

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

IN THE MATTER OF:

William Bradford Academy Charter School	:	
Motion to Quash of the	:	Docket No. CAB 2000-1
Keystone Oaks School District	:	

OPINION AND ORDER
{tc \13 "ORDER}

Background

On February 29, 2000 the William Bradford Academy Charter School (Bradford) filed an appeal with the Charter School Appeal Board (CAB) because of the alleged failure of the Keystone Oaks School District (Keystone) Board of Directors to act upon a “formal second resubmission” of a charter application by Bradford. Bradford contends that it had resubmitted its application to Keystone on December 21, 1999. Because Keystone did not consider this resubmission within 45 days, as provided for in the Charter School Law (CSL), Bradford appealed to CAB’s original jurisdiction. 24 P.S. §17-1717-A(f)&(g).

The resubmitted application in this case was comprised of an unsigned cover letter with two attachments. The letter and attachments were intended to address the reasons set forth by CAB for denying Bradford’s previous appeal. That appeal was decided by CAB in a decision issued on November 16, 1999 at CAB 1999-8.¹ This prior decision dismissed Bradford’s appeal from a January 28, 1999 denial of Bradford’s application by Keystone. The application that was denied in 1999 was actually a resubmission to the School District of an application that had originally been filed on September 3, 1998. Thus, Bradford styles the instant submission as a “second formal resubmission” and incorporates therein the original application of 1998 and its 1999 resubmission.

In response to the December 21 letter from Bradford, the superintendent wrote on December 22, acknowledging receipt of the letter, indicating that the district would not be treating this as a “resubmission,” and advising Bradford to consult its counsel about the process to appeal the CAB decision to court. Bradford, however did not appeal. Instead, Bradford waited to see if the district would deal with its “resubmission” during the February meetings of the Keystone board. When no action was taken, Bradford filed its appeal with CAB, alleging that the district had failed to act upon its resubmission within the 45 days required by the CSL.

On March 13, 2000, Keystone filed a response to the appeal in the nature of a motion to quash (dismiss) the appeal. Bradford responded and asked that CAB deny the motion to quash, appoint a hearing officer, establish an expedited briefing schedule and

¹ The decision in CAB 1999-8 is final and binding upon Bradford since no Petition for Review was filed with the Commonwealth Court. 24 P.S. §17-1717(i)(10).

schedule the case for decision on May 16, 2000. CAB heard argument on Keystone's Motion on May 16, 2000.

Legal Analysis

This appeal and subsequent motion raise an important question of first impression, which must be decided before the merits of the appeal can be addressed. This issue is whether a charter applicant, who has lost an appeal before CAB, can thereafter simply resubmit to the district its former charter application, with changes made in an effort to address the reasons for CAB's denial of its appeal.

Keystone contends that Bradford did not have the option of resubmitting its application to the district after CAB's decision. It suggests that Bradford should have appealed to court. This view finds support in section 1717-A(i)(10) of the CSL, which provides that all CAB decisions "shall be subject to appellate review by the Commonwealth Court." 24 P.S. §17-1717-A (i)(10).

Bradford, on the other hand, argues that nothing in the CSL prohibits revision of an application and its resubmission to a school district, even after affirmance of a previous denial by CAB. It is indeed accurate that the CSL does not specifically authorize resubmission to the school district after CAB has decided an appeal. Likewise, no language in the CSL either directly or implicitly supports Bradford's proposition. In fact, both the language in the CSL, as well as established principles of administrative process and due process militate against hearing this appeal.

The CSL states that "at the option of the charter school applicant, a denied application may be revised and resubmitted to the local board of school directors." 24 P.S. §17-1717-A(f). This provision immediately follows the subsection which describes in detail the school district process for consideration of an application and its action to grant or **deny** the application. 24 P.S. §17-1717-A(e). Thus, we construe the denied application, which can be resubmitted under subsection (f), as being the application that was denied by the school district under subsection (e). In contrast, the action by CAB is described by the statute as "affirming or denying the appeal." 24 P.S. §17-1717(i)(8). Thus, although Bradford's position is creative, it is not supported under this analysis of the statutory language regarding the respective roles of the district and then CAB.

In addition, the purpose of the provisions concerning revision and resubmission of charter applications also supports this view. A charter applicant is authorized to revise and resubmit its application to the school district in order to expedite the process. For example, if an applicant had omitted information in its application, this would enable the applicant to correct that omission. Thus, if an application were rejected for lack of a facility and the applicant subsequently secured a potential facility, the applicant could revise and resubmit the application to the district, rather than have to start the application process anew in the next annual cycle. This resubmission process is effective because the applicant is reacting directly to the school district regarding issues or weaknesses identified by the district during its review of the application.

Extending this principle to the appeal level, as suggested by Bradford, is unworkable and would deny Keystone's due process. Once a charter applicant has appealed to CAB and CAB has rendered its decision, another layer of review has been added between the district and the applicant. Now, Bradford is making revisions to its last application to Keystone not to satisfy Keystone's concerns, but rather to address the reasons for CAB's denial of the appeal. In this case, CAB's reasons for denial of the appeal do not include all of the district's reasons for denying the application. Bradford has made revisions based upon CAB's decision but is resubmitting the application to the district.

Consistent with the dictates of the CSL, our decisions address all of the issues that are raised on appeal. As a result, these decisions have the additional benefit of being instructive to the parties. However, where, as here, we upheld the district, the decision is not binding upon the district insofar as we rejected some of the district's grounds for denial. The district may disagree with our reasoning, but, because it was the prevailing party, it cannot appeal to court. Tomczak v. W.C.A.B. (Pro-Aire), 615 A.2d 993, 997 (Pa. Commonwealth Ct. 1992). Thus, these CAB conclusions have never been litigated in court, and the district would be denied the opportunity to litigate these matters if Bradford's appeal is permitted to continue. For this reason as well, the appeal should be dismissed.

We note that the proper course of action in this case would be for Bradford to file a new application with Keystone. Although this may be viewed as burdensome by Bradford, it is the only reasonable way to proceed. The process may be expedited by the steps Bradford has already taken, as expressed in its instant filing, to satisfy the concerns we identified in our prior decision. We have, of course, not reviewed this filing because of the procedural stance of this case. We urge the district to do so if and when Bradford submits a new application. In addition, we would hope that Bradford and Keystone can work together to develop a reasonable schedule for an application process, which facilitates the process and, if possible, still allows Bradford to open during the 2000-2001 school year.

For the reasons set forth above, we make the following:

ORDER

AND NOW, this _____ day of May, 2000, based upon the foregoing and the vote of this Board, the Keystone Oaks School District's Motion to Quash is granted and the February 28, 2000 appeal filed by the William Bradford Academy Charter School is dismissed.

For the State Charter School Appeal Board,

Eugene W. Hickok
Chairman