

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

In the Matter of	:	
New Hope Academy Charter School	:	
	:	Docket No. 2012-13
v.	:	
	:	
City of York School District	:	

DECISION MOTION TO QUASH

The City of York School District (York) voted to non-renew the charter it had previously granted to New Hope Academy Charter School (New Hope) and issued its written non-renewal decision on August 16, 2012. New Hope filed an appeal from that decision on October 1, 2012. York, on October 19, 2012, filed its Answer and also filed a Motion to Quash the appeal. New Hope responded to the Motion to Quash with a Memorandum of Law on October 24, 2012. York filed a Memorandum of Law in Support of its Motion to Quash on or about November 16, 2012 and New Hope filed a reply on December 3, 2012. The Motion was then argued before the Charter Appeal Board (CAB) on December 11, 2012.

The issue raised by York's Motion to Quash is whether New Hope's appeal should be dismissed and its charter non-renewed for failure to timely file its appeal, which York contends was due within 30 days of the date of issuance of York's non-renewal decision. York's Motion to Quash is based upon several theories. First, York contends that CAB had the authority to and did previously set an appeal deadline for cases such as this. York points to CAB's prior decision in *Germantown Settlement*

Charter School v. School District of Philadelphia, CAB Docket No. 2008-06, as precedent because in that case CAB dismissed an appeal because it was filed more than 30 days after Philadelphia's decision to non-renew the charter of Germantown Settlement Charter School. Because the non-renewal decision in this case was sent to New Hope on August 16, 2012 and the appeal was not filed until October 1, 2012, 46 days later, York argues that the appeal was untimely and should be quashed. Second, York cites to documents from counsel to CAB and argues that CAB had in the past held that appeals from revocation or non-renewal decisions must be filed within 30 days. Third, York addresses the decision in *Graystone Academy Charter School v. Coatesville Area School District*, CAB Docket No. 2012-01, which denied a motion to quash in a similar situation. York points to some technical deficiencies in the decision and contends that it was not available on the Department's website at the time when New Hope filed its appeal. York also argues that *Graystone* was wrongly decided, and should not be held to be controlling because it allows for the absurd result that a charter could continue to operate indefinitely after a non-renewal decision.

New Hope makes several opposing arguments. First, New Hope contends that the *Germantown* decision was wrongly decided because it applied an appeal time applicable to the courts rather than to an administrative proceeding and also relied upon a provision of the Charter School Law that contains no appeal time limit. It also contends that the documents relied upon by York do not establish a binding rule or norm because they were not properly promulgated. Finally, New Hope argues that the more recent decision in *Graystone* is factually indistinguishable from this appeal, has a sound legal basis and should be followed. Thus, New Hope asks that the Motion to Quash be denied.

As we have concluded previously, 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 memoranda of CAB's counsel, which are also relied upon by York in support of its position, are not dispositive. For example, York 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 Pennsylvania Department of Education (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. York also refers to a 1999 letter from CAB's counsel stating that the "appeal petition must be filed within 30 days of the District's revocation decision." This letter is consistent with the advice counsel had provided to PDE; however, there is no evidence or indication that CAB adopted this position. Thus, we find that CAB has not yet established a firm appeal time. We concur with New Hope's contention that in order to do so, CAB must follow its formal rulemaking process. *See CashAmerica Net. of Nevada, LLC v. Com.*, 978 A.2d 1028 (Cmwlth. 2009).

In addition, we reject York's argument that by allowing this appeal to move forward and not enforcing a strict 30 day appeal time, CAB creates an absurd result. In both this case and in *Graystone*, the charter schools did not, as suggested by York, continue to enroll students and operate while waiting for a prolonged period of time before filing an appeal. In fact, the appeals in both cases were filed 46 days after the issuance of the written decisions of the districts.

We turn now to the arguments based upon CAB's prior decision in *Germantown*. The facts in *Germantown* are distinguishable from the instant matter. Here, the 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 *Germantown* 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 to quash was scheduled for argument before CAB. However, the charter school did not file its appeal until late February, only four days before argument. Under these facts and in an exercise of discretion, CAB found the appeal to be untimely and granted the motion to quash.

New Hope argues that the *Germantown* decision was in error insofar as it relied upon a timeline 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 in *Germantown* we had not set a specific appeal time from decisions to revoke or non-renew charters; having not done so there, we will not penalize New Hope for an appeal filed 46 days after York's decision.

Based upon all of 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 orders as follows:

COMMONWEALTH OF PENNSYLVANIA
STATE CHARTER SCHOOL APPEAL BOARD


In the Matter of :
New Hope Academy Charter School :
 : **Docket No. 2012-13**
v. :
 :
City of York School District :

ORDER

AND NOW, this 21st day of March, 2013, based upon the foregoing, IT IS
HEREBY ORDERED that the Motion to Quash filed by the School District of the City of
York is DENIED.¹

A copy of this Decision and Order will be transmitted to the assigned hearing
officer who shall set a briefing schedule, compile and present the record to CAB and
address the School District of the City of York's Motion to Supplement the Record and
hold any hearings necessary in connection with that Motion.

For the State Charter School Appeal Board



Ronald J. Tomalis
Chairman

Date Mailed: 3/21/13

¹ At the Board's December 11, 2013 meeting the School District's Motion to Quash was denied by a vote of 7 to 0, with members Barker, Lawrence, Magnotto, Marks, Munger, Tomalis and Yanyanin voting to deny the Motion.