

<b>STATE OF COLORADO          BOARD OF EDUCATION          201 E. Colfax Avenue #506          Denver, CO 80203</b>	
Ascent Classical Academy of Durango, Appellant,  vs.  Durango 9-R School District, Appellee.	<b>▲ BOARD USE ONLY ▲</b>
	<b>Case No. 22-CS-02</b>
<b>Board Order</b>	

This matter is before the Colorado State Board of Education under § 22-30.5-108(3)(a), C.R.S. Based on the record of materials submitted to the State Board and the hearing on May 12, 2022, the State Board FINDS and ORDERS as follows.

**Material Facts**

Ascent Classical Academies emailed a charter application to Durango 9-R School District on February 7, 2022. *Record on Appeal*, pp. 281-82. Two days later, Durango notified Ascent that it would not consider the application until after August 1, 2022. *Id.* 284-85, 454 & 469. Ascent filed a notice of appeal under § 22-30.5-108 on March 8, 2022. *See Notice of Appeal.*

**Jurisdiction**

Durango moved to dismiss for lack of jurisdiction, arguing that neither the February 9th notice nor any other act of the local board’s is an appealable decision.

The State Board “may review decisions of any local board of education concerning the denial of a charter school application.” § 22-30.5-108(1). This jurisdiction includes reviewing a district’s failure to review a charter application. § 22-30.5-107(1)(b) & (3). As a result, if a district declines or fails to review an application within 90 days as required by § 22-30.5-107(2), the State Board has jurisdiction to review that action as a denial.

Durango argues that it has not failed to review Ascent’s application within the meaning of § 22-30.5-107(1)(b) and (3), because the 90-day clock does not start running until August 1, 2022. The statute is clearly and unambiguously to the contrary. By law,

the 90 days begin to run when a district receives an application. § 22-30.5-107(2) (“The local board of education shall rule by resolution on the application for a charter school in a public hearing, upon reasonable public notice, within ninety days after receiving the application filed pursuant to subsection (1) of this section.” (emphasis added)); *id.* at (1)(b) (“An application is considered filed when the school district administration receives the charter application from the charter applicant either in hard copy or electronically.”). Although § 22-30.5-107(1)(b) sets an August 1st to October 1st range within which districts must set their annual application deadline, nothing in the statute can be reasonably construed as prohibiting earlier applications or otherwise limiting the statute’s plain terms on when the 90 days begin to run.

Durango also argues that it cannot be deemed to have “received” the application on February 7th because its board policy prohibits early applications, by “distinguishing between submission and filing.” As a threshold matter, the parties have agreed that a local board *can*, by board policy, prohibit early applications and thereby stop the 90 days from running until the beginning of the district’s application “window.” The State Board agrees. As a matter of local control and statutory background principles, districts have plenary authority over their schools, including charter schools and applications, except to the extent displaced by statute. *See, e.g.*, § 22-32-110(1)(d). Although the charter-application statute provides that the 90 days begin running when an application is received, it does not expressly or impliedly prohibit a district from limiting the window in which applications will be accepted (provided that the final deadline falls from August 1st to October 1st of the year preceding the school’s planned opening). The State Board therefore agrees that the Charter Schools Act allows local boards to set a window for applications, by board policy.<sup>1</sup>

Durango has not done so, however. Contrary to Durango’s argument, nothing in its board policy can be interpreted to draw the asserted distinction between submission and filing. The policy indeed uses those words differently, but it uses neither one in the manner asserted by Durango. As relevant here, the policy sets an August 1st deadline for applications but expressly allows applications “on or before” that date. Further, the policy expressly states that the local board “shall make a decision . . . within 90 days after receiving the initial charter application from the charter applicant,” and nothing in the policy suggests that the word “receiving” is used in anything other than its ordinary sense. Although the State Board will give appropriate deference to the local board’s interpretation of its own policies, the interpretation urged here is unreasonable.

Because Durango’s board policy does not prohibit early applications, and because state law is unambiguous on when the 90 days begin to run, the State Board holds that the 90 days began to run upon receipt of Ascent’s application on February 7, 2022, and

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<sup>1</sup> The parties have also agreed that districts may set an exceedingly short window for applications—as short as one day, as long as that day is between August 1st and October 1st. The State Board expresses no opinion on whether this is an appropriate interpretation of the statute.

therefore that Durango has declined to review the application within the meaning of § 22-30.5-107(1)(b) and (3). The motion to dismiss for lack of jurisdiction is denied.

### Merits

“If a local board of education denies or does not review a charter school application, it shall state its reasons for the denial or refusal to review.” § 22-30.5-107(4). The district’s stated grounds are then subject to review by the State Board, to determine whether “the local board’s decision was contrary to the best interests of the pupils, school district, or community.” § 22-30.5-108(2) & (3)(a). If so, the State Board “shall remand such decision to the local board of education with written instructions for reconsideration thereof. Said instructions shall include specific recommendations concerning the matters requiring reconsideration.” *Id.*

Durango’s stated grounds for declining to review Ascent’s application within 90 days were as follows:

Pursuant to C.R.S. 22-30.5-107(1)(b), (2.5) and School District Policy LBD-R, a charter school application may not be filed before August 1st, unless both the local board of education and the applicant agree to a different deadline.

*Record on Appeal*, pp. 284-85. This was legal error, for the reasons discussed above. However, the State Board does not have authority to remand applications for legal error alone; it can remand only if the district’s decision (erroneous or otherwise) was contrary to the best-interests standard.

Relevant to the best-interests standard, Durango focuses primarily on its interest in coordinating review of potentially multiple charter applications in a regular fashion, given its need to plan both staffing and enrollment. Ascent focuses primarily on its interest in securing a facility and staff, given the challenges of labor shortages and supply-chain disruptions following the COVID pandemic, combined with the timing of funds under the CCSP grant program (since funds are available only after a signed charter contract).<sup>2</sup> The State Board finds that both sets of interests are important and relevant to the best-interests standard and that, on balance, the local board’s decision was contrary to the best interests of the pupils, school district, or community.

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<sup>2</sup> At oral argument, counsel for Durango suggested that Ascent had not previously brought these interests to the district’s attention. Counsel was mistaken. *See Record on Appeal*, pp. 262-65, 449-50.

**BOARD ORDER**

The State Board REMANDS this matter to the local board with written instructions for reconsideration. As required by § 22-30.5-108(3)(a), the State Board instructs the local board to reconsider its position on when to review the application.

Dated this 16th day of May, 2022.



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Dr. Angelika Schroeder, Chair  
Colorado State Board of Education

## CERTIFICATION OF MAILING

I hereby certify that I have provided a true and correct copy of the foregoing BOARD ORDER this 16th day of May, 2022 via e-mail addressed to counsel as follows:

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*/s/ Angela R. Maramba*  
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