

**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 ON MOTION TO QUASH

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 to which Graystone responded on February 8, 2012.¹ The parties were directed to and did file briefs regarding the Motion to Quash, and the Motion was argued before the Board on April 25, 2012.

The issue raised by Coatesville's Motion to Quash is whether Graystone's appeal should be dismissed and its charter revoked for failure to file its appeal within 30 days of Coatesville's revocation decision. Coatesville's Motion to Quash is based upon several theories. First, citing to communications from counsel to the Charter School Appeal Board (CAB), it argues that "CAB has long held" that appeals from revocation or nonrenewal decisions must be filed within 30 days. Second, Coatesville notes that in the previous revocation and nonrenewal cases decided by CAB, the appeals were all filed within 30 days of the date of the district adjudication. Finally, Coatesville contends that

¹ Coatesville had also filed a Motion to Dismiss the Appeal alleging that Graystone did not timely respond to the Motion to Quash. This Motion was argued on March 30, 2012 and was dismissed.

CAB's prior decision in *Germantown Settlement Charter School v. School District of Philadelphia*, CAB Docket No. 2008-06, is controlling insofar as it dismissed an appeal because it was filed more than 30 days after Philadelphia's decision to non-renew the school's charter. Because the latest date upon which Graystone was served the revocation decision was December 7, 2011 and the appeal was not filed until January 24, 2012, 46 days later, Coatesville argues that the appeal was untimely and should be quashed.

Graystone makes several opposing arguments. First, Graystone suggests that several of CAB's publications indicate that the appeal time frame is 60, rather than 30, days. Second, Graystone argues that the *Germantown* decision is clearly factually distinguishable from the instant case. Alternatively, Graystone argues that even if *Germantown* is considered to be applicable, it was wrongly decided because it applied an appeal time applicable to the courts rather than to an administrative proceeding. Finally, Graystone contends that CAB has decided numerous appeals on the merits in cases where the appeals were filed 46 or more days after the date of the school district adjudication. Thus, Graystone asks that the Motion to Quash be denied.

The Charter School Law is silent on this issue, and CAB has not by way of regulation, informal guidance or through its decisions clearly established the time within which the appeal of a decision to revoke or non-renew a charter must be filed. The alleged pronouncements relied upon by both parties in support of their respective positions are not dispositive. For example, Coatesville relies upon a 1999 memorandum from CAB's counsel to the Director of the Office of Educational Initiatives. This was an internal legal memo to a PDE official, and it was not directed to CAB. Thus, it cannot be

said to represent CAB's establishment of a revocation appeal deadline at the time of the first revocation appeal. The district also refers to a 1999 letter to counsel for the charter school stating that the "appeal petition must be filed within 30 days of the District's revocation decision." This letter is consistent with the advice provided to PDE; however, there is no evidence or indication that CAB adopted this position. Thus, we do not find that CAB has yet established a firm appeal time. In contrast, Graystone relies upon a document entitled "Charter School Appeal Board Process" which is available on PDE's website and a communication from PDE arguing that the appropriate appeal filing time is 60 days. Neither document, however, supports this proposition. The time limit in the "Charter School Appeal Board Process" applies only to the collection of signatures to authorize the filing of an appeal under Section 17-1717(i)(2). The language of the document is "[a]pplicants gather signatures to appeal the denial within 60 days of the date of the denial notice." Although this language is a bit ambiguous in that it is not clear whether "within 60 days" modifies the gathering of signatures or the appeal, reference back to the statute makes clear that the time limit is modifying the signature collection process. Thus, this argument too is rejected.

In addition, the arguments of both parties, based upon their analysis of the actual appeal times in previous cases filed with CAB, are unpersuasive. Because, as indicated previously, CAB has not, by way of regulation, set an appeal time in cases of revocation or nonrenewal appeals, the fact that the appeals referenced by the district were all filed within 30 days or that those cited by Graystone were filed more than 30 days after the adjudication of the district represents factual circumstances; but it does not constitute, nor would it establish, an appeal time as a matter of practice. Appeal times that circumscribe

a party's right to challenge agency adjudications must be formally and properly promulgated. *See, CashAmerica Net. Of Nevada, LLC v. Com.*, 978 A.2d 1028 (Cmwlth. 2009).

We turn now to the arguments based upon CAB's prior decision in *Germantown*. The facts in this case are distinguishable. The present case presents us with a district adjudication to revoke, followed 46 days later by the filing of a petition to appeal. In contrast, *Germantown's* procedural history is far more complex. The decision to revoke in that case was issued in mid-October, and within 30 days the charter school sent a notice of appeal which indicated that the actual appeal was being prepared. When nothing had been filed by December, the district filed a motion to quash. Subsequently, the motion was scheduled for argument; and not until late February, and 4 days before argument, did the charter school finally file its appeal. Under these facts and in reliance upon 42 Pa.C.S.A. §5571(b), CAB found the appeal to be untimely and granted the motion to quash. However, Graystone argues that this decision was in error insofar as it relied upon a time-line applicable to the courts. In retrospect, we agree that CAB was applying this provision as an example to support its decision to dismiss the *Germantown* appeal because of the extremely dilatory behavior of the charter school in that case.

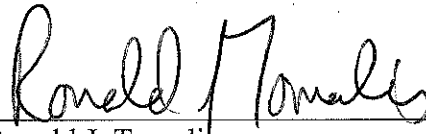
Thus, we hold that we have not set a specific appeal time from decisions to revoke or nonrenew charters. Having not done so, we will not penalize Graystone for an appeal filed 46 days after Coatesville's decision.

Based upon the above, in consideration of the pleadings filed herein and of the argument of counsel presented at the CAB meeting, CAB voted to deny the Motion and makes the following:

ORDER

AND NOW, this 18th day of June, 2012, based upon the foregoing, it is hereby ordered that the Motion to Quash filed by Coatesville is DISMISSED²; and Graystone's appeal will be assigned to a hearing officer who shall: (1) compile and present the record to CAB; (2) address Graystone's Motion to Open and Supplement the Record; and (3) hold any hearings necessary in connection with that Motion.

For the State Charter School Appeal Board



Ronald J. Tomalis
Chairman

Date Mailed: 6/18/12

² At the Board's April 25, 2012 meeting the School District's Motion to Quash was denied by a vote of 6 to 0, with Members Barker, Magnotto, Marks, Munger, Tomalis and Yanyanin voting to deny the Motion.