

COMMONWEALTH OF PENNSYLVANIA
STATE CHARTER SCHOOL APPEAL BOARD

GERMANTOWN SETTLEMENT	:	
CHARTER SCHOOL	:	
Petitioner	:	
	:	
v.	:	DOCKET NO. CAB 2008-06
	:	
SCHOOL DISTRICT OF PHILADELPHIA	:	
Respondents	:	

OPINION

I. INTRODUCTION

This matter comes before the State Charter School Appeal Board (“CAB”) on appeal by the Germantown Settlement Charter School (“Germantown”) from the denial of Germantown’s renewal application by the School District of Philadelphia (the “District”). The District denied Germantown’s renewal application on October 15, 2008. CAB received a letter from Germantown on November 13, 2008 stating that it was a formal notice of appeal with regards to the renewal of Germantown’s charter. On December 1, 2008, CAB received from the District a Motion to Quash the Purported Appeal of Germantown Settlement Charter School.

II. FINDINGS OF FACT

1. The District received Germantown’s application for renewal on or about January 15, 2008.
2. The District served notice on Germantown of its intention to revoke or not renew the charter and on June 24, July 31, and August 7, 2008, the School Reform Commission (“SRC”) held public hearings to address the charges and notice of revocation/nonrenewal.
3. On October 15, 2008, the SRC voted to revoke/nonrenew Germantown’s charter.

4. A copy of the decision to revoke/nonrenew Germantown's charter was sent to Germantown on October 16, 2008.

5. On October 20, 2008, Germantown's Board of Trustees authorized the filing of an appeal of the District's decision to CAB.

6. CAB received a letter from Germantown on November 13, 2008 stating that it was a formal notice of appeal with regards to the renewal of Germantown's charter and that it was preparing its appeal.

7. On December 1, 2008, CAB received the District's Motion to Quash the Purported Appeal of Germantown Settlement Charter School ("Motion to Quash") arguing that Germantown's letter filed on November 13, 2008 was not sufficient to effectuate an appeal and that the deadline for filing an appeal was November 14, 2008.

8. By letter dated December 31, 2008, counsel for CAB wrote to Germantown (with a copy to the District's counsel) noting that even though Germantown filed a notice of appeal on November 13, 2008, Germantown had not subsequently filed a petition of appeal in accordance with 1 Pa. Code §35.17. Counsel also noted that Germantown had not filed any responsive pleading to the District's Motion to Quash. In addition, counsel informed Germantown that the Motion to Quash would be before CAB at its February 24, 2009 meeting and that the parties could provide argument to CAB on the Motion to Quash.

9. On February 2, 2009, counsel for Germantown entered his appearance with CAB and on February 17, 2009 filed Germantown's Opposition to the Motion to Quash and Memorandum in support thereof.

10. The District filed its Memorandum of Law in Support of its Motion to Quash on February 18, 2009.

11. On February 20, 2009, Germantown filed a Petition of Appeal with CAB.

12. On February 24, 2009, counsel for Germantown and the District argued their respective positions regarding the District's Motion to Quash.

13. After hearing the parties' arguments regarding the Motion to Quash, CAB went into an executive session to receive legal advice from its counsel.

14. After the executive session, CAB voted 6-0 to grant the Motion to Quash.

II. CONCLUSIONS OF LAW

1. The District sent Germantown the SRC's decision to revoke/nonrenew Germantown's charter on October 16, 2008.

2. Germantown was required to file a Petition of Appeal on or before November 14, 2008 in order for the appeal to be timely.

3. Germantown's letter filed with CAB on November 13, 2008 was not a petition of appeal because it did not comply with the requirements of 1 Pa. Code §35.17. In addition, Germantown admitted its letter was not a petition of appeal because it stated that it was preparing its appeal.

4. The letter from CAB's counsel to Germantown on December 31, 2008 was not the acceptance of a defective pleading but simply a letter noting that Germantown had failed to file a petition of appeal, had failed to file any response to the District's Motion to Quash, and that the Motion to Quash would be addressed at CAB's February 24, 2009 meeting.

5. Germantown did not file a Petition of Appeal with CAB until February 20, 2009.

6. CAB acted within its discretionary authority when it granted the Motion to Quash.

III. DISCUSSION

The Charter School Law (“CSL”) provides that if a school district revokes/nonrenews a charter school’s charter, the charter school may appeal that decision to CAB. 24 P.S. §17-1729-A(d). The decision must be appealed to CAB within thirty (30) days after the entry of the order from which the appeal is taken. 24 P.S. §17-1749-A(c); 42 Pa.C.S.A. §5571(b).

Section 35.17 of the General Rules of Administrative Practice and Procedure provides that:

Petitions for relief under a statute or other authority delegated to an agency shall be in writing, shall state clearly and concisely the grounds of interest of the petitioner in the subject matter, the facts relied upon and the relief sought, and shall cite by appropriate reference the statutory provision or other authority relied upon for relief.

1 Pa. Code §35.17. Germantown’s “notice of appeal” received by CAB on November 13, 2008 did not comply with any of the requirements set forth in 1 Pa. Code §35.17. The “notice of appeal” simply stated that Germantown was noticing CAB of an appeal with regards to renewal of its charter and that it was preparing its appeal. Thus, if Germantown was preparing its appeal, it clearly did not intend for the letter to constitute its petition of appeal.¹

On December 1, 2008, CAB received the District’s Motion to Quash the Purported Appeal of Germantown Settlement Charter School. The District argued that Germantown’s letter filed on November 13, 2008 was not sufficient to effectuate an appeal and that the deadline for filing an appeal was November 14, 2008.

CAB received no further correspondence from Germantown until February 2, 2009 when counsel entered his appearance on behalf of Germantown. Germantown filed a Memorandum in Opposition to the Motion to Quash on February 17, 2009 and filed a Petition of Appeal on

¹ In his argument to CAB, Germantown’s counsel stated that Germantown “filed a notice of appeal. It didn’t file a petition of appeal.” (CAB transcript, Feb. 24, 2009, p. 13).

February 20, 2009. It is clear that Germantown did not file a petition of appeal within thirty (30) days after receipt of the District's decision to revoke/nonrenew its charter. Thus, Germantown did not file a timely appeal with CAB and, on that basis, CAB has the authority to grant the District's Motion to Quash.

Germantown has argued that a letter from CAB's counsel to Germantown on December 31, 2008, constituted the acceptance of a defective pleading which would allow Germantown to correct the defect. 1 Pa. Code §31.5. However, the letter was not sent to Germantown until after the thirty (30) day appeal period had expired and was not meant to be an acceptance of the letter as a defective petition of appeal and did not advise Germantown that any deficiency could be corrected. The letter simply noted that Germantown had not filed a Petition of Appeal and had not responded to the District's Motion to Quash and advised that the Motion to Quash would be addressed at CAB's February 24, 2009 meeting. Thus, CAB rejects Germantown's argument that counsel's December 31, 2008 letter was the acceptance of a defective pleading and that Germantown was allowed to cure the defect.

Even if CAB agreed that counsel's letter of December 31, 2008 was the acceptance of a defective pleading and allowed Germantown to cure the defect, Germantown failed to cure the defect within a reasonable period of time. The December 31, 2008 letter advised Germantown that the Motion to Quash would be addressed at CAB's February 24, 2009 meeting.

Germantown waited until February 2, 2009, which was thirty-three (33) days after the December 31, 2008 letter, to hire counsel to represent Germantown at the February 24, 2009 CAB meeting. Germantown did not file its Opposition to the Motion to Quash until February 17, 2009 and did not file its Petition of Appeal until February 20, 2009. Thus, the Petition of Appeal was filed fifty-one (51) days after the December 31, 2008 letter, and only four (4) days before CAB's

meeting on February 24, 2009. So even if Germantown was allowed to cure its “defective pleading”, Germantown failed to file any of its pleadings within a reasonable period of time.² Therefore, CAB acted within the bounds of its discretion by granting the District’s Motion to Quash.

Germantown’s counsel also argued that 1 Pa. Code §31.15 allows Germantown to make an oral motion at CAB’s hearing for an extension of time for filing the petition of appeal based on good cause shown. Counsel’s argument, that good cause existed for allowing an extension of time to file the petition of appeal, is that after Germantown’s application was denied it was without counsel and was unable to find new counsel before the filing deadline of November 14, 2008. However, when Germantown filed its notice of appeal it did not mention that it did not have counsel, that it was having problems finding new counsel, or that not having counsel was the reason it could not file a timely petition of appeal. In addition, even after Germantown retained counsel on February 2, 2009, it did not file a Petition of Appeal until February 20, 2009, which was only four (4) days before CAB’s meeting. The request for extension of time was not made in conjunction with counsel’s entry of appearance, at the time that the answer to the motion to quash was filed or with the filing of the Petition of Appeal. This motion was made orally at the hearing. (CAB transcript, February 24, 2009, p. 14). As with the Motion to Dismiss, it is within CAB’s sound discretion whether to allow an extension of time to file the appeal, and CAB finds that Germantown did not establish good cause for failing to file a timely appeal. Thus, we hereby also deny Germantown’s oral extension request.

² Under the CSL, a charter school’s charter remains in effect until final disposition of CAB. Thus, if a charter school is not required to file its Petition of Appeal in a timely manner, a charter school could delay the filing so that CAB could not enter a final disposition, which would allow the charter school to remain open indefinitely.

IV. CONCLUSION

Based on all of the above, Germantown failed to timely file a Petition of Appeal with CAB, and CAB makes the following:

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ORDER

AND NOW, this 31st day of March, 2009, based upon the foregoing and the vote of this Board³, the District's Motion to Quash is **GRANTED** and Germantown's Petition of Appeal is **DENIED** as untimely.

For the State Charter School Appeal Board

Gerald L. Zahorchak, D.Ed.
Chairman

Date Mailed: 03/31/2009

³ At the Board's February 24, 2009 meeting the District's Motion to Quash was granted by a vote of 6-0, with members Barker, Green, Reeves, Schweighofer, Shipula and Zahorchak voting to grant the Motion.