

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

In the Matter of :
Roberto Clemente Elementary Charter :
School :
 : **Docket No. 2012-03**
v. :
 :
Allentown School District :

DECISION ON MOTION TO QUASH

On February 24, 2011, the Allentown School District (“District”) denied Roberto Clemente Elementary Charter School’s (“RCECS”) application for a charter. RCECS subsequently filed a signature petition with the Lehigh County Court of Common Pleas so as to be authorized to appeal the District’s decision. The Court found the signature petition to be sufficient on February 16, 2012. On March 13, 2012, the District filed a Notice of Appeal in the Commonwealth Court to the trial court’s order of sufficiency, which appeal is still pending. On or about April 17, 2012 RCECS filed a Petition for Appeal with the Charter School Appeal Board (“CAB”) to challenge the denial of the charter by the District. On May 3, 2012, the District filed a Motion to Quash the appeal alleging that an automatic supersedeas bars the CAB from deciding the case. RCECS filed a Reply Brief to the Motion to Quash on May 29, 2012, alleging that there is no automatic supersedeas.

The issue raised by the District’s Motion to Quash is whether RCECS’s appeal should be quashed pending the outcome of the signature sufficiency appeal. The Motion was premised upon the Pennsylvania Rules of Appellate Procedure 1701 and 1736, Pa.R.A.P. 1701; Pa.R.A.P. 1736, which provide for an automatic supersedeas while an appeal is pending. The District argues that, consistent with these Rules, its appeal in the Commonwealth Court creates an

automatic supersedeas while the appeal is pending. Unless the appeal is affirmed, the necessary determination on the sufficiency of the signatures under 24 P.S. §17-1717-A(i)(5) does not exist to allow RCECS to appeal and to authorize CAB to hear the appeal. RCECS, however, suggests that the District is not entitled to an automatic supersedeas for two reasons. First, RCECS contends that the petition for review is in an administrative matter, and as such is beyond the scope of Rules 1701 and 1736. *Colston v. Dep't of Community Affairs*, 104 Pa. Cmwlth. 165, 521 A.2d 513 (1987). Second, it argues that interpreting Rule 1736 to create an automatic supersedeas in these cases would create an absurd result and be inconsistent with the legislative intent of the Charter School Law to provide for an expedited application and review process. Alternatively, RCECS asks CAB to vacate the automatic supersedeas.

The Charter School Law conditions the right of a charter school applicant to appeal the denial of its application by a school district upon obtaining a certain number of district resident signatures on a petition, which petition must be found sufficient by the local court of common pleas. 24 P.S. § 17-1717-A(i)(2)-(5). Once the court determines that a signature petition is sufficient, the court transmits the decree to CAB which is then authorized to accept and hear an appeal. 24 P.S. § 17-1717-A(i)(5). In this case, no decree has been transmitted to CAB, most likely because of the appeal to Commonwealth Court. The Rules cited by the District and that apply to the Motion to Quash state that after an appeal is taken the trial court may no longer proceed further in the matter, and that any political subdivision must suspend proceedings related to the case. Thus, the case must be suspended until the appeal in the Commonwealth Court has resulted in a decision that the signature petition is sufficient.

In regard to RCECS's argument, it is correct that when the petition for review is in an administrative matter, automatic supersedeas does not apply. *Colston v. Dep't of Community*

Affairs, 104 Pa. Cmwlth. 165, 521 A.2d 513 (1987). However, in this instance, RCECS's appeal for review in the trial court was a civil action, not an administrative review; so automatic supersedeas applies. RCECS also contends that absurd results should be avoided when interpreting a statute or a court rule. See 1 Pa.C.S. § 1922(1). This rule of construction is only applied, however, when there is an ambiguity in the statute. 1 Pa.C.S. § 1921(b). There is no ambiguity in this case; so automatic supersedeas still applies. A court decree finding a signature petition sufficient is necessary in order for a charter school to file an appeal with CAB. Moreover, it is certainly not absurd to wait for the Commonwealth Court to decide an issue that must be adjudicated before CAB can review the appeal.

In the alternative, if CAB concludes that the Commonwealth Court filing generated an automatic supersedeas, RCECS seeks to have the automatic supersedeas vacated. A motion to vacate an automatic supersedeas must establish: (1) that RCECS is likely to prevail on the merits; (2) that without the requested relief RCECS will suffer irreparable injury; and (3) that removal of the supersedeas will not substantially harm other parties or adversely affect the public interest. *Ricket v. Latimore Township*, 960 A.2d 912, 923 (2008).¹ Because, as detailed above, CAB does not believe RCECS is likely to prevail on the merits, the automatic supersedeas will not be vacated.

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

¹ The Court of Common Pleas already ruled on an identical request made to it and denied RCECS's request to vacate the stay. *In Re: Petition to Appeal the Denial of the Charter School Application of the Roberto Clemente Elementary Charter Sch.*, No. 2011-C-2764.

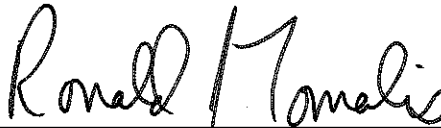
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ORDER

AND NOW, this ____ day of _____, 2012, based upon the foregoing, it is hereby ordered that the Allentown School District's Motion to Quash is GRANTED; and the appeal filed by RCECS is quashed without prejudice.

For the State Charter School Appeal Board



Ronald J. Tomalis
Chairman

Date Mailed: _____