

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PAULA S. TISHOK, GRETCHEN VAN NESS,  
KENDAL L. HOPKINS, and MELISSA BEHM,

Petitioners,

v.

Docket No.  
136 CD 2015

PENNSYLVANIA DEPARTMENT OF EDUCATION,

Respondent.

PETITIONERS' BRIEF

Now come the Petitioners, Paula S. Tishok, Gretchen Van Ness, Kendal L. Hopkins, and Melissa Behm, in this case of first impression and hereby submit their principal brief in support of their Petition for Review.

In this brief, Petitioners will show that Respondent's decision in the Wilson College Matter, 43 Pa.B. 3951 (July 13, 2013), is not a final agency decision capable of appellate review, and that the decision must be vacated and this case returned to the agency with instructions for the proper resolution of Petitioners' protests, petition to intervene, request for a hearing, request for expedited review, and motion for the appointment of a public trustee. If Respondent's decision is considered a final agency decision, Petitioners argue in the alternative that the agency's administrative process was rife with legal error that, among other things, violated Petitioners' due process rights. Petitioners also argue that the final agency decision is contrary to the substantial evidence and must be vacated and this matter be returned to the agency with instructions for the proper resolution of Petitioners' petition to intervene, requests for relief, and motions.

Petitioners' Memorandum of Law in Opposition to Respondent's Application for Relief in the Form of a Motion to Dismiss and/or Quash is incorporated herein pursuant to this Court's Order dated July 1, 2015.

1. The Respondent's "Public Informational Hearing" Was Flawed Under *Philadelphia County Medical Society v. Kaiser*

Following Respondent's July 13, 2013 publication of Notice of Wilson College's application for a certificate of authority to make fundamental changes in its articles of incorporation and abandon its historic mission as a women's college, 43 Pa.B. 3951(July 13, 2013) <http://www.pabulletin.com/secure/data/vol43/43-28/1253.html>, Petitioners and the protesters they represent timely filed their protests, request for a hearing, petition to intervene, request for expedited review, and motion to appoint a public trustee or guardian. Certified Record at 379-595 (Van Ness/Wilson College Women Protest). In its *Pennsylvania Bulletin* notice, Respondent cited 24 Pa.C.S. § 6503(e), which provides, in relevant part,

(e) Procedure. – For the purpose of enabling the department to make the finding or determination required by subsection (d) ["Standards for issuance of certificate"], the department shall, by publication of notice in the *Pennsylvania Bulletin*, afford reasonable opportunity for hearing, which shall be public, and, before or after any such hearing, it may make such inquiries, audits and investigations, and may require the submission of such supplemental studies and information, as it may deem necessary or proper to enable it to reach a finding or determination. The department, in issuing a certificate of authority, may impose such conditions as it may deem to be just and reasonable. In every case, the department shall make a finding or determination in writing stating whether or not the application has been approved and, if it has been approved in part only, specifying the part which has been approved and the part which has been denied. Any holder of a certificate of authority exercising the authority conferred thereby shall be deemed to have waived any and all objections to the terms and conditions of such certificate.

The Notice also stated that Respondent would act on the College's application without a hearing unless "within 30 days after the publication of this notice in the *Pennsylvania Bulletin*, a written

request for public hearing is filed with the Department, along with a notice of intervention, a petition to intervene or protest in accordance with 1 Pa. Code §§ 35.23 and 35.24 (relating to protests) or 1 Pa. Code §§ 35.27 - 35.32 (relating to intervention).” Id. Respondent’s Notice further provided that “Persons wishing to review the application should call (717) 783-8228 or write ... to schedule a time for an in-office review.” Id.

Pursuant to the Notice’s instructions, within 30 days Petitioners and the protesters they represent filed protests, a petition to intervene, and a request for a hearing. Certified Record at 379. Based on the unlawful and unauthorized repurposing and dissipation of the College’s assets, as detailed in the Wilson College Women protest filed by Petitioner Van Ness, Petitioners also requested expedited review and the appointment of a public trustee or guardian. Id. In addition, Petitioner Hopkins called the telephone number listed in the Notice and scheduled a time to view the College’s application in person at Respondent’s office in Harrisburg. When she arrived for her scheduled meeting, Respondent was unable to provide a copy of the application, which was later provided by email.

Three months after the 30-day protest period closed, Respondent notified each of the 40 individual protesters that the petition to intervene was denied and that Petitioner Van Ness had been granted “Limited Participant” status. Certified Record at 370-71 (Hans Nov. 27, 2013 Letter). Respondent invited the protesters to notify the Deputy Secretary should they also wish to participate as Limited Participants. Three other protesters — Petitioners Tishok, Hopkins, and Behm — requested that they also be granted Limited Participant status. Certified Record at 359-69 (Hopkins, Behm, and Tishok Letters). Respondent granted those requests and appointed Petitioner Van Ness as the representative of the remaining protesters and Wilson College Women,

an unincorporated group of alumnae and friends of the College. Certified Record at 354-56 (Hans Jan. 6. 2014 Letter). Inexplicably, Respondent has failed to include in the Certified Record all 40 of the individual protests it received in the Wilson College matter.

Without briefing, oral argument, or an evidentiary hearing, Respondent denied Petitioners' petition to intervene. Certified Record at 362-63 (Hans Dec. 11, 2013 email); 370-71 (Hans Nov. 27, 2013 Letter). Also without briefing, argument or an evidentiary hearing, Respondent decided to hold a "public informational hearing" rather than an adjudicatory hearing on the College's application. *Id.*; see also 354-56 Hans. Jan. 26, 2014 Letter). Like the public informational hearing in *Philadelphia County Medical Society v. Kaiser*, 699 A.2d 800 (PA Cmwlth. 1997) (en banc), this decision led to a flawed administrative process that failed to produce an adequate evidentiary record, failed to provide Petitioners with a reasonable opportunity to be heard, and failed to produce a final, reviewable agency action.

(a) *Kaiser's Teachings*

The *Kaiser* decision establishes the test for determining whether a state agency's administrative review process comports with the Commonwealth's Administrative Agency law, 2 Pa. C.S. section 504. In *Kaiser*, two nonprofit health insurance companies sought to merge. They submitted their consolidation plan to the Commissioner of the Insurance Department of Pennsylvania (Department) for approval, as required by the Insurance Holding Companies Act, 40 P.S. 991.1402(a)(1). The proposed by-laws of the resulting consolidated company also required approval by the Department under the PA Health Plan Corporations Act, 40 Pa. § 6328, and were submitted to the Department.

In its notice in the *Pennsylvania Bulletin*, the Insurance Department invited interested persons to attend a “public informational hearing” regarding the application. Before the hearing, 25 individuals and organizations submitted comments to the Department. At the hearing, only representatives of the consolidating companies were permitted to speak and no one was permitted to ask questions. After the hearing, additional written comments were received, including comments in opposition by Dr. Sklaroff, one of the petitioners in *Kaiser*.

Although she found that she did not have jurisdiction over certain aspects of the application, the Insurance Commissioner approved the consolidation and the by-laws of the new consolidated company. Opponents filed a petition for review in this Court, where all of the parties argued, for different reasons, that the matter was not ready for or subject to appellate review. The opponents contended that the matter was not ready for appellate review because there was no for record for the Court to review. The consolidating company argued that the matter was not ready for appellate review because the opponents had not exhausted their internal appeals within the agency. The agency argued that there was nothing to appeal because the decision approving the consolidation was not an adjudication, but was instead an unappealable “determination.”

The *Kaiser* Court first dismissed the agency’s argument that its determination was not an adjudication, citing section 101 of the Administrative Agency Law, which defines an adjudication as “[a]ny final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made.” While finding that the Department’s “determination” qualified as an adjudication under the statute, the Court went

on to explain that an agency action only results in an adjudication when there is a final order, and that only when administrative appeals have been exhausted will an agency's final order be subject to appellate review. Thus the Court clarified that the words "adjudication" and "final" are not synonymous in the administrative law context.

In the passage most relevant to the present matter, this Court explained that although an agency action may have direct impact on a person's rights or privileges and is therefore final so as to fall within the statute's definition of an adjudication, "the action is not 'valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.'" Explaining further, this Court stated that, "Unless a *hearing* is held before the administrative agency and a record of that hearing made, Section 504 of the Administrative Agency Law provides that the adjudication is not valid or effective." *Id.* (emphasis supplied). "Moreover, until a hearing, and, if necessary, the taking of evidence where facts are disputed, the issues cannot be properly clarified, whether there is a direct interest of the party taking the appeal and questions of fact sufficiently resolved to create a record upon which judicial review can be conducted."

In footnote 17 of the *Kaiser* decision, this Court explained what is meant by "a hearing" and "the opportunity to be heard" under the Commonwealth's Administrative Agency Law.

Where no factual issues are in dispute, no evidentiary hearing is required under Section 504 of the Administrative Agency Law. Here, however, the Department has not yet determined whether there exist factual issues or mixed issues of law and fact, so that an evidentiary hearing may not be required. If the Department had found that factual issues exist, an adjudicatory action cannot be subject to valid judicial review by any tribunal, either judicial or administrative, except upon a hearing wherein each party has the opportunity to know the claims of his opponents, hear and present evidence, cross examine witnesses, and to present argument. Because here, all that was provided was a "public informational hearing" at which Opponents were neither permitted to cross

examine witnesses nor present evidence on their own behalf, the Department did not determine whether an evidentiary hearing was required, and that requirement of the Administrative Law was not complied with. An agency's adjudication is invalid where it "failed to comply with the statutory requirements of notice and an opportunity to be heard."

Id. (citations omitted) (quoting *Callahan v. Pennsylvania State Police*, 494 Pa. 461, 465, 431 A.2d 946, 948 (1981)).

In the present matter, the record shows that in denying Petitioners' petition to intervene and request for a hearing, Respondent failed to determine whether disputed factual issues, or disputed mixed issues of law and fact, exist. Certified Record at 370-73 (Hans Nov. 27, 2013 Letter). The record also shows that although Respondent permitted the parties to offer both written and oral testimony and argument, none of the testimony was offered under oath (see, e.g., Certified Record at 42-45 (Transcript of June 16, 2014 Public Hearing); 171-93 (Testimony of Wilson College)). Petitioners were not permitted to ask questions or cross-examine witnesses at the public informational hearing. Id. at 43 (Transcript of June 16, 2013 Public Hearing) ("The hearing is an informational hearing. Therefore, there will not be any Cross Examination of those individuals who are testifying, and the only questions that will be asked will be by me as the Hearing Officer."); 348 (Before the hearing, "each side shall submit any responses to the others' written testimony and any questions you would like me to ask at the hearing. However, I have the discretion to determine the appropriateness and/or relevance of any suggested questions."). Moreover, even after receiving written testimony from the College and Petitioners that showed sharply conflicting accounts of the relevant facts, the record shows that Respondent did not request briefing or argument in order to determine whether an evidentiary hearing was required. See disputed issues summarized in Limited Participants' Rebuttal to the College's Testimony,

Certified Record at 269-302. Finally, after the public informational hearing, where even more highly relevant facts and mixed fact and law were in dispute, see Transcript of Hearing, Certified Record at 39-169, Respondent failed to fulfill its obligation to conduct a full evidentiary hearing and convene an adjudicatory hearing, opting instead to prematurely close the record and issue a woefully inadequate decision that ignored its obligations under the Administrative Agency Law.

Respondent will argue that even if every dispute of fact and mixed law and fact is resolved in Petitioners' favor, the outcome would be the same because Respondent's legal authority is limited in this matter. This Court rejected as irrelevant just such an argument in the *Kaiser* decision. There, the agency argued that it did not have jurisdiction over the proposed consolidation, which was governed by the Nonprofit Law, but that it did have jurisdiction over the change of control approved by the boards of the individual insurance companies. The Department argued that it was proper to approve the proposed consolidation because it continued to further the charitable and benevolent purposes of the consolidating companies and because the successor corporation would still be bound by the same statutory requirements of the Health Plan Corporations Act.

Here, in the decision issued by Respondent, Certified Record at 2-11 (Dumaresq Jan. 6, 2015 Letter and Proposed Report), Respondent similarly stated that it has no jurisdiction over certain claims. *Id.* at 6-8. In addition, even after stating that "Wilson's action of proceeding to change to a co-educational, residential college prior to receiving PDE's approval of its proposed amendments is not what should have occurred and should not occur in the future," Certified Record at 10, which explicitly acknowledges that the College failed to follow the applicable law and regulations prior to implementing fundamental changes to its charter and its historic mission



as a women's college, Respondent approved the College's application because it claims that the proposed amended articles create a college that complies with the Public School Code. Certified Record at 8-9; 24 Pa. C.S. § 6504(c). Under *Kaiser*, this decision is irrelevant. When determining whether Respondent fulfilled its obligations under the Administrative Agency Law, the focus is on the due process rights of the parties, not on whether the agency's determination appears to be correct or incorrect.

(b) Even if Respondent's Decision Qualifies as an "Adjudication," It Does not Qualify as a "Final Order"

Should this Court determine that the public informational hearing conducted by Respondent passes muster under *Kaiser* and qualifies as an adjudication, Respondent's denial of Petitioners' motion to intervene without either requiring briefing or holding an evidentiary hearing to determine whether Petitioners have a direct interest sufficient to grant standing as a party in this matter, means that the adjudication does not qualify as a final, appealable order. In addition, *Kaiser's* language and the language of the statute regarding the legal effect of failing to provide the panoply of rights and privileges incorporated within the concept of a "reasonable opportunity to be heard" are unequivocal: "Even though the agency action has a direct impact on the person's rights or privileges, and is final so as to fall within the definition of an 'adjudication', the action is not 'valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.'" (quoting 2 Pa. C.S. § 504).

Although Respondent denied Petitioners' petition to intervene, section 101 of the Administrative Agency Law defines a "party" as "Any person who appears in a proceeding before an agency who has a direct interest in the subject matter of such proceeding." 2 Pa. C.S.

§ 101. In Section 1 their Memorandum of Law in Opposition to Respondent's Application for Relief in the Form of a Motion to Dismiss and/or Quash, Petitioners described their direct interests, and the direct interests of the protesters they represent, in the Wilson College matter. Petitioners' Memorandum of Law is incorporated herein and Petitioners will not repeat their arguments showing that they and the protesters they represent have interests that are distinguishable from those of the general public under *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). Petitioners and those they represent appeared before the agency and they have a direct interest in the subject matter of the proceeding at issue. They therefore qualify as "parties" under Section 101 of the Administrative Agency Law who were not afforded a reasonable opportunity to be heard by the "public informational hearing" conducted by Respondent.

Finally, because Respondent denied Petitioners' petition to intervene, they were not permitted to seek agency reconsideration after Respondent issued its decision in the Wilson College matter. In her letter adopting the Proposed Report as the final agency action, Secretary Dumaresq explicitly stated, "Since the proposed report recommends that Wilson's Application be approved, no exceptions to the proposed report will be accepted." Certified Record at 2. *Kaiser's* requirement that parties exhaust their internal agency appeal rights therefore does not apply, as Petitioners had no internal agency appeal rights to exhaust.

(c) Notice to the Department of Justice

Respondent's decision to hold a public informational hearing rather than an adjudicatory hearing in this matter apparently permitted the agency to skirt section 508 of the Administrative Agency Law, which requires an agency to give prior notice of "any hearing" to the Department

of Justice so that the Department may “pass upon the legality of the proposed action or defense.” 2 Pa. C.S. § 508. Had Respondent notified the Department of Justice prior to denying Petitioners’ petition to intervene or prior to issuing its decision following the public informational hearing, it might have received guidance regarding the application of sections 6504 and 6509 of Title 24 of the Consolidated Statutes. Such guidance would have been helpful in this matter, as there are no reported cases or agency decisions interpreting or applying these two statutes.

Section 6504 governs the process a college or university must follow before making fundamental changes in the institution’s articles of incorporation. The statute states that “It is unlawful for any institution holding a certificate of authority under this chapter authorizing the conferring of degrees to amend its articles of incorporation, to merge or consolidate with any other corporation or to divide or convert without first securing the approval of the department with respect thereto.” 24 Pa. C.S. § 6504. Section 6509 makes any violation of section 6504 a summary criminal offense. 24 Pa. C.S. § 6509 (“Penalty for violation of this chapter. A person who violates this chapter commits a summary offense.”). In section 6509, the Pennsylvania legislature has expressed the public policy of the Commonwealth that *ultras vires* actions by colleges and universities that circumvent the regulatory oversight process of the Department of Education will not be tolerated. Before, during, and after the public informational hearing Petitioners repeatedly raised the issue of the College’s violation of section 6509 and the Respondent’s obligations under the law, but Respondent ignored the statute. Certified Record at 274-75 (Wilson College Women’s Rebuttal to College’s Written Testimony); 94-95 (Behm Testimony); 330-31 (Petitioners’ Post-Hearing Submission).

There is no mention at all of section 6509 in the decision Respondent issued in this matter. Certified Record at 3-11. While deference is due to an administrative agency's expertise and interpretation of its governing statutes, *Turchi v. Philadelphia Board of License and Inspection Review*, 1273 C.D. 2010, 1274 C.D. 2010 (Pa. Cmwlth. 2011), deference is not appropriate when an agency has simply ignored the law. When the uncontested evidence presented by Petitioners showed that the College had implemented fundamental changes to its charter and mission both before approval by the Board of Trustees and before submission and approval by Respondent in violation of the explicit language of section 6504, Respondent's failure to take any action under section 6509 was a clear abuse of discretion.

2. Respondent's Decision Ignores the Substantial Evidence and Constitutes an Abuse of Discretion

Petitioners' discussion of the substantial evidence is hampered in the present matter because of Respondent's failure to include in the Certified Record the extensive documentation and evidence appended to the written testimony submitted by each of the Petitioners. All of Petitioners' factual claims are supported by evidence that was timely submitted to Respondent and that evidence should have been made part of the Certified Record.

The substantial and uncontested evidence submitted by Petitioners in this matter shows that the College intentionally implemented fundamental changes to its articles of incorporation and its historic mission as a college for women without seeking prior approval from Respondent, as required by section 6504. 24 Pa. C.S. § 6504. See, e.g., Certified Record at 92-93 (Behm Testimony); 329-30 (Petitioners' Post-Hearing Submission); 501-13 (Van Ness/Wilson College Women Protest). At the public informational hearing, the College's counsel stated, "I do not

believe that frankly we need to be here. And again, I'm not saying anything about your process, but I believe that the 1993 charter and I still believe that today was — its language of including without limitation permitted the College to go ahead and become coeducational across all of its programming.” Certified Record at 164 (Transcript of Hearing). After the public informational hearing concluded, the President of the College was quoted as stating that regardless of Respondent’s decision in this matter, the College was not changing course and would continue to admit male students. Certified Record at 322 (Petitioners’ Post-Hearing Submission). In view of the uncontested evidence of the College’s deliberate violation of the law and open defiance of Respondent’s proper regulatory oversight role, it was an abuse of discretion for Respondent to grant unqualified *ex post facto* approval of the College’s application.

The substantial and uncontested evidence shows that Respondent failed to determine whether the proposed fundamental changes in the College’s charter and mission serve the public interest in a diverse array of higher education options, and whether the region in which the College is located already offers the kind of educational opportunities provided by a small, coeducational liberal arts college. Certified Record at 93-94, 96 (Behm Testimony); 272-73 (Petitioners’ Rebuttal). Chapter 32 of the Pennsylvania Code describes the purposes and authority of the Department of Education:

The purpose of this chapter is to encourage and affirm, and when necessary, apply impetus and sanctions to, institutional efforts to provide equal opportunity in admissions and treatment of students, in educational programs for students, in employment opportunities and in governance, *to the end that the educational needs of the diverse citizenry of this Commonwealth are served by the Commonwealth's rich array of higher education institutions in keeping with their individual missions and charters.*

Id. (emphasis supplied). Respondent's failure to hold an evidentiary hearing to determine whether replacing one of the three remaining women's colleges in Pennsylvania with yet another small coeducational liberal arts college serves "the educational needs of a diverse citizenry of the Commonwealth" constitutes an abuse of discretion.

Additionally, when Respondent approved the College's application on the basis that the new college created by the amended charter complies with the requirements of Title 24, it should have submitted the amended charter to the institutional review described in Chapter 40 of the Pennsylvania Code. Section 40.2 specifically requires a new college or university to submit a statement that "shall document how the mission fulfills the educational needs of the Commonwealth and does not duplicate education already provided in the institution's service region and the Commonwealth." Petitioners submitted substantial and uncontested evidence that Wilson College's "service area" is overflowing with small, coeducational liberal arts colleges, many with outstanding histories and reputations such as Gettysburg College, Dickinson College, and Penn State Mont Alto. Certified Record at 112-13 (Behm Testimony); 272-73 (Wilson College Women's Rebuttal to College's Written Testimony). Respondent's failure to require the College to undergo institutional review under Chapter 40 and its failure to address the duplication of existing educational opportunities created by the amended charter constitutes an abuse of discretion.

The substantial evidence shows that Respondent failed to address Petitioners' arguments concerning the value of women's colleges and the public interest in preserving one of the few women's colleges remaining in Pennsylvania, particularly when the record shows that there is no financial or enrollment crisis, as the College claimed, requiring the dissolution of the women's

college. Certified Record at 284-90 (Petitioners' Rebuttal); 471-74 (Wilson College Board of Trustees' Dec. 10, 2009 "We Believe" Letter); 476-88 ("The Strategic Plan for Wilson College: 2010-2015"). This was an abuse of discretion.

The substantial and uncontested evidence shows that the process underlying the College's decision to make fundamental changes to its charter and mission was fraught with incomplete, unfounded and misleading information (e.g., Certified Record at 81-83 (Tishok Testimony)); that the College deliberately misled the Board of Trustees and the College community as to the need to abandon its historic mission and weaken its charter (e.g., Certified Record at 87-90, 79-78, 96 (Tishok Testimony); 230-35 (Behm Testimony); 249-54 (Tishok Written Testimony); 501-02 (Mistick Interview); 393-401 (Wilson College receives "A" grade by Forbes College Financial Grades, Fiscal Years 2010-11): that neither Stevens Strategy, the consultant retained by the College, nor the Commission on Shaping the Future of Wilson College recommended that the College adopt coeducation across all programs (Certified Record at 288 (Wilson College Women's Rebuttal to the College's Written Testimony) ("Stevens Strategy presented the following conclusions to the Board of Trustees and the College community-at-large in spring 2012: Wilson should: Preserve its core undergraduate, residential women's college; Strengthen and expand undergraduate degree programs; Establish additional graduate programs; Establish graduate and undergraduate articulation programs; Develop on-line and hybrid programs for adults; Consider new marketable program areas such as healthcare"); 490-95 (Van Ness Chronicle of Higher Education Letter)); and that the claim that enrollment needed to grow to over 1,700 for the College to survive was flatly false and has been abandoned by the College. Certified Record at 119-21 (Tishok Testimony); 329-30 (Petitioners' Post-Hearing Submission).

In these circumstances, Respondent's ex post facto and unqualified approval of the College's application — rather than taking any of the actions authorized by section 6503(e), such as conducting audits and investigations or imposing conditions on the College — was an abuse of discretion. 24 Pa. C.S. § 6503(e).

Finally, section 6504(d) provides that Respondent may only issue a certificate of authority when the application submitted by a college or university complies with the provisions of Title 24, the Department of Education's regulations, and the standards and qualifications for institutions of higher education prescribed by the State Board of Education. 24 Pa. C.S. § 6503(d) ("Standards for issuance of certificate.--A certificate of authority shall be issued by order of the department only if and when the department finds and determines that: (1) The application complies with the provisions of this chapter, the regulations of the department thereunder and the standards and qualifications for institutions prescribed by the State board thereunder." ). The uncontested evidence shows that the College's application failed to meet these minimum requirements. The College's application failed to inform the Department that it was already operating as a coeducational institution in violation of its articles of incorporation and mission. It failed to inform the Department that it had filed a "substantial change" application with its accreditation agency, the Middle States Commission on Higher Education. Certified Record at 327-28 (Petitioners' Post-Hearing Statement). It failed to submit a section 40.2 statement regarding how the new charter and mission fulfills the educational needs of the Commonwealth and does not duplicate existing educational opportunities in the College's service area. These and other red flags should have prompted further investigation by



Respondent and a full adjudicatory hearing, but in an abuse of discretion, Respondent failed to act.

Respondent had the authority to require the College to suspend implementation of the fundamental changes to its charter and mission while it investigated these and other serious, highly relevant legal and factual matters raised by Petitioners, but it failed to do so. Respondent had the authority to grant Petitioners' petition to intervene and hold an adjudicatory hearing that would have permitted a full exploration and resolution of the important and highly relevant disputed facts and law and mixed questions of fact and law raised in the substantial evidence submitted in this matter, but it failed to do so. Respondent had the obligation to act on the College's violation of section 6509, but it failed to do so. This was an abuse of discretion.

#### Conclusion

Respondent's decision granting unqualified approval of the College's application for a certificate of authority to amend its articles of incorporation, following an administrative process that failed to comport with the Commonwealth's Administrative Agency Law and this Court's decision in *Philadelphia County Medical Society v. Kaiser*, 699 A.2d 800 (PA Cmwlth. 1997) (en banc), must be vacated. Although this is a case of first impression and there are no reported cases or agency decisions addressing Respondent's authority under 24 Pa. C.S. §§ 6504 and 6509, established principles of administrative law and the plain language of the applicable statutes compel a single outcome. This is not overreaching, as Respondent will most likely argue, but rather proper exercise of this Court's jurisdiction. Just as the Pennsylvania Orphans Court Judge ruled in the Wilson College Case in 1979, Certified Record at 429-59:

While we recognize, as we, must, the distinct possibility that a time will come when the continuation of Wilson College as a teaching institution may become either impractical or impossible of fulfillment, the totality of the evidence did not persuade us that that time is now. The difficult days that lie ahead for Wilson College, its governing board, its alumnae and its student body are obvious. However, we doubt that those future days are any more fraught with peril, any more risky, any more doomed to failure than the conditions and circumstances which confronted the incorporators 110 years ago.

Id. at 457.

Respectfully submitted,

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