

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

Fell Charter School,	:	
Petitioner,	:	
	:	
	:	
v.	:	CAB Docket No. 2022-04
	:	
Carbondale Area School District,	:	
Respondent.	:	

OPINION

Fell Charter School (“Fell”) is a Charter School operating within the boundaries of the Carbondale Area School District (“District”). Fell was granted its original Charter in 2002, after Fell appealed the District’s denial of its application to the Charter School Appeal Board (“CAB”).

Subsequently, Fell was granted its first renewed Charter by CAB for a five-year period after its renewal application was denied by the District. The first Charter renewal period was from July 1, 2007 to June 30, 2012. Fell was granted its second Charter renewal by the District on August 29, 2012, for the five-year period from July 1, 2012 through June 30, 2017. Fell was granted its third renewed Charter by CAB for a five-year period after its renewal application was denied by the District. The third Charter renewal period was for a five-year period from July 1, 2017 through June 30, 2022.¹

¹ On November 29, 2016, Fell submitted to the District its letter of intent to renew its charter for another five-year period. The District acknowledged the third charter renewal application by letter dated February 17, 2017, and provided a list of supplemental documents that Fell needed to supply to the District for review. On April 12, 2017, Fell submitted the requested documentation to the District. The District did not provide Fell with an opportunity to present its application and evidence in support of the charter renewal at a public hearing, and did not provide for

On or about November 29, 2021, Fell submitted to the District its letter of intent to renew its Charter for another five-year period from July 1, 2022 to June 30, 2027. Within 30 days of receipt of a charter school's notice of intent to renew its charter a district must inform the charter school of any information that should be provided to the district for review. 24 P.S. § 17-1728-A. Typically, upon receipt of Fell's letter of intent to renew its charter, the District has asked Fell to submit a list of required documentation for the charter renewal application. In this matter, however, the District did not supply Fell with the list of items required for application review. Nevertheless, Fell supplied its own application documents for its fourth charter renewal.

The District did not provide Fell with an opportunity to present its application and evidence in support of the charter renewal at a public hearing, and did not provide for public comment on the matter as required by 24 P.S. § 17-1729-A. On June 29, 2022 the District Board unanimously voted to deny Fell's fourth charter renewal application.

On August 1, 2021, Fell filed with CAB a Petition to Appeal the District's non-renewal. On September 23, 2022, the District's solicitor filed a letter with CAB, which stated "[p]lease be advised that the Carbondale Area School District does not intend to answer the appeal filed by the Fell Charter School or participate in the proceedings." (*Letter from John J. Lawler, Esq. to CAB*

public comment on the matter. On June 30, 2017, the District Board unanimously voted to deny Fell's third charter renewal. On July 31, 2017, Fell filed with CAB a Petition to Appeal the District's non-renewal.

On August 18, 2017, the District's solicitor filed a letter with CAB, which stated that "[t]he Carbondale Area School District will not be filing a response to the Petition and will not be defending the Appeal." (*Letter from John J. Lawler, Esq. to CAB Dated August 18, 2017*). As a result, CAB counsel held a conference call with counsel for the parties at which time it was agreed to bring this matter before CAB to consider whether the District should be held in default for failure to answer the appeal and the appeal granted. On November 22, 2017, CAB issued its Order in which the District was deemed to be in default and Fell's appeal was granted.

Dated September 23, 2022).² On October 6, 2022, the assigned Hearing Officer issued an Order returning the file to CAB for entry of an appropriate Order.

The record in this appeal is limited. Aside from the October 6, 2022 Order, it contains the Petition to Appeal filed by Fell and the letter filed by the District indicating that it would not defend the appeal. Because the District, by way of the letter from its solicitor indicated that it would not file an answer to the appeal, the issue before CAB is whether the District should be deemed in default because it did not answer the averments in the Petition.

The District has indicated it would not answer the appeal and it is clear that an answer was owing. It is well-established that the proceedings before CAB are governed by Pennsylvania's General Rules of Administrative Practice and Procedure ("GRAPP"), which are found in Title 1 of the Pennsylvania Code. *See Souderton Area Sch. Dist. v. Souderton Charter Sch. Collaborative*, 746 A.2d 688, 695 (Pa. Cmwlth. 2000). Section 35.35 of the GRAPP provides the school district a period of 20 days to file an answer to an appeal. If the school district fails to answer, it "may be deemed in default, and relevant basic facts stated in the . . . petition [to appeal] may be deemed admitted." *See* 22 Pa. Code § 35.35.

Were the District to be deemed in default, then the facts averred in the petition to appeal would be deemed admitted and as a result, the appeal would out of necessity be granted and the Charter renewed. To deem the District in default under these circumstances is consistent with the law and with the position taken by CAB in prior cases. *See Fell Charter School v. Carbondale Area*

² The District chose not to contest the current appeal as previously occurred in the 2017 Fell charter renewal appeal process.

School District, CAB Docket No 2017-202 and Lehigh Valley Academy Regional Charter School v. Bethlehem and Saucon Valley School Districts, CAB Docket No. 2016-14

The language contained in Section 35.35 prescribes the appropriate adjudicatory response. At the CAB meeting on December 6, 2022, a motion to deem the District in default and grant the appeal was made and seconded, and the motion was adopted.

Accordingly, CAB enters the following:

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

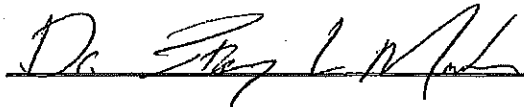
Fell Charter School,	:	
Petitioner,	:	
	:	
v.	:	CAB Docket No. 2022-04
	:	
Carbondale Area School District,	:	
Respondent.	:	

ORDER

AND NOW, this 21st day of December, 2022, based on the foregoing and vote of this Board,³ it is hereby **ORDERED** that the Carbondale Area School District is deemed to be in default in this matter, and the appeal of Fell Charter School is **GRANTED**.

The executed renewal charter should be presented to Carbondale Area School District for signature.

For the State Charter School Appeal Board:



Chair

³ At the Board's meeting on December 6, 2022, members Marten, Faustman, Schwartz, Killion, and Hagarty voted 5 to 0 to deem the District in default and grant the appeal.

For Appellant: John J. Lawler, Esquire
25 North Main Steet, Suite Two
Carbondale, PA 18407

For Appellee: Kimberly Kost Scanlon, Esquire
P.O. Box 240
Clarks Summit, PA 18411

Docket Clerk: Terriann Preston-Simpson
State Charter Appeal District, Office of Chief Counsel
Pennsylvania Department of Education
333 Market Street, 9th Floor
Harrisburg, PA 17126-0333
RA-EDCHARTERBOARD@pa.gov

Date of Mailing: December 21, 2022