

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

Arts Academy Elementary Charter School	:	
	:	
	:	CAB Docket No. 2014-03
v.	:	
	:	
Allentown School District	:	

DECISION ON MOTION TO DISMISS

Arts Academy Elementary Charter School (“Arts Academy”) initially applied to the Allentown School District (“District”) for a charter in August of 2013. The application was denied in December of that year. On January 27, 2014, Arts Academy submitted a revised application to the District. That revised application was denied on May 22, 2014. However, before that denial, on April 24, 2014, Arts Academy filed a direct appeal with the Charter School Appeal Board (“CAB”) pursuant to section 1717-A(g) of the Charter School Law. The appeal alleged that the District failed to act on its revised application in the time required by the Charter School Law, and thus, a direct appeal to CAB was proper. The District filed an Amended Motion to Dismiss¹ the appeal on June 25, 2014, arguing that CAB did not have jurisdiction over this matter. Thereafter, counsel filed stipulations of fact on July 1, 2014; Arts Academy responded to the motion on July 11, 2014; and the parties argued the motion before CAB on July 29, 2014.

The Charter School Law permits a charter applicant to file a direct appeal with CAB if the local board of school directors fails to grant or deny the application for a charter school within the time period stated in subsections (d), (e), or (f) of section 1717-A of the Charter

¹ The District originally filed a Motion to Dismiss but ultimately withdrew that motion and filed the Amended Motion to Dismiss now being considered.

School Law. 24 P.S. § 17-1717-A(g). The subsection relevant to this appeal is subsection (f) which addresses resubmitted charter applications. Section 1717-A(f) of the Charter School Law allows a charter school applicant to revise and resubmit a denied application to the local board of school directors. 24 P.S. § 17-1717-A(f). Subsection (f) states, in relevant part:

The board shall consider the revised and resubmitted application at the first board meeting occurring at least forty-five (45) days after receipt of the revised application by the board.

24 P.S. § 17-1717-A(f) (emphasis added).

The District argues that CAB does not have jurisdiction pursuant to section 1717-A(g) of the Charter School Law because there is no statutory deadline for the board to consider a revised and resubmitted application, only a waiting period. The District argues that this section merely requires the District to wait forty-five (45) days after the submission of the revised application before the board can act. To the contrary, Arts Academy argues that the section requires the District to take action upon the revised application at the first board meeting after the expiration of the forty-five (45) day waiting period.

The Rules of Statutory Construction provide that “[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921(b). In order to ascertain the plain meaning, “[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage.” 1 Pa.C.S. § 1903(a). Furthermore, the Rules of Statutory Construction require that every statute be construed to give effect to all of its provisions. 1 Pa.C.S. § 1921(a). Applying these rules to section 1717-A, the clear language of section 1717-A(f) serves as both a waiting period and a deadline for a school district to act when a charter applicant submits a revised application for consideration.

First, section 1717-A(f) requires a school district to wait “at least forty-five days after receipt of the revised application by the board” before it can take action. This waiting period affords a school district time to give meaningful consideration to the revised application and schedule additional public hearings, if needed. *See* 24 P.S. § 17-1717-A(f) (permitting a local board of school directors to schedule additional public hearings on the revised application). Second, section 1717-A(f) requires the school district to take action “at the first board meeting” after the expiration of the forty-five day waiting period.² The consequence of a school district not acting within the statutorily-prescribed time periods can result in a charter applicant directly appealing to CAB. 24 P.S. § 17-1717-A(g). This interpretation gives meaning to the provisions of section 1717-A and is consistent with the unambiguous language of the statute.³

The District received the revised application on January 27, 2014. The first board meeting, after the expiration of the forty-five (45) day waiting period, was on March 27, 2014. Although the matter was originally on the Board’s agenda for that date, it was subsequently removed. In fact, the District did not even consider the revised application at the second board meeting following the expiration of the forty-five (45) day waiting period. It was not until the third board meeting, on May 22, 2014, that the District took action to deny the revised application. By this time, Arts Academy already had filed a direct appeal with CAB. Because the District failed to act within the statutorily-prescribed timeline of section 1717-A(f), the direct

² The District additionally argues that section 1717-A(f) needed to use the phrase “not later than” the first board meeting in order to be consistent with other language denoting deadlines in the Charter School Law. However, the Rules of Statutory Construction do not require the same exact language to be used throughout a law in order for it to be consistent. Instead, the rules require that the interpretation be based upon the plain meaning. The plain meaning of “at the first” board meeting is simply that – at the first board meeting.

³ It is unclear how the District’s interpretation of subsection (f) would give meaning to subsection (g) of section 1717-A. According to the District, there is no deadline for the District to act when considering a revised application. However, subsection (g) allows a charter applicant to appeal directly to CAB in the event that a school district fails to act “within the time periods specified in subsection[]... (f)...” 24 P.S. § 17-1717-A(g). If the District’s interpretation was adopted, then subsection (g) would have no meaning when it refers to subsection (f).

appeal filed by Arts Academy was proper pursuant to section 1717-A(g) of the Charter School Law.

Based upon the above and in consideration of the pleadings filed herein and the argument of counsel presented at the CAB meeting, CAB voted to deny the Motion to Dismiss and orders the following:

**COMMONWEALTH OF PENNSYLVANIA
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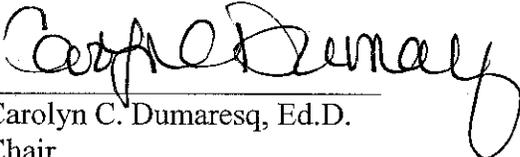
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ORDER

AND NOW, this 27th day of August, 2014, based upon the foregoing and the vote of this Board,⁴ IT IS HEREBY ORDERED that the Amended Motion to Dismiss filed by the Allentown School District is DENIED; and Arts Academy Elementary Charter School's appeal will move forward.

IT IS FURTHER ORDERED that the Allentown School District's May 22, 2014 decision shall be admitted into the record for the Board's consideration.

For the State Charter School Appeal Board,



Carolyn C. Dumaresq, Ed.D.
Chair

Date mailed: 8/27/14

⁴ At the Board's meeting on July 29, 2014, the Amended Motion to Dismiss was denied by a vote of 6 to 0 with members Dumaresq, Henry, Miller, Munger, Peri and Yanyanin voting.