

ORIGINAL

In the
Supreme Court of Ohio

STATE OF OHIO, ex rel. NATION
BUILDING TECHNICAL ACADEMY

Relator-Appellant,

v.

OHIO DEPARTMENT OF EDUCATION,

Respondent-Appellee.

: Case No. 2009-0003
:
:
: On Appeal from the
: Franklin County
: Court of Appeals,
: Tenth Appellate District
:
: Court of Appeals Case
: No. 07AP-169
:

BRIEF OF RESPONDENT-APPELLEE THE OHIO DEPARTMENT OF EDUCATION

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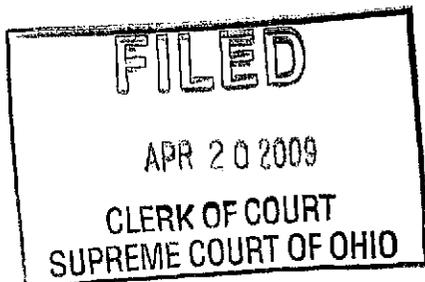


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Appellee’s First Proposition of Law:

A community school has no right to appeal a proposed termination of its contract under R.C. 3314.07(B)(4) unless it requests an informal hearing with its sponsor under R.C. 3314.07(B)(3).

- A. R.C. 3314.07(B)(4) unambiguously requires a community school to seek an informal hearing before it appeals to the State Board.
 - 1. There can be no “appeal” unless the community school first presents its arguments in an informal hearing.
 - 2. There can be no “appeal” without a live controversy and a community school’s failure to request a hearing moots any controversy about termination.

- B. Any ambiguity in R.C. 3314.07(B)(4) should be resolved in favor of requiring community schools to seek hearings before they appeal to the Board of Education.
 - 1. The factors identified in R.C. 1.49 indicate that the legislature intended that a hearing be an essential precondition to an appeal.
 - 2. The alternate rules of construction NBTA suggests are inapposite.

Appellee's Second Proposition of Law:

A writ of mandamus requiring the Board of Education to hear an appeal from the termination of a community school's contract should be denied as compelling a vain act when other matters would prevent the school from operating.

- A. Mandamus does not lie to compel a vain act.
- B. NBTA would be unable to operate a community school even if it prevailed on its appeal.

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SUMMARY OF ARGUMENT

This appeal arises from the long cold ashes of the Nation Building Technical Academy (“NBTA”). It was a community school, Ohio’s name for a charter school. Such schools operate under contracts with supervising entities known as sponsors. In 2005 NBTA’s sponsor served notice that it was terminating the school’s contract. Rather than requesting a hearing with the sponsor as provided by R.C. 3314.04(B)(3), NBTA appealed to the State Board of Education (“the Board”) under R.C. 3314.07(B)(4). The Board concluded that no appeal is possible unless a school first seeks a hearing with its sponsor, and that NBTA’s failure to do so barred its appeal. NBTA sought a writ of mandamus compelling the Board to hear the appeal, but the Court of Appeals denied that relief. Now, almost four years after its closure, NBTA asks this Court to compel the Board to hear its appeal. There are two reasons why this Court should deny that relief.

First, NBTA has no clear legal right to what it seeks. R.C. 3314.07(B)(4) authorizes an “appeal,” but what NBTA attempted was not an “appeal.” An appeal is a proceeding that occurs *after* the appellant has pressed its claims in another forum and that didn’t occur here. Similarly, an appeal resolves a live controversy and NBTA’s failure to request a hearing resulted in its contract terminating by operation of law, eliminating any controversy.

Second, mandamus would be futile. Mandamus will not compel an act with no practical benefit, and that’s what NBTA seeks. Other matters would prevent it from operating a community school even if its appeal was sustained. It no longer has the necessary corporate status, the Auditor has declared it to be out of compliance with auditing laws that all community schools must observe, and it lacks the assets to comply with mandatory operating requirements.

In short, NBTA had no right to the “appeal” it sought, and that appeal would have no practical effect. There are no grounds for mandamus, or reversal.

STATEMENT OF THE CASE

Three sets of facts are relevant here: The process for closing failing community schools, the facts surrounding NBTA's closure, and the proceedings below.

A. The process for closing failing community schools: The sponsor proposes termination and the school is given the opportunity to be heard through an informal hearing and an appeal to the State Board of Education.

Community schools are charter schools. They are publicly funded schools operated pursuant to contracts with supervising entities known as sponsors. The contract spells out the school's duties and the sponsor's rights in the event that the school fails to meet its obligations.¹

One fundamental premise of the charter school movement is that sponsors should close schools that fail to meet their obligations,² and Ohio's laws control the process for closing failing schools. R. C. 3314.07(B)(attached as Ex. 1) spells out the procedure for terminating a school's contract if it has failed to correct its problems after its sponsor has suspended its operations.

The first step is for the sponsor to notify the school of its intent to end the contract. R.C. 3314.07(B)(3) requires the sponsor to provide the school with written notice that it proposes to terminate the contract, a step the statute refers to as the "proposed action." That notice must be provided at least 90 days prior to the proposed termination date and must contain a detailed description of the reasons for the proposed action. The notice must also inform the school that it has 14 days to request a hearing with the sponsor about the proposed action.

The next step varies depending on the school's response. If it requests a hearing, one must be held within 70 days and the sponsor must provide a written decision either ratifying or rescinding the proposed action.³ If the sponsor ratifies the proposed action the school may appeal

¹ *State ex rel. Ohio Cong. of Parents & Teachers v. State Bd of Education*, 111 Ohio St. 3d 568, 2006-Ohio-5512, ¶¶ 7, 9; R.C. 3314.03.

² *Id.* at ¶¶9-31.

³ R.C. 3314.07(B)(3).

to the Board.⁴ R.C. 3314.07(B)(5)(b) provides that the termination is held in abeyance pending resolution of those proceedings. If, on the other hand, the school does nothing, R.C. 3314.07(B)(5)(a) provides that the termination takes effect 90 days after the sponsor serves notice of the proposed action.

B. NBTA's sponsor proposes the termination, the school appeals to the State Board without seeking a hearing, the appeal is rejected, and the school has been closed since 2005.

NBTA had trouble meeting its contractual obligations. Its sponsor therefore put the school on probation and later suspended the school's operations. That suspension was effective at the end of the 2004-2005 school year, and the school has not operated since.⁵

NBTA's sponsor was not satisfied with the school's response to the suspension and served notice of its proposal to terminate the school's contract. That notice advised NBTA that it could seek an informal hearing, but NBTA did not avail itself of that remedy. Instead, it attempted to directly appeal to the Board. The Board, acting through the Ohio Department of Education ("ODE"), rejected that appeal, concluding that NBTA was required to seek a hearing with its sponsor before appealing. ODE announced that decision in August of 2006.⁶

C. NBTA unsuccessfully seeks a writ of mandamus compelling the Board to accept the appeal.

NBTA filed the case below in February, 2007 almost two years after its closure. It claimed that R.C. 3314.07 did not require it to request a hearing before appealing to the Board, and requested a writ of mandamus requiring the Board to accept its appeal. A magistrate

⁴ R.C. 3314.07(B)(4).

⁵ *State ex rel. Nation Building Technical Academy v. Ohio Department of Education* (10th Dist.), 2008-Ohio-5967, ¶¶ 5, 23, 25; Stipulated Evidence, filed May 14, 2008 ("Stips") at ¶¶ 3, 4, 15.

⁶ *Id.* at ¶¶ 6, 7, 8, 26, 27, 28, 29.

recommended that the writ issue, but the Court rejected that recommendation and dismissed the case.⁷

ARGUMENT

Appellee's First Proposition of Law:

A community school has no right to appeal a proposed termination of its contract under R.C. 3314.07(B)(4) unless it first requests an informal hearing with its sponsor under R.C. 3314.07(B)(3).

NBTA was not entitled to mandamus relief unless it had a clear legal right to appeal to the Board. There are two reasons why it had no such right. First, R.C. 3314.07(B) unambiguously required NBTA to seek a hearing with its sponsor before pursuing an appeal. Second, that result is independently compelled by R.C. 1.49 even if R.C. 3314.07(B) is deemed ambiguous.

A. R.C. 3314.07(B)(4) unambiguously requires a community school to seek an informal hearing before it appeals to the State Board of Education.

NBTA's primary argument is that R.C. 3314.07(B)(4) imposes no preconditions on a school appealing a proposed termination to the Board, but that overlooks the very nature of the term used to describe proceedings before the Board. That term—"appeal"—has two essential attributes that compel the conclusion that a school must request a hearing before appealing. First, there can be no appeal until the appellant has presented its case below, and that doesn't happen unless a school requests a hearing. Second, appellate review is not available unless there is a live controversy, and a school's failure to request a hearing ends any controversy by giving that termination automatic effect. The legislature was aware of those features when it provided for an "appeal" and therefore did not authorize such proceedings without an initial hearing.

⁷ *Id.* at ¶¶ 12-18.

1. There can be no “appeal” unless the community school first presents its arguments in an informal hearing.

Although courts have disagreed about other aspects of an “appeal,” they agree on one essential element—that it follows an earlier proceeding where the parties previously pressed their arguments. A number of cases recognize that “[t]he fundamental idea of the word, without reference to any particular statute, involves the idea of a review of the proceedings in a trial *which has already been had*[.]”⁸ Others hold that “[t]he term ‘appeal’ indicates a re-examination by a higher tribunal of issues determined *in the original trial*,⁹ and that an “appeal ... follows a [] verdict after a trial[.]”¹⁰ As the United States Supreme Court has succinctly observed, “[a]n appeal simply means a *second hearing*[.]”¹¹ In other words, there must be contested proceedings *before* an appeal lies.

The Ohio cases similarly contemplate that the issues must be joined before an appeal can occur. As this Court has noted, “[i]t has long been the law in Ohio that an appeal is a removal of a cause or matter from an inferior jurisdiction... *for retrial*,”¹² and “a proceeding ... cannot, with any propriety, be called an appeal where the cause or matter involved was not before any inferior tribunal or body.”¹³ As a lower court has aptly noted, “the [body] with appellate jurisdiction does not hear a cause initially: rather, it reviews or retries what some other tribunal, judicial or quasi-judicial, *has already done*.”¹⁴

⁸ *In re Gruber* (Ok 1923), 214 P. 690, 692 (emphasis added); *New Mexico State Highway Dep't v. Bible* (N.M. 1934), 34 P.2d 295, 297; *State v. Williams* (S.C. 1893), 19 S.E. 5, 9.

⁹ *United States v. District Court of Fourth Judicial Dist.* (Utah 1952), 242 P.2d 774, 776-7(emphasis added).

¹⁰ *State v. Abbott* (R.I. 1976), 366 A.2d 1132, 1134.

¹¹ *Montana Co. v. St. Louis Mining & Milling Co.* (1894), 152 U.S. 160, 171 (emphasis added).

¹² *Kiriakis v. Fountas* (1924), 109 Ohio St. 553, 563 (emphasis added).

¹³ *Zanesville v. Zanesville Tel. & Tel. Co.* (1901), 64 Ohio St. 67, 83.

¹⁴ *In re Appeal of Sergent* (Mont. Co. C.P. 1976), 49 Ohio Misc. 36, 38 (emphasis added).

Consistent with that, this Court has held that no appeal occurs when there is nothing more than an unadjudicated dispute.¹⁵ It has relied on a similar analysis to hold that no appeal is possible when the so-called “appellant” didn’t submit its contentions in proceedings where they could have been tested.¹⁶ While those cases admittedly involved a variety of issues different from the one presented here, they reflect a common understanding of what an “appeal” is: a proceeding that occurs *after* the appellant has presented its case below.

That cannot occur in this context unless a community school requests a hearing. Until that occurs, all we have is the sponsor’s “proposed action.” We don’t have the school’s response or the sponsor’s analysis of that response. There is therefore nothing “for retrial.” Instead, there is only the sort of an unresolved disagreement this Court has found insufficient to support an appeal.¹⁷ That cannot support an “appeal” as that term is properly understood.

There are two reasons why the Court should reject NBTA’s likely response that the schools and sponsors can make their contentions through the various notices involved in suspending a school’s operation.¹⁸ Legally, the two processes are not the same. While R.C. 3314.07(B)(3) requires a sponsor to issue a definitive, written, decision on a school’s objections to termination, the suspension statute requires no such decision. It therefore produces no “decision below” for the Board to review.

Factually, and perhaps more importantly, things can change significantly between the time the suspension is initiated and termination is proposed, making the suspension record a poor basis for reviewing a proposed termination. Suspension proceedings can begin well before termination is proposed. Circumstances and positions can change, things that seemed important

¹⁵ *Zanesville*, 64 Ohio St. at 83.

¹⁶ *Board of Education v. Cuyahoga County Board of Revision* (1973), 34 Ohio St. 2d 231, 233-4.

¹⁷ *Zanesville, supra*, *Board of Education, supra*,

¹⁸ R.C. 3314.07(B)(2), 3314.072(C) and (D).

at the beginning of that period may recede into insignificance, and other issues can come to the fore. Interlocutory exchanges about suspension may not be relevant to the termination issues before the Board. Asking the Board to decide those issues on such a record would be akin to asking an appellate court to review a final judgment based on the record of preliminary injunction proceedings. A quality decision would be very unlikely.

2. There can be no “appeal” without a live controversy and a community school’s failure to request an informal hearing moots any controversy about its termination.

Another essential element of an appeal is a live controversy. This Court’s precedents establish that “when, pending an appeal ... an event occurs which renders it impossible for this court... to grant [] any effectual relief whatever, the court ... will dismiss the appeal.”¹⁹ It has therefore repeatedly held that no appeal lies if an appellant fails to take available steps to stay an action that would moot the controversy.²⁰

That is precisely what happens if a community school fails to request a hearing. R.C. 3314.07(B)(5) provides a default rule that a proposed termination becomes effective 90 days after the sponsor communicates the proposal.²¹ The only exception is if the school requests a hearing and appeals any adverse outcome from that hearing to the Board.²² The failure to request a hearing therefore resolves the matter before the Board: the continued existence of the contract. That makes it impossible for the Board to grant any relief, and precludes any “appeal.”

¹⁹ *Miner v. Witt* (1910), 82 Ohio St. 237, 239.

²⁰ *Cincinnati Gas & Elec. Co. v. PUCO*, 103 Ohio St. 3d 398, 2004-Ohio-5466, ¶¶ 15, 16; *Travis v. Public Utilities Com.* (1931), 123 Ohio St. 355, paragraph 1 of syllabus; *Pollitz v. Public Utilities Com.* (1916), 93 Ohio St. 483.

²¹ R.C. 3314.07(B)(5)(a).

²² R.C. 3315.07(B)(5)(b).

R.C. 1.42 provides that the legislature is presumed to intend that statutory terms be given the particularized meaning they had at the time of enactment. “Appeal” has such a meaning: no appeal is possible unless the appellant first presses its arguments below and the controversy before the appellate body remains alive. R.C. 3314.07(B)(4)’s provisions for an “appeal” from a proposed termination must be understood to have that meaning. Neither of those essential elements is present unless the community school requests a preliminary hearing, and that didn’t happen here. NBTAs therefore had no right to appeal to the Board and the Court of Appeals committed no error in denying mandamus.

B. Any ambiguity in R.C. 3314.07(B)(4) should be resolved in favor of requiring community schools to seek hearings before they appeal to the Board of Education.

Although resort to rules of statutory construction is unnecessary because the inherent nature of an “appeal” unambiguously requires a school to request a hearing, ODE submits that the controlling rule of construction compels the same result. Each of the factors identified in R.C. 1.49 indicate that the legislature intended such hearings to be necessary preconditions to an appeal.

1. The factors identified in R.C. 1.49 indicate that the legislature intended that a hearing be an essential precondition to an appeal.

R.C. 1.49 provides that “[i]f a statute is ambiguous, the court, in determining the intention of the legislature, may consider . . . (A) The object sought to be attained; (B) The circumstances under which the statute was enacted; (C) The legislative history; (D) The common law or former statutory provisions . . . ; (E) The consequences of a particular construction; (F) The administrative construction of the statute.” Each of those factors indicates that the legislature intended that a community school seek a hearing before appealing to the Board.

Requiring schools to request hearings would further the legislature's objective of encouraging schools and sponsors to informally resolve disputes. That objective is manifested in two ways. On a general level, the community school laws have long required that contracts contain procedures for informally resolving disputes between schools and sponsors.²³ Of more particular interest here, the present R.C. 3314.07(B) represents a significant reinforcement of that objective in connection with contract terminations. It contains provisions intended to focus those parties' attention on what is really at issue.²⁴ Requiring schools to utilize those procedures before appealing would clearly further that purpose; allowing schools to bypass them would frustrate it.

The circumstances of R.C. 3314.07(B)'s enactment and its legislative history indicate that the legislature places great importance on having schools and sponsors think through termination decisions. That is seen by comparing the termination provisions as they evolved over time. When the community school laws were first enacted, R.C. 3314.07(B) provided little detail on how disputes about those decisions were to be resolved.²⁵ The legislature changed that by enacting the current provisions requiring sponsors to explain their decisions and do so in a timely manner.²⁶ The intent was obvious—to require increased examination of these decisions. Requiring that process to unfold before an appeal would further that purpose.

Requiring direct appeals would be inconsistent with the common law understanding of an appeal. Allowing appeals without an initial hearing would vary from the common law by making the appellate body the initial arbiter of the parties' dispute (see pp. 9-12 above) and by requiring

²³ R.C. 3314.03(A)(18); Am. Sub. S.B. 215 (122d G.A.), 147 Ohio Laws, Part III, 6542, 6570.

²⁴ Am. Sub. H.B. 94 (124th G.A.), 149 Ohio Laws, Part III, 4126, 4544-5.

²⁵ Am. Sub. H.B. 215 (122d G.A.), 147 Ohio Laws, Part I, 909, 1193 (enacting R.C. 3314.07(B)(2)).

²⁶ Am. Sub. H.B. 94 (124th G.A.), 149 Ohio Laws, Part III, 4126, 4544 (amending R.C. 3314.07(B)(3)).

that body to resolve a dispute that would be mooted by the school's failure to request a hearing (see pp. 12-13 above).

Requiring informal hearings would result in better informed decisions by the Board. Just as a court benefits from an administrative agency's reasoned explanation when reviewing its actions,²⁷ the Board would benefit from the explanation R.C. 3314.07(B)(3) requires a sponsor to give after a hearing.

ODE, the agency that administers R.C. 3314.07, reads the statute as making informal hearings a precondition to Board appeals. This too supports the analysis urged here.

In sum, each of the factors that R.C. 1.49 identifies as guiding the search for legislative intent indicates that schools must seek informal hearings before they appeal to the Board.

2. The alternate rules of construction NBTA suggests are inapposite.

NBTA invokes the rules set out in R.C. 1.11 and 1.42, but there are several reasons why those rules are inapposite.

First, NBTA did not invoke those rules below. NBTA filed two briefs below. Neither mentioned R.C. 1.11 or R.C. 1.42. Neither made the arguments under those statutes advanced here. Those arguments cannot be debated before this Court.

Second, NBTA's argument under R.C. 1.11 fails on the merits because its position would thwart the community school laws' focus on informal dispute resolution. That statute requires that remedial laws be "construed in order to promote their object." As discussed at p. 14 above, the community school laws in general and R.C. 3314.07(B)(3) in particular have the common object of encouraging the informal resolution of disputes. Allowing a school to bypass such procedures in favor of a formal appeal to a state agency hardly promotes that object.

²⁷ *Nemazee v. Mt. Sinai Medical Center* (1990), 56 Ohio St. 3d 109, 111-2.

Third, its argument under R.C. 1.42 ignores the context of the language it relies upon.

NBTA argues that an informal hearing is not a predicate to an appeal because R.C. 3314.07(B)(3) provides that a school “may” request a hearing, but that overlooks the purpose of that statement. It merely clarifies that a school may acquiesce in the termination. That becomes clear when one reads it together with R.C. 3314.07(B)(5)’s statement that a termination automatically takes effect if a school doesn’t request a hearing. While a school’s decision to forgo a hearing certainly impacts the availability of an appeal, R.C. 3314.07(B)(3)’s permissive language speaks to a school’s discretion to forgo an appeal, not to the steps that must be taken to pursue an appeal.

Appellee's Second Proposition of Law:

A writ of mandamus requiring the Board of Education to hear an appeal of the termination of a community school's contract should be denied as compelling a vain act when other matters would prevent the school from operating.

A. Mandamus does not lie to compel a vain act.

Ohio courts will not use their mandamus power to compel the performance of a vain act. One appeals court put it well: "Where, in an action in mandamus ... the relief sought by the relator could not have any effect ... the writ sought will be denied."²⁸ This Court has likewise refused to grant mandamus relief to compel actions that would have no real impact.²⁹

B. NBTA would be unable to operate a community school even if it prevailed on its appeal.

That dynamic is present here. Other matters would prevent it from operating as a community school even if it won the appeal it seeks.

First, it lacks the legal capacity to operate a community school. R.C. 3314.03(A)(1) requires NBTA to be a corporation in good standing under R.C. Chapter 1702 in order to operate a community school, but its corporate articles were canceled more than a year and a half ago.³⁰

Second, it is in violation of State auditing laws. R.C. 3314.03(A)(11)(d) requires community schools to comply with Ohio's public auditing standards, but the Auditor of State has declared NBTA's books to be unauditabile.³¹ That independently bars the school's operation.

²⁸ *State ex rel. Sandbach v. Roudebush* (12th Dist. 1969), 21 Ohio App. 2d 2, Syllabus.

²⁹ See e.g. *State ex rel. Moore v. Malone*, 96 Ohio St. 3d 417, 2002-Ohio-4821, ¶ 38; *State ex rel. Morenz v. Kerr*, 104 Ohio St. 3d 148, 2004-Ohio-6208, ¶¶ 34-36.

³⁰ *Certificate of Cancellation* (Ohio Sec. of State, Sept. 18, 2007), available at: <http://www2.sos.state.oh.us/reports/rwservlet?imgc&Din=200726126014>. Last visited April 14, 2009; *Opoka v. INS* (C.A. 7 1996), 94 F.3d 392, 394 (appellate courts may take judicial notice of official records outside the record).

³¹ *Unauditabile List as of 4-3-09* (Ohio Auditor of State), available at: <http://www.auditor.state.oh.us/Publications/Issues/UnauditabileList.pdf> Last visited April 15, 2009; *Opoka*, 94 F.3d at 394.

Third, it presumably lacks the assets necessary to meet other preconditions to the operation of a community school. Ohio law requires community schools to maintain a specific facility, have insurance coverage, and provide benefits to their employees. R.C. 3314.03(A)(9), (11)(b), (12). Those requirements are amplified by NBTA's contract, and are supplemented by a requirement that NBTA maintain specific staffing levels.³²

It's hard to see how NBTA could meet those requirements even if it prevailed on its appeal. R.C. 3314.074 requires that all assets of a closed community school be distributed in particular ways, NBTA has been closed for almost four years, it presumably complied with that statutory mandate, so its assets are long gone. How is it going to operate at the specific location designated in its contract (which has presumably been abandoned long ago), meet the specific staffing levels set out in that agreement, pay those employees' benefits, or buy the required insurance coverage? Those realities would deprive NBTA of any benefit from an appeal.

In sum, NBTA faces insurmountable barriers to operating a community school, barriers that are independent of the matters to be decided in the appeal it seeks. They would make the appeal a vain exercise.

CONCLUSION

This Court should affirm the decision below.

Respectfully Submitted,

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³² Stips, Ex. A at p. 2, § II(F); p. 6, § II(X); p. 7, § II(AA) p. 8, § II(GG).

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I certify that a copy of the foregoing was served by U.S. mail this 20th day of April, 2009,

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*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH MARCH 4, 2009 ***
*** ANNOTATIONS CURRENT THROUGH JANUARY 1, 2009 ***
*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH MARCH 4, 2009 ***

TITLE 33. EDUCATION -- LIBRARIES
CHAPTER 3314. COMMUNITY SCHOOLS

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ORC Ann. 3314.07 (2009)

§ 3314.07. Expiration, termination or nonrenewal of contract; rights of attendees where school closed; immunity of sponsor

(A) The expiration of the contract for a community school between a sponsor and a school shall be the date provided in the contract. A successor contract may be entered into pursuant to division (E) of section 3314.03 of the Revised Code unless the contract is terminated or not renewed pursuant to this section.

(B) (1) A sponsor may choose not to renew a contract at its expiration or may choose to terminate a contract prior to its expiration for any of the following reasons:

- (a) Failure to meet student performance requirements stated in the contract;
- (b) Failure to meet generally accepted standards of fiscal management;
- (c) Violation of any provision of the contract or applicable state or federal law;
- (d) Other good cause.

(2) A sponsor may choose to terminate a contract prior to its expiration if the sponsor has suspended the operation of the contract under section 3314.072 [3314.07.2] of the Revised Code.

(3) At least ninety days prior to the termination or nonrenewal of a contract, the sponsor shall notify the school of the proposed action in writing. The notice shall include the reasons for the proposed action in detail, the effective date of the termination or nonrenewal, and a statement that the school may, within fourteen days of receiving the notice, request an informal hearing before the sponsor. Such request must be in writing. The informal hearing shall be held within seventy days of the receipt of a request for the hearing. Promptly following the informal hearing, the sponsor shall issue a written decision either affirming or rescinding the decision to terminate or not renew the contract.

(4) A decision by the sponsor to terminate a contract may be appealed to the state board of education. The decision by the state board pertaining to an appeal under this division is final. If the sponsor is the state board, its decision to terminate a contract under division (B)(3) of this section shall be final.

(5) The termination of a contract under this section shall be effective upon the occurrence of the later of the following events:

(a) Ninety days following the date the sponsor notifies the school of its decision to terminate the contract as prescribed in division (B)(3) of this section;

(b) If an informal hearing is requested under division (B)(3) of this section and as a result of that hearing the sponsor affirms its decision to terminate the contract, the effective date of the termination specified in the notice issued under division (B)(3) of this section, or if that decision is appealed to the state board under division (B)(4) of this sec-

tion and the state board affirms that decision, the date established in the resolution of the state board affirming the sponsor's decision.

(6) Any community school whose contract is terminated under this division shall not enter into a contract with any other sponsor.

(C) A child attending a community school whose contract has been terminated, nonrenewed, or suspended or that closes for any reason shall be admitted to the schools of the district in which the child is entitled to attend under section 3313.64 or 3313.65 of the Revised Code. Any deadlines established for the purpose of admitting students under section 3313.97 or 3313.98 of the Revised Code shall be waived for students to whom this division pertains.

(D) If a community school does not intend to renew a contract with its sponsor, the community school shall notify its sponsor in writing of that fact at least one hundred eighty days prior to the expiration of the contract. Such a community school may enter into a contract with a new sponsor in accordance with section 3314.03 of the Revised Code upon the expiration of the previous contract.

(E) A sponsor of a community school and the officers, directors, or employees of such a sponsor are not liable in damages in a tort or other civil action for harm allegedly arising from either of the following:

(1) A failure of the community school or any of its officers, directors, or employees to perform any statutory or common law duty or responsibility or any other legal obligation;

(2) An action or omission of the community school or any of its officers, directors, or employees that results in harm.

(F) As used in this section:

(1) "Harm" means injury, death, or loss to person or property.

(2) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons.

HISTORY:

147 v H 215 (Eff 6-30-97); 147 v H 770 (Eff 7-1-98); 149 v H 94 (Eff 9-5-2001); 149 v H 364. Eff 4-8-2003; 150 v H 95, § 1, eff. 9-26-03.