

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

In Re:	:	
	:	
Independence Charter School	:	
Rising Sun Academy Charter School	:	
Delaware Valley Charter High School	:	Docket Nos. CAB 2000-2,
Kemetic Institute Charter School	:	2000-4 through 2000-10
Dimensions of Learning Charter School	:	
Leadership Learning Partners	:	
Genesis Charter School	:	
W.E.B. DuBois Charter School	:	
Appeals from Denials of Charter School	:	
Applications by the School District of	:	
Philadelphia	:	

OPINION AND ORDER

Background

The Charter School Law (“CSL”) provides that a local board of school directors shall, no later than 75 days after the first public hearing, grant or deny the charter. 24 P.S. §17-1717-A(e)(1) (emphasis added). If a school district fails to act within this time period, the applicant is permitted to file its application as an appeal to the Charter School Appeal Board (“CAB”)(emphasis added). 24 P.S. §17-1717-A(g). In such case, CAB is to review the application and then grant or deny a charter based on the criteria in subsection (e)(2) of section 1717-A. Essentially, this means that CAB stands in the shoes of the school district and reviews the application pursuant to the four-pronged statutory criteria, in other words, in its “original” jurisdiction.

The Philadelphia School District (“PSD”) received applications for charter schools for the 2000-2001 school year. PSD has admitted in its Motion to Quash that it did not grant or deny charters for these applicants within seventy-five (75) days of the first public hearing. PSD voted on these applications approximately two weeks after the running of the 75-day time period.

After the 75-day time period passed, and prior to PSD voting on the applications, seven of the listed charter school applicants filed appeals with CAB based on PSD's failure to act within the 75-day time period. When PSD finally voted on the applications, PSD denied charters to all seven of the applicants that had appealed to the CAB prior to PSD's vote. Another applicant, W.E.B. DuBois Charter School, did not file an appeal with CAB until after PSD voted and denied it a charter.¹

PSD filed a Motion to Quash with CAB seeking to have the appeals dismissed. PSD also filed a Petition to consolidate the appeals for purposes of the Motion to Quash, and also sought to have review of the records in these appeals stayed until a decision was made on the Motion to Quash. The cases were consolidated, including the W.E.B. DuBois case, for purposes of argument on the Motion to Quash, but the Petition to stay review of the records was denied.

For the reasons set forth below, we deny PSD's Motion to Quash in seven cases and grant the Motion to Quash in one case.

Legal Analysis – Directory v. Mandatory Provisions

The issue presented by PSD's Motion to Quash is whether the language of section 17-1717-A(e)(1) of the CSL is mandatory or directory. Generally, statutes that impose time limitations on adjudicatory tribunals are directory only. Snyder v. State Ethics Commission, 686 A.2d 843, 852 (Pa. Commw. 1996), appeal denied, 1997 Pa. LEXIS 2719 (12/22/97). Time limitations that are placed on procedures before administrative bodies, such as this 75-day provision, have been held to be directory rather than mandatory. See, Mickens-Thomas v. Commonwealth of Pennsylvania, Bd. of Probation and Parole et al., 699 A.2d 792, 796 (Pa. Commw. 1996). "When it relates to the time of doing something, "shall" has generally been

¹ W.E.B. DuBois filed its appeal under 24 P.S. §17-1717-A(g), or in CAB's "original jurisdiction," notwithstanding the fact that PSD voted and denied W.E.B. DuBois' charter application prior to W.E.B. DuBois filing its appeal.

regarded as directory, unless time is of the essence or the statute indicates that the provision is mandatory.” Commonwealth of Pennsylvania, Dept. of Transp. v. Claypool, 618 A.2d 1231, 1232, 152 Pa. Commw. 332, 335 (1992).

Both mandatory and directory provisions are to be followed and it is only in the effect of noncompliance that a distinction arises. When failure to follow the provision renders the proceedings to which it relates invalid, the provision is mandatory. When failure to follow the provision does not invalidate the proceedings, the provision is directory. Claypool, 618 A.2d at 1233, 152 Pa. Commw. at 335-36. Additionally, “whether a statute is mandatory or directory must be determined by considering legislative intent gleaned from review of the entire statute and from considering the nature and object of the statute and the consequences of the construction of it one way or the other.” West Penn Power Co. v. Pennsylvania Public Utility Commission, 104 Pa. Commw. 21, 27, 521 A.2d 75, 78 (1987). An exception to the general rule that time limitations on adjudicatory tribunals are directory is where the individual seeking redress from the agency’s failure to issue a decision can demonstrate prejudice. Sanders v. Commonwealth of Pennsylvania, Bd. of Probation and Parole, 162 Pa. Commw. 424, 428, 639 A.2d 872, 874 (1994).

Charter School Law

Section 17-1717-A(g) permits a charter applicant to file its application as an appeal to CAB if the school district fails to act within certain time periods, one of which is the 75-day time period in which the school district is to grant or deny a charter. Some of the charter school applicants argue that the appeal allowed by section 17-1717-A(g) of the CSL provides a “penalty” or “consequence” for a school district’s failure to act within the required 75-day time period, thereby indicating that the provision is mandatory. If this statutory right to appeal makes

the 75-day time period mandatory, then any action taken by a school district thereafter is invalid. This would mean that even if an applicant did not appeal a school district's failure to act within the 75-day period, the school district would be barred from taking any further action, even deciding to grant a charter on the 76th day. We do not believe this was the intent of the Legislature.

We find that the language set forth in section 17-1717-A(e)(1) is directory rather than mandatory. The CSL does not indicate that the provision is mandatory because it does not state that no action can be taken after the 75-day time period, nor does it state that failure to act within the time period deems the charter to have been granted or denied. Section 17-1717-A(e)(1) merely states that the school district shall grant or deny a charter no later than 75 days after the first public hearing. Therefore, based on this language and relevant case law, we hold that the time period set forth in section 17-1717-A(e)(1) is directory.

Although the language is directory, the CSL does allow an applicant to appeal to CAB after the 75-day period has expired without the school district taking action. Since the provision is directory, the school district may take action after the 75-day period has run. However, since the applicant is specifically permitted to appeal to CAB after the 75-day period has run, the filing of an appeal pursuant to this provision, vests jurisdiction in CAB to hear the appeal in its "original" jurisdiction.² CAB reviews the application under its "original" jurisdiction because section 17-1717-A(g) states that CAB is to review the application and grant or deny a charter based on the criteria in subsection (e)(2) of section 17-1717-A.

Therefore, if a school district fails to grant or deny a charter within the 75-day period and

² One other charter school applicant filed an appeal with CAB prior to PSD acting on its charter application. When PSD granted this applicant a charter, the applicant withdrew its appeal, which divested CAB of jurisdiction. Thus, our decision herein, and particularly our above interpretation of the legislative intent of Section 17-1717-A(9), does not alter PSD's grant of the charter.

the applicant files an appeal to CAB before the school district acts, CAB has “original” jurisdiction to review the application and grant or deny a charter. In the event a school district denies a charter after such an appeal is filed with CAB, CAB reviews the application and makes its determination to grant or deny a charter based on the statutory criteria set forth in section 17-1717-A(e)(2).

If the school district does not act within the 75-day period, but acts before the charter applicant files an appeal with CAB, the applicant cannot have its appeal heard by CAB in its “original” jurisdiction. After the 75-day period has run, CAB does not have the authority to hear an appeal in its “original” jurisdiction unless and until the appeal is filed. Therefore, any appeal filed after the school district acts will not be heard under CAB’s “original” jurisdiction. In such an instance, the appeal process will be the same as when a school district denies an applicant a charter prior to the 75-day time period.

We believe this interpretation of the relevant provisions complies with the overall intent of the Legislature. School districts are granted the initial jurisdiction to review and act upon a charter school application. However, the Legislature provided a safeguard against a school district delaying action on an application or failing to act on an application by allowing a charter applicant the right to appeal the school district’s failure to act within a certain period of time.³ If the applicant appeals a school district’s failure to act within the 75-day period before the school

³ PSD argued at CAB’s hearing that 24 P.S. §17-1717-A(g) requires a school district to both fail to hold a public hearing and fail to grant or deny a charter within the 75-day time period before the charter applicant can have its appeal heard in CAB’s original jurisdiction. This argument is not tenable and does not comport with common sense or the intent of the Legislature. Under such a scenario, a district would only have to hold a public hearing, but not vote to grant or deny the charter within the prescribed time period. This would allow a district to delay action on the charter, which the Legislature sought to prevent when it gave the applicant the right to appeal to CAB’s original jurisdiction when the district failed to act within the 75-day time period. PSD also argued that when a charter applicant appeals the district’s failure to act within the 75-day time period that both CAB and the district have jurisdiction to grant or deny the charter. This would create a “race” between the district and CAB, and whichever entity acted first would be the deciding entity. Such a situation was not contemplated by the Legislature, does not comport with the intent or spirit of the Charter School Law, and will not be adopted by CAB.

district acts, CAB will hear the applicant’s appeal in its “original” jurisdiction. If the applicant decides to wait until the school district acts before it appeals to CAB, then the appeal will not be reviewed pursuant to CAB’s “original” jurisdiction.

Based upon the above, we make the following:

Order

PSD’s Motion to Quash is denied in part and granted in part. The Motion is denied as it relates to the following appeals:

- Independence Charter School
- Rising Sun Academy Charter School
- Delaware Valley Charter High School
- Kemetic Institute Charter School
- Dimensions of Learning Charter School
- Leadership Learning Partners
- Genesis Charter School

The Motion is granted as it relates to the appeal of W.E.B. DuBois Charter School. Therefore, all the appeals, except for that of W.E.B. DuBois Charter School, will be reviewed under the CAB’s “original” jurisdiction. W.E.B. DuBois Charter School must obtain the signatures required in Section 17-1717-A(i)(2) of the CSL and must present the petition to the proper Court of Common Pleas as set forth in Section 17-1717-A(i)(5) of the CSL, to be eligible to appeal to CAB. These signatures must be obtained within the later of sixty (60) days from the date of the district’s written notice of denial of the charter or of the date of this Opinion and Order.

The Charter School Appeal Board

Eugene W. Hickok
Chairman

Date: