honorable Elizabeth K. Kelly, a parent of a special needs Montessori student.
- 18) Mr. Pirrello was questioned at length by defense counsel and Erie and Millcreek school board members about many MRCS details, including its current location and the proposed SAS expansion.
- 19) Defendants requested more information from Plaintiff and agreed to issue a decision before June 30, 2009, when the charter would expire. *Id.* at 137.
- 20) On April 30, 2009, Plaintiff provided further information to Defendants in response to questions raised at the hearing. Plaintiff also provided additional details on the proposed expansion at SAS, including a Power Point presentation. *Id.* at 324-331.
- 21) On June 29, 2009, the Defendant Erie granted renewal of the charter, but deferred decision on the SAS proposal and requested more documentation. The same day, Defendant Millcreek granted the charter renewal in a 4-3 vote, and denied the SAS proposal, 7-0. Defendant Millcreek Solicitor, Timothy Sennett, advised that the vote was not enough to approve the charter renewal.

- 22) Defendants issued a written decision on June 29, 2009, claiming several violations of the Charter School Law by MRCS, and interpreting the SAS proposal as a new charter. The decision concluded that MRCS had proposed expansion to SAS "as a tactic to qualify for financing for a new building through the Reinvestment Fund." *Id.* at 11-23 (Decision, pp. 10-12).
- 23) Defendants later referred to the SAS proposal as a "scheme by MRCS to qualify for financing for a new building through a financial program known as the Reinvestment Fund." Defendant's Brief in Support, p. 5, ¶ 23.
- 24) Despite extensive questioning of MRCS representatives, the joint hearing transcript does not support Defendants' contentions that MRCS is deliberately proposing the SAS expansion as some kind of financial tactic or scheme.
- 25) On July 24, 2009, Plaintiff appealed Defendants' decisions denying the renewal of charter and the proposed expansion into SAS.
- 26) On November 23, 2009, after consultation with its Solicitor, Defendant Millcreek reconsidered its denial of the charter and reversed its decision. See July 13, 2010 Order, p. 1, n. 1. Millcreek granted charter renewal but still denied the SAS proposal.
- 27) Preliminary Objections were filed by the Defendants on September 21, 2009.
- 28) Plaintiff responded with Preliminary Objections on October 12, 2009.
- 29) An evidentiary hearing was held before this Court on October 26, 2009 where the parties filed supplemental certifications of the record for the

Court's consideration. No additional testimony was taken at the evidentiary hearing.

- 30) The matter was also appealed to the State Charter School Appeal Board (hereinafter CAB). On November 24, 2009, the CAB denied Plaintiff's appeal, ruling that it had no jurisdiction over charter amendments. Plaintiff subsequently appealed the CAB decision. That matter is still pending on appeal.
- 31) On January 20, 2010, Defendants sent a new charter to Plaintiff that applied retroactively from July 9, 2009 to June 30, 2014. To date, MRCS has not returned a signed charter.
- 32) After the CAB decision, this Court held a Status Conference on February 17, 2010. At that time, the parties agreed they were awaiting the Court's decision on the Preliminary Objections.
- 33) On July 13, 2010, the Court overruled Defendants' Preliminary Objections and granted Plaintiff's Preliminary Objections. In that same Order, the Court encouraged the parties to try and settle the matter before the next school year.
- 34) Plaintiff requested a briefing schedule in September 2010, which the Court granted. See September 30, 2010 Order.
- 35) Defendants objected to the briefing schedule on October 1, 2010, stating it was contrary to ongoing settlement negotiations between "the professional educators" and requested another status conference with the Court. See Appellees Motion to Reconsider Establishing Filing Schedule and Request for Status Conference, p. 1.

36) Briefs were submitted by the parties on October 20, 2010. Reply briefs were filed on November 4, 2010.

37) After review of those briefs, the Court scheduled another status/settlement conference for January 5, 2011, almost 18 months after litigation first commenced.

38) On January 10, 2011, less than a week after the status/settlement conference, the parties asked the Court issue a decision in this matter.

Perseus House Charters

39) Defendant Erie granted a charter to the Perseus House Charter School of Excellence (hereinafter Perseus House) on February 12, 2003.

40) Perseus House leased the Hamilton Center located at 2931 Harvard Road, Erie. The Hamilton Center offers programming for high school students.¹

41) On April 30, 2004, Perseus House entered into an agreement with Erie to amend the charter to allow Perseus House to operate a second school.

42) Erie approved a sublease agreement between Perseus House and the Bayfront Center for Maritime Studies (BCMS). The Maritime Center, located at 426 Eagle Point Blvd, Erie, offers programming for middle school students.²

¹ <http://www.charterschoolofexcellence.org/category/hamilton>

² <http://www.charterschoolofexcellence.org/category/maritime>

43) In September 2005, Perseus House began operating a third facility called the Leadership Center, located at 1511 Peach Street in Erie. The Leadership Center also offers programming for high school students.³

44) On November 15, 2005, Perseus House submitted a charter renewal to the Erie School District for the Leadership Center. A hearing was held on January 10, 2006. *Id.* at 759-777.

45) At the January 10, 2006 hearing, school board members and Perseus House representatives were jovial, often laughing and joking around.

46) No time limitations were placed on speakers addressing the school board regarding Perseus House.

47) Only one board member had questions about the funding of special education at Perseus House. *Id.* at 768. No one appeared on behalf of LTF.

48) One member of the public spoke in support of Perseus House. *Id.* at 777.

49) The Perseus House representatives were not questioned by the Board's solicitor. Some board members had questions as well as positive comments and thanks for the efforts made by Perseus House's representatives. *Id.* at 776.

50) The Erie School District granted Perseus House's charter renewal for the Leadership Center on February 8, 2006. The five-year renewal formally approved operation at the Maritime Center and Leadership Center

³ <http://www.charterschoolofexcellence.org/category/leadership>

locations.⁴ Erie and Perseus House also entered into financing and cooperative services agreement.

Conclusions of Law

Jurisdiction

Since this Court is only determining the propriety of the Defendants' denials, not the extent of the CAB's authority, Defendants' continued argument that this Court lacks jurisdiction is without merit. Further, by its own decision, the CAB has declined to exercise jurisdiction over a charter school's amendment, which is the only issue left to decide herein.⁵ As the local Court of Common Pleas, this Court has jurisdiction over Defendant's actions/decisions because there are no other ways for Plaintiff to proceed. Plaintiff's counsel informed the Court that the Pennsylvania Commonwealth Court was proceeding with the case without prompting by either of the parties. To date, this Court has not received instruction from the Pennsylvania Commonwealth Court to stay its actions, thus the Court shall proceed accordingly.

Charter School Law⁶

Under §17-1702-A, the express legislative intent of the Charter School Law is to improve pupil learning, increase learning opportunities, encourage use

⁴ In its research, the Court discovered that Perseus House also operates The Skills Center, located at 1309 French Street. It is unknown to the Court whether this facility is also a charter school.<http://www.charterschoolofexcellence.org/category/skills-center>

⁵ Defendants have conceded that charter renewal is moot given their approval of MRCS's renewed charter. See also *Bucks County Montessori School*, CAB Docket 2003-4 (2004) where amendments to an existing charter do not establish a new charter.

⁶ 24 P.S. §§17-1701-A, *et seq.*

of different and innovative teaching methods, create new professional opportunities for teachers, provide parents and students with expanded educational choices, and hold schools accountable. The Pennsylvania legislature went to great lengths to establish the Charter School Law. See ***Mosaica Academy Charter School v. Commonwealth of Pennsylvania Department of Education, et al. v. Bensalem Township School District, et al.***, 572 Pa. 191, at 200, 813 A.2d 813 (2002). In ***Mosaica***, the Pennsylvania Supreme Court held that the school district improperly refused to provide transportation for charter school students. The Court reasoned that the Charter School Law should provide what the Public School Law provides since the Charter School Law is a part of Public School Law.

The purpose of the Charter School Law, through the Public School Law, is intended to establish a thorough and efficient system of public education, to which every child has a right. ***Zager v. Chester Community Charter School***, 934 A.2d 1227, 594 Pa. 166 (2007). A charter's school distinction/difference from a public school satisfies the requirements of the Charter School Law. See ***Montour School District v. Propel Charter School-Montour***, 889 A.2d 682 (Pa.Cmwlt. 2006) where charter school's unique curriculum and learning environment consisted of 190 school days, small classes, reading blocks, etc.

After review of the extensive records submitted in this matter, the Court finds that MRCS has more than satisfied the basic requirements and legislative intent of the Charter School Law. Defendants requested information from Plaintiff on at least three different occasions and Plaintiff complied, providing

sufficient answers to the concerns raised at the joint hearing and beyond. The SAS proposal is merely an amendment to the charter, requesting permission to expand into another facility. Plaintiff is not requesting a whole new charter as Defendants have tried to suggest. The next question is whether Plaintiff's SAS proposal was improperly denied by Defendants.

St. Andrew's School Proposal

The Charter School Law also provides for the expansion of a charter school into certain types of facilities pursuant to Charter School Law 17-1722-A, which reads in full:

Facilities

(a) A charter school may be located in an existing public school building, in a part of an existing public school building, in space provided on a privately owned site, in a public building or in any other suitable location.

(b) The charter school facility shall be exempt from public school facility regulations except those pertaining to the health or safety of the pupils.

(c) [Repealed]

(d) Notwithstanding any other provision of this act, a school district of the first class may, in its discretion, *permit a charter school to operate its school at more than one location.* [emphasis added].

Here, Plaintiff entered into a lease agreement with the Erie Diocese for the SAS building. While Defendant maintains that Plaintiff has no property stake in the litigation, clearly under property law, a lease is "any agreement which gives rise to relationship of landlord and tenant (real property) or lessor and lessee (real or personal property)."⁷ However, the Charter School Law does not require

⁷ Black's Law Dictionary, p. 889, 6th edition, 1990.

that a charter applicant actually secure the proposed property or provide the school district with a lease or sales agreement, site development plan, etc. See ***Central Dauphin School Dist. v. Founding Coalition of the Infinity Charter School***, 847 A.2d 195, at 203 (Pa.Cmwth., 2004) (Description of the physical facility planned for charter school is enough under the Charter School Law.)

Based on the Court's review of the record, SAS appears to be an acceptable facility for the proposed MRCS expansion. Evidently, it was acceptable to the Erie School District when it temporarily housed students from J.S. Wilson Middle School. Presumably it was also acceptable when Perseus House contemplated leasing the facility as another charter school location.

While Defendants take issue with the submission of the SAS proposal just days before the March 25, 2009 hearing, the Court notes that there has been more than sufficient time (i.e. during the course of this litigation) for Defendants to visit SAS and determine its suitability for MRCS. At this time, it appears that Defendants have not done so.

Relevance of Perseus House Charter Schools

Plaintiff argues that Defendant Erie's treatment of the Perseus House Charter School is highly relevant to its claim of arbitrary and capricious behavior by Defendants given Perseus House's three charter school locations in the City of Erie. This Court is inclined to agree given the record here.

Defendant Erie describes its relationship with Perseus House as "cooperative" and that they "enjoy a unique working relationship". Defendant's

Brief In Support, pp. 10-12. Perseus House leased its first facility, the Hamilton Center, from Erie School District. Perseus House accommodated almost every request made by Erie regarding the Maritime Center. Erie allowed Perseus House to operate the Leadership Center before the charter renewal application was filed and a public hearing was held on it.

Defendant Erie's preferential attitude toward Perseus House is plainly shown by the minutes of the January 10, 2006 meeting. Rather than a quasi-adversarial proceeding like the March 25, 2009 joint meeting with MRCS, the January 10, 2006 meeting was hospitable and cordial. It demonstrated that it is possible for school districts to maintain cooperative relationships with charter schools. However, the Court finds that Erie School District cannot apply different standards/requirements to Perseus House and MRCS simply because one entity is more "cooperative" than the other.⁸ The question now becomes whether Defendants' treatment of MRCS has been arbitrary and capricious.

Arbitrary and Capricious

For purposes of clarity, the Court shall first define the terms. "Arbitrary and Capricious" is defined by Black's Law Dictionary as the "characterization of a decision or action taken by an administrative agency or inferior court meaning

⁸ Unfortunately, the situation here reminds the Court of a parent (the Erie School District) trying to raise two very different children (Perseus House and MRCS) where Erie asks MRCS, "Why can't you be more like Perseus House?" The Court notes that while Perseus House and MRCS may act very differently, Erie should apply the same rules to both or risk cries of "That's not fair!" and "You like them better than me!" (a/k/a litigation).

willful and unreasonable action without consideration or in disregard of facts or law or without determining principle.”⁹

Merriam-Webster's Dictionary defines “Arbitrary” as “based on or determined by individual preference or convenience rather than by necessity or the intrinsic nature of something.”¹⁰ Merriam-Webster's Dictionary defines “Capricious” as “governed or characterized by caprice; impulsive, unpredictable.” The term “caprice” is defined as “a sudden, impulsive, and seemingly unmotivated notion or action; a sudden usually unpredictable condition, change, or series of changes.”¹¹

Under the Charter School Law, school board policy decisions are entitled to substantial deference, free from court interference, unless it is apparent that the conduct of the board is arbitrary, capricious, and prejudicial to the public interest. *Mosaica, supra*. An administrative action will be “found to be arbitrary and capricious where it is unsupportable on any rational basis because there is no evidence upon which the action may be logically based.” *Adams County Interfaith Housing Corp. v. Prevailing Wage Appeals Board*, 981 A.2d 352, 358 (Pa.Cmwth., 2009) citing *Lynch v. Urban Redevelopment Authority of Pittsburgh*, 91 Pa.Cmwth. 260, 496 A.2d 1331, 1335 (1985). Mere failure to effectuate a policy in the most effective or efficient manner is not arbitrary and capricious, but “some rational basis” is required. *Adams, supra*, citing *Board of*

⁹ Black's Law Dictionary, p. 105, 6th edition, 1990.

¹⁰ <http://www.merriam-webster.com/dictionary/arbitrary>, definition 3.

¹¹ <http://www.merriam-webster.com/dictionary/capricious> and <http://www.merriam-webster.com/dictionary/caprice>

Public Education of School District of Pittsburgh v. Thomas, 41 Pa.Cmwlth. 490, 399 A.2d 1148, 1150 (1979).

Here, the Court can find no rational basis for Defendants' denial of the charter amendment. Defendants have unreasonably refused to approve the SAS proposal despite the fact that the SAS building is appropriate for students, that MRCS has enough students for enrollment, that MRCS has had a successful academic record, and is in compliance with the Charter School Law. Defendants raised no objections to Perseus House leasing SAS, showing an arbitrary preference for Perseus House over MRCS.

Defendant Millcreek's argument that its actions were not arbitrary and capricious because it has an obligation to its taxpayers and constituents implies that MRCS is not part of that obligation. The Court finds this argument to be absurd because surely some MRCS employees, parents of students, etc. live, pay taxes, and vote in Millcreek

Defendants' arbitrary and capricious actions are most conspicuously demonstrated by the disparate treatment of the Perseus House and MRCS charter application/renewal hearings. In this case, only one public hearing was held, and that hearing was attended by several members of the public (i.e. the LTF) with an agenda unrelated to the issue of charter renewal/expansion. Excluding legal counsel, only one MRCS administrator, Mr. Pirrello, was questioned about the charter renewal and SAS proposal. There were no follow-up meetings to further address the alleged concerns Defendants had about MRCS. The charter renewal and amendments were simply denied. *Compare*

Telly v. Pennridge School District Board of School Directors, 995 A.2d 898 (Pa.Cmwlt. 2010) where the school district's reduction of tax collector compensation was not arbitrary and capricious because the district held five public meetings and received considerable analysis and input from the public, business administrators, and tax collectors. As previously stated, Defendants cannot, and should not, apply different requirements to area charter schools based on preference, convenience, or impulse. It is impermissible under the Charter School Law.

Deferral by Defendant Erie

Contrary to Defendants' arguments, Defendant Erie's refusal to act by deferring its vote on the SAS proposal, and Defendant Millcreek's vote rejecting the amendment are adjudications.

Turning to Merriam-Webster's Dictionary again, "adjudicate" is defined as "to give an opinion about (something at issue or in dispute)."¹² Synonyms for "defer" are "to postpone, suspend, stay, mean to delay an action or proceeding... a deliberate putting off to a later time."¹³

Here, Defendants undoubtedly gave their opinion of Plaintiff's SAS proposal. Millcreek denied it outright and Erie effectively issued a denial because their non-decision prevents MRCS from going forward with the

¹² <http://www.merriam-webster.com/thesaurus/adjudicate>

¹³ <http://www.merriam-webster.com/dictionary/defer>

expansion.¹⁴ Erie's deferral has further postponed, suspended, and delayed this case contrary to the interests of justice.

Continued Delays

Sadly, delay has been prevalent in this matter. It is apparent that Defendants do not want to allow Plaintiff to expand its school. The reasons why Defendants have denied the expansion are far less clear.¹⁵ Defendants' continued denial of every request made by Montessori is a deplorable pattern that appears to serve no legitimate purpose.

This Court is not oblivious to the history of this case. See *Montessori Regional Charter School v. Millcreek Township School District and City of Erie School District*, *supra*, where Defendants' denial of the initial charter school application was reversed. The record clearly shows that Montessori has had to engage in litigation from its very inception. Montessori's attempts to move this process along are recognized by the Court as valid efforts to maintain its hard fought existence. Coincidentally, the record does not reflect any such effort by Perseus House.

Further, the parties' failure to effectively communicate throughout the duration of this case is simply appalling. As much as both Defendants would like to pretend that the fault here is entirely Montessori's, the Court cannot overlook

¹⁴ For example, under the Pennsylvania Rules of Criminal Procedure, the Court can decline to take action on a post-sentence motion for up to 120 days. Then the motion is deemed denied. Pa.R.Crim.P. 720(B)(3)(a). This Court fails to see the difference between that Rule and the inaction of Defendant Erie.

¹⁵ If the mysterious reasons are financial in nature, those are not permitted in making a charter school determination. See *In re: Sugar Valley Charter School*, CAB Docket 1999-4.

their role in this case. For example, Defendants' contended at the January 5, 2011 conference that Plaintiff had failed to send any settlement proposals to Defendants. That claim was completely refuted by Plaintiff. (See multiple letters and e-mails exchanged between Montessorri CEO Anthony Pirrello and Erie Superintendent Jay Badams and Millcreek Superintendent Michael Golde.)

The Court was not exaggerating when it strongly suggested to counsel at the January 5, 2011 conference to "do everyone a favor and settle this". Continued delays have done a disservice to potential students, and contradict the very intent of the Charter School Law. Thus, this Court is compelled to grant Plaintiff's request and overrule Defendants' denial of Plaintiff's proposed expansion into the St. Andrew's School.

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ORDER

AND NOW to-wit, this 14th day of February 2011, upon consideration of the foregoing Opinion and the arguments of counsel, it is hereby **ORDERED, ADJUDGED, and DECREED** that the Montessori Regional Charter School's request to amend its charter to open a second location at the former St. Andrew's parochial school is **GRANTED**. The parties shall endeavor to facilitate the expansion with all due haste so that Plaintiff will be ready and able to operate two locations for the 2011-2012 school year.

BY THE COURT:


MICHAEL E. DUNLAVEY, JUDGE

Date: February 14 2011

Cc: ✓ Thomas A. Pendleton, Esq., Attorney for Plaintiff

Timothy Wachter, Esq., and Timothy Sennett, Esq., Attorneys for Defendants