

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

Choices of William Penn Charter School	:	
	:	
	:	
v.	:	Docket No. CAB 2014-07
	:	
William Penn School District	:	

DECISION ON MOTION TO AMEND

This matter comes before the State Charter School Appeal Board (“CAB”) again on the William Penn School District’s (“District”) Motion to Amend CAB’s March 17, 2015 Order denying the District’s Motion to Dismiss in order to allow an interlocutory appeal so that the District may appeal CAB’s decision to the Commonwealth Court.

Choices of William Penn Charter School (“Choices”) filed a direct appeal with CAB on November 12, 2014 alleging that the District had failed to act on its revised and resubmitted application within the time period set forth in the Charter School Law (“CSL”). Choices had first applied to the District for a charter in November 2012, and that application was denied in February 2013. In November 2013, Choices filed a second charter school application and the Board of School Directors voted to deny that application in February 2014. On August 28, 2014, Choices submitted a revised application to the District; and when 45 days had passed without a decision, Choices filed its appeal with CAB pursuant to section 1717-A(g) of the Charter School Law (“CSL”) based upon the failure of the local board of school directors to grant or deny its resubmitted charter application within the time period specified in section 1717-A(f) of the CSL. The District filed a Motion to Quash the Appeal which CAB denied by way of an Order issued on March 17, 2015. The Motion was

denied because: (1) the Charter School Law does not contain a time limit for the filing of a resubmitted application; and (2) the District failed to act within the time period in the CSL for action on a resubmitted application. The District seeks CAB's endorsement of an immediate appeal to Commonwealth Court before the merits of the application are considered.

Pursuant to Pennsylvania Rule of Appellate Procedure 1311(b), the District is seeking to amend CAB's March 17, 2015 Order to include a statement that the Order involves a controlling question of law as to which there is substantial ground for a difference of opinion, and that an immediate appeal from the Order may materially advance the ultimate termination of the matter. Pa.R.A.P. Rule 1311(b). In order to obtain this amendment, however, the District must establish that CAB's March 17, 2015 Order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal from that Order may materially advance the ultimate termination of the appeal. Thus, the issue before CAB is whether the District has established that sufficient grounds exist to support amendment of its Order, pursuant to Rule 1311(b).

The District argues that the requested statement should be included in CAB's Order because this is a matter of first impression and such disposition would materially advance the ultimate disposition of the case because a decision on the merits will be to no avail if the District were to prevail before the court. In contrast, Choices argues that the motion to amend should be denied because the District has failed to demonstrate that the Order involves a controlling question of law in which there is substantial ground for a difference of opinion; or that granting the District's motion will materially advance the end of the appeal.

In addition, Choices points out that there is simply no time limit contained in the Charter School Law for the resubmission of applications and that the law is clear and unambiguous.

The CSL 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 CSL. 24 P.S. § 17-1717-A(g). In this case, it is clear that Choices' application was a resubmission since it was clearly so designated. Although the District treated the revised application as a new application, there is no written evidence that this was the District's position until counsel's representations after Vision's appeal was filed. The subsection of the CSL relevant to this appeal is subsection (f) which 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) also states, in relevant part:

At the option of the charter school applicant, a denied application may be revised and resubmitted to the local board of school directors.... 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).

The Rules of Statutory Construction require that when "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). The plain language of the CSL does not contain a deadline for a charter applicant to submit a revised application; yet the language above regarding a district's responsibility to act upon a revised and resubmitted application is clear and unambiguous. There are many other sections of the CSL which do contain timelines¹;

¹ See, 24 P.S. §§17-1717-A(c), 17-1717-A(d), 17-1717-A(e)(1), 17-1717-A(h), 17-1717(i)(3),(5),(7), (8), (9).

so the lack of a timeline here must be given meaning, and CAB takes that meaning to be that there is no time limit for submitting a revised charter application. Therefore, this appeal should go forward.

Finally, in order for the District to file an interlocutory appeal with Commonwealth Court, the law requires:

When a court or other government unit, in making an interlocutory order in a matter in which its final order would be within the jurisdiction of an appellate court, shall be of the opinion that such order *involves a controlling question of law* as to which there is *substantial ground for difference of opinion* that an immediate appeal from the order may materially advance the ultimate termination of the matter, it shall so state in such order. The appellate court may thereupon, in its discretion, permit an appeal to be taken from such interlocutory order.

42 Pa.C.S. § 702(b) (emphasis added). Because the CSL is clear, as explained above, CAB concludes that there is no controlling legal issue. Moreover, the District has not offered a compelling argument for why there are substantial grounds for a difference of opinion. CAB also concludes that an immediate appeal will only serve to delay, rather than to expedite, the final disposition of this appeal.


Thus, we make the following:

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ORDER

AND NOW, this 17th day of June, 2015, in accordance with the vote of this Board at its meeting on June 9, 2015², it is hereby ordered that the William Penn School District's Motion to Amend the Order of March 17, 2015 to Allow an Interlocutory Appeal is DENIED.


Pedro A. Rivera, Chairperson
State Charter School Appeal Board

Date Mailed: 6/17/15

² At its June 9, 2015 meeting the Board voted to deny the Motion to Amend, with Board Members Bracey, Cook, Munger, Peri, Yanyanin and Chairman Rivera voting to deny. Board Member Miller was absent.