

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Richland County School District One Board of
Commissioners,

Docket No. 19-ALJ-30-0036-AP

Appellant,

RECEIVED

vs.

ORDER JUN 06 2019

Clear Dot Charter School, Charter Institute at
Erskine,

RECEIVED
Court of Appeals

Respondents.

JUN 11 2019

SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. §§ 59-40-90, 1-23-380, and 1-23-600(D) (Supp. 2018). Richland County School District One Board of Commissioners (Appellant) appeals the decision of Charter Institute at Erskine (Charter Institute) granting final approval to Clear Dot Charter School Columbia's (Clear Dot) charter application. Appellant filed this appeal with the ALC on February 15, 2019 seeking review of Charter Institute's decision announced at its Board of Directors meeting on December 11, 2018. Respondents Charter Institute and Clear Dot filed a Joint Motion to Dismiss Appellant's appeal on March 22, 2019, and an Amended Joint Motion to Dismiss Appellant's appeal on March 28, 2019, stating that Appellant's appeal is untimely as it was filed more than 30 days after Charter Institute's final approval of the charter application of Clear Dot was issued, and therefore, should be dismissed pursuant to ALC Rules 23 and 38. On April 10, 2019, Appellant filed its response to the amended motion stating that no written decision approving the charter application was ever provided to Appellant.

STANDARD OF REVIEW

After providing the public with notice of the hearing on Clear Dot's charter application, Charter Institute announced its final decision to grant Clear Dot's charter application on the record during a public Board of Director's meeting on December 11, 2018. On February 15, 2019, Appellant filed its notice of appeal challenging the Institute's decision to grant final approval of Clear Dot's charter application.

The Court's jurisdiction over an appeal of an agency's decision is defined by the Administrative Procedures Act (APA). See S.C. Code Ann. § 1-23-600(D) (vesting the Court

FILED

May 7, 2019

SC ADMIN. LAW COURT

with jurisdiction over “appeals from final decisions of contested cases”). The APA further outlines the steps required to invoke the Court’s appellate jurisdiction:

Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency and all parties of record.

S.C. Code Ann. § 1-23-380(1).¹ A “final decision” of an agency must be in writing or announced orally on the record. Id. § 1-23-350.

The Charter Schools Act expressly incorporates § 1-23-380 as the procedure for appealing to the ALC a school district’s decision regarding a charter application. See S.C. Code Ann. § 59-40-90 (“A final decision of the school district...may be appealed by any party to the [ALC] as provided in Sections 1-23-380(B) and 1-23-600(D).”). Further, the ALC has repeatedly held that its appellate process is governed by Section 1-23-380, including the jurisdictional requirement that a notice of appeal be filed within thirty days after the agency renders its final decision. See, e.g., Allendale Cnty. Sch. Dist. v. S.C. Pub. Charter Sch. Dist. and Virgin Johnson Acad. of Excellence, Case No. 11-ALJ-30-0404-AP (S.C. Admin. Law Ct. Nov. 4, 2011) (dismissing an appeal of a charter school application for lack of jurisdiction and holding that under S.C. Code Ann. § 1-23-380(B) “[t]he thirty (30) day time limit for filing and serving a notice of appeal to the [ALC] is a jurisdictional matter”); Simun v. S.C. DSS, Case No. 98-ALJ-18-0427-AP, at *1 (S.C. Admin. Law Ct. Aug. 17, 1998) (dismissing an appeal for lack of jurisdiction and reiterating that “[p]ursuant to S.C. Code Ann. § 1-23-380(A)(1) and (B), an appeal to the Administrative Law Judge Division is initiated by filing a notice of appeal with the Division within thirty days after the final decision of the agency”) (emphasis supplied by Simun Court).

“The thirty-day time limit for filing and serving a notice of appeal is a jurisdictional matter, and no court has any discretion to extend this deadline.” Elam v. S.C. DOT, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (“The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”); Mears v. Mears, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (“Service of the notice of intent to appeal is a jurisdictional requirement, and

¹ The relevant Appellate Court Rule for serving and filing a notice of appeal is Rule 203, SCACR.

this court has no authority to extend or expand the time in which the notice of intent to appeal must be served.”).

DISCUSSION

In the instant case, Charter Institute held a public hearing at its Board of Directors meeting on December 11, 2018, during which it considered the charter application of Clear Dot. The December 11, 2018, meeting agenda was properly noticed in accordance with the South Carolina Freedom of Information Act and posted on Charter Institute’s website at least twenty-four hours before the meeting. This meeting was held by conference call, and the public was given an access code to participate in the meeting. As reflected in Charter Institute’s minutes and recording for that Board Meeting, the Board of Directors for Charter Institute received a presentation on the application from representatives of Clear Dot, as well as Mr. Vamshi Rudrapati, Director for Charter Institute, and the Board of Directors then questioned those representatives on a series of points about Clear Dot’s charter application. The Board of Directors for Charter Institute then publicly voted and unanimously voted to grant the full approval of Clear Dot’s charter application.

This on-the-record, publicly announced, ruling constituted Charter Institute’s final decision with respect to Clear Dot’s charter application. See Brown v. James, 389 S.C. 41, 51, 697 S.E.2d 604 (Ct. App. 2010) (finding that a vote by the Board terminating a teacher’s contract constituted a final action). Consequently, pursuant to S.C. Code Ann. § 1-23-380(1), any notice of appeal regarding that decision had to be presented to the Court and served on Charter Institute no later than January 10, 2019. However, the Appellant did not file or serve a notice of appeal until February 15, 2019 -- five weeks after the Court’s jurisdiction expired.

ORDER

Based upon the foregoing, it is hereby

ORDERED that Respondents Charter Institute and Clear Dot’s Amended Joint Motion to Dismiss is **GRANTED** and this matter is hereby **DISMISSED** with prejudice.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

May 7, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

May 7, 2019
Columbia, South Carolina

FILED

May 7, 2019

SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Administrative Law Court

Deborah B. Durden, Administrative Law Judge

Case No.: 19-ALJ-30-0036-AP

RECEIVED

JUN 06 2019

SC Court of Appeals

Richland County School District One Board of Commissioners.....Appellant,

v.

The Charter Institute at Erskine and Clear Dot Charter School Columbia.....Respondents.

PROOF OF SERVICE

The undersigned of Boykin & Davis, L.L.C., hereby certifies that he has served the following counsel of record with the foregoing **NOTICE OF APPEAL**, by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 6th day of June, 2019.

Sarah R. Anderson, Esq.
Sarah Anderson Law Firm, LLC
416 E. North Street, Second Floor
Greenville, South Carolina 29601

Tyler R. Turner, Esq.
Turner & Caudell, LLC
914 Richland Street, Suite A-101
Columbia, South Carolina 29201

RECEIVED

JUN 11 2019

SC Court of Appeals

Kierra N. Brown

Charles J. Boykin (SC Bar No. 6310)
Kierra N. Brown (SC Bar No. 12717)
BOYKIN & DAVIS, LLC
220 Stoneridge Drive, Suite 100
Columbia, South Carolina 29210
(803) 254-0707

Attorneys for Appellant