

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

In the Matter of:	:	
Graystone Academy Charter School	:	
	:	Docket No. 2012-01
v.	:	
	:	
Coatesville Area School District	:	

DECISION MOTION TO DISMISS

On January 20, 2012, the Graystone Academy Charter School (Graystone) filed an appeal from the decision of the Coatesville Area School District (Coatesville) to revoke its charter. Coatesville filed a Motion to Quash the appeal on January 24, 2012. On February 7, 2012, Coatesville filed a Motion to Dismiss the Appeal alleging that Graystone had failed to timely answer the Motion to Quash. Graystone responded to the Motion to Dismiss on February 8, 2012 and attached Answers to both the Motion to Quash and the Motion to Dismiss. On February 9, 2012, Coatesville filed an Answer to Graystone's Petition to Appeal and also provided the Charter Appeal Board (CAB) with the certified record of the proceedings before it. Graystone filed a Brief in Response to the Motion to Dismiss on February 17, 2012, and Coatesville filed a Reply Brief on February 21, 2012. Argument on the Motion to Dismiss was heard by CAB on February 21, 2012.

The issue raised by Coatesville's Motion to Dismiss is whether Graystone's appeal should be dismissed and its charter revoked for failure to timely respond to Coatesville's Motion to Quash. That Motion was premised upon the General Rules of Administrative Practice and Procedure (which rules were generally adopted by CAB) that

require answers to motions be filed within 10 days of service of the motion. 1 Pa. Code §35.179. The district states that its Motion was filed on January 24, 2012, and that Graystone's answer was due on February 3, 2012. Because Graystone did not file an answer by that date, the district argues that its Motion to Quash should be deemed unopposed and should be granted. In contrast, Graystone suggests that a scheduling letter it received modified the usual 10-day requirement and directed it to respond by way of a brief to be filed on March 9, 2012. Secondly, Graystone points out that it sent a letter to CAB on January 30, 2012 in which it expressed its opposition to the Motion to Quash. Thus, it argues that it has not missed its filing date, has not waived any objections to the Motion to Quash and asks that the Motion to Dismiss be denied.

The applicable regulation states that “[a]ny participant shall have 10 days within which to answer or object to any motion unless the period of time is otherwise fixed by the agency head or the presiding officer.” Thus, Graystone had 10 days to file an answer or otherwise object to Coatesville's Motion or such greater period of time as may have been permitted by CAB. As Graystone notes in its January 30, 2012 letter: (1) the Motion to Quash “is without merit”; (2) the district's reliance on the Germantown case “is in error; and (3) Graystone's appeal was timely filed under the CAB's regulations.” This would seem to satisfy the alternative of “otherwise objecting” to the motion. Moreover, CAB's scheduling letter of that same date is silent concerning the filing of an answer and simply notes that the Motion to Quash was filed; and, because the motion raised jurisdictional issues, it also directed the parties to file briefs. It is thus plausible that the charter school considered this to constitute a modification of the usual 10-day limit for responding to motions.

Based upon the above, in consideration of the pleadings filed herein and the argument of counsel presented at the CAB meeting, CAB voted to deny the Motion¹ and sets forth the following Order.

¹ The vote at the February 21, 2012 CAB meeting to deny the Motion to Dismiss was 6-1, with Mr. Yanyanin voting to grant the Motion.

