

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION**

STATE CHARTER SCHOOL APPEAL BOARD

In Re: Fell Charter School :
 : **Docket No. CAB 2007-04**
Appeal from the revocation/denial of renewal :
of charter by Carbondale Area School District :

OPINION

I. Background

Fell Charter School (“FCS”) was granted its original five-year charter by the State Charter Appeal Board (“CAB”) in 2002, after its application was denied by the Carbondale Area School District (the “District” or “Carbondale”). The term of the charter ended June 30, 2007. At the commencement of the 2006-2007 school year, FCS informed Carbondale of its intent to renew the charter and, on October 26, 2007, FCS sent a Charter Renewal Package to the District. On December 7, 2007, the District sent a “Notice of Revocation/Nonrenewal Charges and of Hearing” to FCS. Subsequently, on January 2, 2007, the District sent to FCS an Amended “Notice of Revocation/Nonrenewal Charges” including five additional allegations against the school. Public hearings on the revocation/non-renewal, at which both FCS and Carbondale were afforded a full opportunity to be heard, were held on February 5, 6 and 7, 2007. At an April 2, 2007 meeting, the Carbondale Area School District’s Board of School Directors (the “Board”) voted to revoke/not renew the charter. On April 27, 2007, FCS filed with the State Charter School Appeal Board (“CAB”) an appeal of that decision. The record was certified and the appeal was heard on June 26, 2007. Subsequent to the record being certified, both parties filed a Motion to Supplement the Record which we now grant. For the reasons set forth below, we hold that the revocation/non-renewal of the charter was not proper.

II. Findings of Fact

1. FCS' original charter was granted in 2001.
2. The initial charter was for a term of five years, commencing July 1, 2002 and ending June 30, 2007.
3. At the beginning of the 2006-2007 school year, FCS requested that its charter be renewed.
4. On October 26, 2006, FCS sent a Charter Renewal Package to the District evidencing its intent to renew the charter commencing with the 2007-2008 school year.
5. The District conducted a comprehensive review of FCS, including two site visits to the school in September and November, 2006.
6. By letter dated December 7, 2006, the District provided FCS with formal notice, pursuant to the Charter School Law, 24 P.S. § 17-1729-A, of the grounds for revocation/non-renewal of the charter and the date, time and place at which a public hearing concerning the non-renewal would be held.
7. On January 2, 2007, the District sent an Amended "Notice of Revocation/Nonrenewal Charges" including five additional allegations against FCS.
8. Public hearings on the revocation/non-renewal were held on February 5, 6 and 7, 2007.
9. On April 2, 2007, the Carbondale Area Board of Education voted to revoke/not renew FCS's charter.

10. The Board provided four grounds for revoking/not renewing the charter: (a) FCS violated material terms of the charter; (b) FCS failed to meet generally accepted standards of fiscal management; (c) FCS violated provisions of the CSL, including provisions relating to the employment of personnel, and other laws applicable to charter schools; and (d) FCS violated federal and state law concerning the provision of special education services to children with disabilities.
11. On April 27, 2007, FCS filed an appeal of the Board's denial with CAB.
12. On June 26, 2007, CAB heard argument from FCS and the District regarding this appeal.
13. FCS offers an after school tutoring program. *See* Certified Record Exhibit H, pg. 43.¹
14. A tutoring program held before school, as well as the Oasis after school program are both available to students but are currently not offered by FCS due to lack of interest. *See* Cert. R. Exh. H, pgs. 42-3.
15. Students at FCS are not grouped strictly by ability. *See* Cert. R. Exh. H, pg. 44; *see also* Affidavit of Mary Jo Walsh.²
16. FCS utilizes personalized learning plans and integrated learning systems. *See, e.g.,* Cert. R. Exh. H, pgs. 115-16; Exh. H, pgs. 79-80; Exh. B-17a.
17. Adequate time is allotted during the school day for math and literacy instruction. *See* Cert. R. Exh. G, pgs. 196-7.

¹ Hereinafter, citations to any document contained in the Certified Record provided to CAB on May 11, 2007 will be referenced as "Cert. R. Exh. ___."

² This affidavit, dated June 16, 2007, is attached to FCS's Motion to Supplement the Record, which was granted above.

18. For most of its existence, FCS has provided foreign language instruction to students. In the times that it has not provided foreign language instruction, FCS has been consistently attempting to meet this aspect of its charter agreement. *See* Cert. R. Exh. J, pg. 9; *see also* Affidavit of Mary Jo Walsh.
19. FCS is providing a rigorous curriculum for its students and uses constructivist teaching methods in areas of its curriculum. *See, e.g.*, Cert. R. Exh. G, pgs. 168-70; Exh. G, pgs. 150-8; Exh. C, pgs. 195-7.
20. The yearbook program at FCS is an aspect of a media arts program. *See, e.g.*, Cert. R. Exh. C, pgs. 63-4; Exh. H, pgs. 48-9.
21. Neither a centralized library nor a science lab is required by FCS' charter. *See generally*, Cert. R. Exh. A-3.

III. Conclusions of Law

1. The Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, 24 PS § 17-1701-A *et. seq.* ("CSL"), governs the application process, the approval process, the operation and revocation/renewal of charter schools in Pennsylvania.
2. Pursuant to §17-1729-A(a) of the CSL, a school district may deny the renewal of a charter based on any of the following:
 - (a) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.
 - (b) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.
 - (c) Failure to meet generally accepted standards of fiscal management or audit requirements.

- (d) Violation of provisions of [the Charter School Law].
 - (e) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
 - (f) The charter school has been convicted of fraud.
3. In determining whether a school district's non-renewal of a charter is appropriate, CAB shall give due consideration to the findings of the local board of school directors and specifically articulate reasons for agreeing or disagreeing with the board. 24 P.S. § 17-1729-A(d); *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 571 Pa. 503, 516-17 (2002).
 4. Because the statutory standards for review of charter non-renewals are the same as those for the review of charter denials, CAB shall make a de novo review of the District's determinations. *Compare* 24 P.S. § 17-1717-A(i)(6) *with* 24 P.S. § 17-1729-A(d); *see also West Chester* at 516-17.
 5. The CSL requires a district to state the grounds for non-renewal of a charter with reasonable specificity and to give reasonable notice to the charter school of the date on which a public hearing concerning the non-renewal will be held. 24 P.S. § 17-1729-A(c).
 6. A district must conduct a hearing, present evidence in support of the grounds for non-renewal stated in its notice and give the charter school reasonable opportunity to offer testimony before taking final action. 24 P.S. § 17-1729-A(c).
 7. A district must take formal action regarding the non-renewal of a charter school at a public meeting pursuant to the act of July 3, 1986 (P.L. 388, No. 84), known as

the “Sunshine Act,” after the public has had thirty (30) days to submit comments to the board. 24 P.S. § 17-1729-A(c).

8. The District followed proper procedure pursuant to 24 P.S. § 17-1729-A(c).
9. The CSL places the burden of proof on the District to present compelling evidence to substantiate its reasons for non-renewal. *See* 24 P.S. § 17-1729-A(c); *see also Renewal Application of the Lincoln Charter School, CAB 2005-3.*
10. The District did not meet its statutory obligation of presenting compelling evidence to substantiate its reasons for non-renewal under 24 P.S. § 17-1729-A(c).
11. FCS did not commit material violations of the conditions, standards and procedures contained in its written charter.
12. FCS did not violate generally accepted standards of fiscal management.
13. FCS did not violate provisions of the CSL, including provisions relating to the employment of personnel, and other laws applicable to charter schools.
14. FCS did not violate federal and state law concerning the provision of special education services to children with disabilities.
15. The record in this appeal does not support the revocation/non-renewal of FCS’s charter.

IV. Discussion

The Pennsylvania General Assembly enacted the CSL to provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system. It was the intent of the Legislature that charter schools would offer diverse and innovative educational techniques while operating independently of the traditional public

school system. *See* 24 P.S. § 17-1702-A. The charter school application process is rigorous as the intent of the CSL is to improve educational opportunities for students. *See generally*, 24 P.S. § 17-1719-A; *see also* 24 P.S. § 17-1702-A. When a charter is granted by a local board of school directors, the charter school is required to comply with the terms and conditions of that charter, as well as the information contained in the charter school application, which is incorporated into the charter. 24 P.S. §17-1720-A; *see also* 24 P.S. § 17-1729-A(a)(1).

Section 1729(a) of the Charter School Law sets forth the causes for non-renewal or termination of a charter. Those causes include:

- (1) One or more material violations of any of the conditions, standards or procedures contained in the written charter.
- (2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter.
- (3) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (4) Violation of provisions of [the Charter School Law].
- (5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
- (6) The charter school has been convicted of fraud.

24 P.S. § 17-1729-A(a). In order to legally terminate or not renew a charter, a district must provide compelling evidence that a charter school violated at least one of these provisions. *See* 24 P.S. § 17-1729-A(c); *see also* *Renewal Application of the Lincoln Charter School*, CAB 2005-3. In the present case, the District voted to not renew FCS's charter; specifically, Carbondale found that FCS: (a) violated material terms of the charter; (b) failed to meet generally accepted standards of fiscal management; (c) violated provisions of the CSL, including

provisions relating to the employment of personnel; and (d) violated federal and state law concerning the provision of special education services to children with disabilities.

In accord with the discussion below, CAB now finds, based upon its independent review of the record, that Carbondale did not present compelling evidence to substantiate its finding that FCS violated the CSL and, therefore, the District acted improperly in revoking/not renewing FCS's charter.

V. Standard of Review

Before addressing the merits of this appeal, it is necessary to set forth the proper standard of review to be applied by CAB in this matter. Section 1729(d) of the Charter School Law states:

The appeal board shall have the exclusive review of a decision not to renew or revoke a charter. The appeal board shall review the record and shall have the discretion to supplement the record if the supplemental information was previously unavailable. The appeal board may consider the charter school plan, annual reports, student performance and employee and community support for the charter school in addition to the record. The appeal board shall give due consideration to the findings of the local board of directors and specifically articulate its reasons for agreeing or disagreeing with those findings in its written decision.

24 P.S. § 17-1729-A(d). The Pennsylvania Supreme Court, in *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 571 Pa. 503, 812 A.2d 1172 (2002), set forth the proper standard to be applied by CAB when reviewing a district's denial of a charter school application. In *West Chester*, the Court held that CAB must apply a *de novo* standard of review and that such a standard "requires CAB to give 'appropriate consideration' to the findings of the District Board, while making an independent determination as to the merits of the charter school application." *Id.* at 516-17 (affirming the holding of the Commonwealth Court, *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 760 A.2d 452 (Pa. Commw. Ct. 2000)).

Although *West Chester* pertains to CAB's review of a denial of a charter school application, the CSL language regarding the review of a non-renewal of an application is

essentially identical. *Compare* 24 P.S. § 17-1717-A(i)(6) *with* 24 P.S. §17-1729-A(d). Therefore, CAB shall make a *de novo* review; while giving “due consideration” to the findings of the District, CAB will independently review each of the bases cited by Carbondale for its denial of FCS’s renewal application. *See* 24 P.S. § 17-1729-A(d).

**The Carbondale Board of Education Acted Properly and Did Not Violate FCS’
Due Process Rights When Counsel From the Same Firm Acted Both as the
Hearing Officer for the School Board and Prosecutor for the Matter
Before the School Board**

FCS alleges that it was denied its due process rights by the actions of Carbondale when the Board voted to revoke/not renew the charter based on a decision written by the prosecuting attorney, who is in the same firm as a testifying witness in this matter, and who pursued a separate matter on behalf of Carbondale against FCS. Specifically, FCS asserts that the inter-relationship between the Levin Legal Group, the District administration and the Board creates the appearance of impropriety and a due process violation. However, the fact that the Board adopted the Findings of Fact and Conclusions of Law submitted on behalf of the administration without any changes is not enough to establish impropriety. The Board adopted the decision and was not advised by the prosecuting attorney, but by its own solicitor, who is not employed by the Levin Legal Group. Without more evidence to support this allegation, we hold that the Board did not violate the due process rights of FCS.

**FCS’s Application for Renewal Was Improperly Denied Because Carbondale did not
Present Compelling Evidence of Material Violations of the Conditions, Standards or
Procedures Contained in the Written Charter**

Now CAB will turn to the merits of this appeal. In this case, the Board found that FCS committed a multitude of violations of the charter. However, most of the alleged violations have not been substantiated by the record and the violations that have been established do not, in

CAB's view, rise to the level of material violations. Because the District failed to present compelling evidence that FCS materially violated the conditions, standards or procedures contained in the written charter, the charter cannot be revoked/not renewed on this basis.

Notwithstanding the fact that we do not find material violations of the charter, as explained below, we do note that there are some aspects of the charter regarding which FCS has failed to satisfy its commitments, either in whole or in part. Although these deviations, taken as a whole, do not support non-renewal of the charter, FCS is reminded that it must be true to its charter and the representations that caused the charter to be approved in the first instance.

Although some of the shortcomings are beyond FCS's control, we strongly urge the School to be diligent in complying with its charter, especially during the period of its renewal term. It is essential that charter schools and chartering districts take all components of their charters very seriously, especially since families and students rely on the representations made in the school's charter in exercising the option to enroll in those alternatives to traditional public school. CABs findings should not be taken as an affirmation of or agreement in any of the several deviations from the instructional program described in the charter. CAB does not condone those violations. Rather, CAB is simply concluding that these deviations do not, especially in light of CAB's conclusions on the other issues raised by Carbondale, rise to such a level as to justify nonrenewal.

To be more specific, Carbondale found that FCS violated the charter because, for three years, the Board of Trustees of FCS was composed of an insufficient number of members and allowed members to serve longer terms than the charter allowed. There have been periodic vacancies on the Board of Trustees since FCS opened its doors; however, there is no evidence that this affected FCS' operations. Moreover, FCS presently satisfies the charter provision

requiring a minimum of five members of the Board of Trustees. *See* Affidavit of Mary Jo Walsh. We note that FCS has no control over public apathy and cannot force anyone to become a member of the Board of Trustees. Although the lack of interest is unfortunate, neither periodic vacancies nor members serving longer terms than the charter establishes rise to the level of a material violation. Although one might argue that this evidences lack of support of or interest in the school, such a conclusion is belied by FCS's steadily increasing enrollment.

Carbondale further held that, in violation of its charter, FCS did not provide an after school Oasis program or a before school tutoring program, both of which had been promised in the charter. FCS does offer an extensive after school tutoring program. The Oasis program and the before school tutoring program are both available to students, although they are not currently offered due to a lack of student and parent interest. Interest in these programs is not something that FCS can control and, therefore, the fact that the programs are not currently running is not a material violation. The school stands ready to offer these programs, consistent with the charter, if they are requested. *See* Cert. R. Exh. H, pgs. 42-3.

The next area of concern was that the FCS charter provides that it will not track students by ability and that it will utilize personalized learning plans and provide for the utilization of integrated learning systems. Carbondale found that FCS was tracking students by ability, was not providing personalized learning plans and failed to utilize integrated learning systems; however, Carbondale erred in its findings. The record establishes that students at FCS are grouped under a flexible grouping model that takes into account many factors; although ability is one of those factors, it is only one of many factors taken into consideration. The record also establishes that personalized learning plans are in place at FCS and, in fact, a sample copy was introduced into

the record. Cert. R. Exh. B-17a. Furthermore, the record also established that integrated learning systems are in use at the school.

Carbondale also found that FCS failed to provide uninterrupted instruction in language arts and math, and therefore, provided insufficient learning time in these subject areas. Adequate learning time is provided to students in these subject areas. Although Spanish classes were inserted between the school's math and literacy programs, there is sufficient time allotted during the school day to provide literacy and math instruction to the students. Because FCS should have the discretion to schedule its school day in a manner it deems appropriate for its students, Carbondale erred in finding this to be a material violation.

Next Carbondale held to be a violation of the charter that FCS failed to offer foreign language instruction. FCS was unable to offer Spanish instruction for one semester because FCS could not find a qualified teacher to hire. Although FCS eventually hired a Spanish teacher, who it believed to be competent, FCS had to terminate the individual for insubordination and neglect of duties and responsibilities. *See* Affidavit of Mary Jo Walsh. In the meantime, FCS has been actively seeking a qualified Spanish teacher. The lack of foreign language instruction at FCS is neither permanent nor due to FCS disregard of the charter agreement. FCS has been consistently attempting to meet this responsibility and to not renew/revoke the charter on this basis is unreasonable and inconsistent with the CSL.

Carbondale also found that FCS violated the charter by failing to attain the goals and objectives outlined in the charter agreement.³ Goals such as (a) utilizing constructivist teaching practices; (b) providing an academically rigorous curriculum; (c) adapting to the different

³ We note that, at the outset of the renewal process, Carbondale requested grade level equivalencies for all FCS students, which FCS failed to provide. This failure to be forthcoming with information that was certainly in FCS's possession, was not helpful to FCS's renewal request. Moreover, Carbondale had every right to request this information and the charter school was required to make it available to the district. 24 P.S. § 17-1729-A(a).

learning styles of students; (d) providing varied student assessments; and (e) all students performing at grade level in core subjects were, at some level, attained by FCS. Goals are, by definition, results for which to strive. Therefore, even if not fully realized, as long as FCS is directing efforts toward achieving these results, which it clearly was, FCS is not violating the charter.

Examples of how FCS has reached some, if not all, of its goals and objectives included expert testimony which proved that FCS did, in fact, provide a rigorous curriculum for its students. Also, FCS does use constructivist teaching in some areas of its curriculum. The charter does not provide that FCS will utilize solely constructivist teaching, therefore this goal has been met. Finally, relating to student achievement, FCS is well on its way to meeting its goal of all students performing at grade level in core subject areas. FCS administers the ITBS and PSSA and the scores of its students demonstrate that students enrolled at FCS for a longer period of time outperformed students who recently transferred to FCS from surrounding schools. Furthermore, the testing results are used by FCS to determine student strengths and weaknesses and the results are factored into each student's Personalized Student Achievement Plan to determine individual goals for students throughout the year.

The District also found it to be a violation of the charter that FCS did not have a centralized library, science labs or an extra-curricular media arts program. Neither a centralized library nor a science lab is required by the charter and, therefore, no violation exists on these grounds. FCS does not have a centralized library, but does have classroom libraries and does heavily use the Lackawanna County Book Mobile. Also, although there is no centralized science lab, students are provided with science materials in their individual classrooms. Materials such as workbooks and kits, which include microscopes, allow the students to perform science

experiments in the classroom. Thus, FCS is meeting student needs in these areas. Furthermore, Carbondale found that FCS did not have a media arts program, but the school yearbook program which utilizes computers, print media and photography can be considered an aspect of a media arts program. Thus, CAB finds no material violation on this basis.

The remaining noted violations involved looping, computer technology and the division of the school into smaller houses. FCS argued that these matters are matters of expense and that they will be resolved as the financial position of FCS improves. Therefore, we hold that the lack of looping and dividing the students into smaller houses are not material violations of the charter. The lack of extensive access to computer technology is more worrisome but still does not rise to the level of a material violation. FCS does provide its students with access to technology, but because extensive access to computer technology was included as a goal of FCS, not completely realizing the goal is not a material violation. CAB believes that the lack of technology at FCS is, as stated above, primarily a budget expense. FCS alleges that it is currently owed almost \$200,000 by surrounding school districts, including Carbondale. *See* Affidavit of Mary Jo Walsh. If FCS had access to these funds, it would have an increased ability to meet its goal of providing extensive access to computer technology, including more computers, to the students at FCS.

Pursuant to Section 1729 of the CSL, which states that a request for a charter renewal can be denied if there are one or more material violations of the conditions, standards or procedures stated in the charter, Carbondale voted to revoke/not renew FCS's charter. 24 P.S. § 17-1729-A(a)(1). CAB does not agree with Carbondale in this finding for the reasons specified above. Therefore, the decision to revoke/not renew the charter cannot be upheld on the ground that there are material violations of the conditions, standards or procedures in the FCS charter. 24 P.S. § 17-1729-A(a)(1).

FCS Met Generally Accepted Standards of Fiscal Management

Regarding finances, Carbondale alleges that FCS has not operated in accordance with accepted fiscal standards because FCS operated at a deficit for its first three years of operation, a tax lien was filed against FCS by the Pennsylvania Department of Revenue for one quarter and FCS is behind in its principal and interest payments to Mosaica, its educational management company. Although FCS operated at a deficit for the first three years of its operation, FCS is now operating in the black. Because of increased enrollment, increased revenue from the federal lunch program and decreased expenses, FCS's revenue is exceeding expenditures and FCS is currently enjoying a financial surplus. Regarding the tax lien, the record reflects that FCS paid all applicable taxes, but the money was transferred to the wrong account by either FCS's payroll agent or the Department of Revenue. *See* Cert. R. Exh. B-13; *see also* Affidavit of Mary Jo Walsh. Thus, this issue was satisfactorily resolved. Furthermore, both FCS and Mosaica are working together to address FCS's debt. Currently, interest is being paid and although all principal payments are not being paid, some are. Moreover, there is no evidence to suggest that Mosaica will call the debt and put the school into bankruptcy. In fact the opposite is true; because of Mosaica's interest in the success of FCS, Mosaica is unlikely to do anything but support FCS. In sum, CAB does not agree with Carbondale's finding that FCS violated generally accepted standards of fiscal management. In contrast, CAB finds that FCS is meeting such standards.

FCS Complied With the CSL, Including Provisions Relating to the Employment of Personnel

Carbondale found that FCS violated Section 1724-A(a) of the CSL because it alleged that at least seventy-five percent of the professional staff members at FCS did not hold appropriate State certification. 24 P.S. § 17-1724-A(a). Carbondale provided an extensive analysis of why it

believes less than seventy-five percent of the professional staff members are improperly certified. However, we find the District's analysis to be erroneous.

In total, Carbondale found that 14 of FCS's 26 employees were inappropriately certified; at least six of these employees were found to be inappropriately certified because Carbondale believed that their Level I certificates had lapsed. Carbondale concluded that under 22 Pa. Code § 49.82, all teachers with Level I certificates must convert to Level II within six years, otherwise the certificates will lapse. However, Level I certificates are valid for actual years of professional service as an educator, not calendar years. *See* Certification and Staffing Policies and Guidelines, No. 3. There is no evidence in the record that the District knew the actual years of professional service of each educator with a Level I certificate. Therefore, the District's determination that some of these certificates had lapsed is not supported by the record.

More importantly, even if the District had information about the professional employees' actual years of professional service, only the Bureau of Teacher Certification and Preparation (the "Bureau") can determine the validity of a certificate. *See* Certification and Staffing Policies and Guidelines, Nos. 3 & 8. There is no evidence in the record that the Bureau determined that any of the Level I certificates held by FCS' professional employees were invalid.

In addition, the CSL provides that, "[p]rofessional employees who hold a first level teaching or administrative certificate may, at their option, have the time completed in satisfactory service in a charter school applied to the length of service requirements for the next level of certification." 24 P.S. § 17-1724-A(g). Thus, FCS' employees with Level I certificates were not required to apply the time worked at FCS to the length of service requirements for Level II certificates.

Therefore, those teachers who Carbondale found to be inappropriately certified because of allegedly lapsed Level I certificates could, in fact, be properly certified to teach in a charter school. If this is the case, these six teachers, along with the 1 $\frac{3}{4}$ professional employees that Carbondale admitted were properly certified, would bring the percentage of appropriately certified teachers above the minimum requirement of 75%. There are not sufficient facts in the record to support Carbondale's position that 75% of the professional staff did not hold appropriate state certification. Thus, this basis for non-renewal/revocation is rejected.

Next, Carbondale found that FCS was in violation of the Certification Staffing Policy Guidelines ("CSPGs") No. 24 because none of its professional employees had a job description in their personnel files. However, job descriptions did exist; although they were not kept in each individual file, a description for each job was kept on site at FCS as part of the Mosaica Education Manual and the original charter. *See* Cert. R. Exh. H, pgs. 75-8. Furthermore, all employee files now contain job descriptions. *See* Affidavit of Mary Jo Walsh. If this issue is an infraction, it is not a reason to not renew FCS's charter.

Additionally, Carbondale found that FCS violated the CSL because all employees and volunteers did not have the appropriate criminal history and child abuse checks. During the site visit, Carbondale did not find the appropriate Act 34 or Act 151 clearances in all personnel files; however, at the revocation hearing, FCS provided current Act 34 and Act 151 clearances for each employee. Although FCS admits that it had previously failed to obtain Act 31 and Act 151 clearances from volunteers, FCS is now in compliance with the CSL and has established a protocol for all volunteers to obtain proper clearances under Acts 34 and 151.

For all of the above-stated reasons, CAB concludes that there were no employment violations, and therefore, this basis for non-renewal/revocation is rejected.⁴ In sum, Carbondale did not present compelling evidence that FCS violated any provisions of the CSL relating to the employment of personnel, therefore, the charter cannot be revoked/not renewed on this ground.

FCS Complied With Federal and State Law Concerning the Provision of Special Education Services to Children with Disabilities

Finally, in voting to not renew/revoke FCS's charter, the District found that FCS had violated federal and state law concerning the education of special needs children. In reaching this conclusion, the District failed to acknowledge that FCS underwent a state conducted audit to determine its compliance with Federal and State requirements for students identified as eligible for special education. After the state's monitoring visit, which included an extensive review of the special education services of the school, FCS was ordered to take corrective action in a few areas. However, on February 16, 2006, the Director of the Bureau of Special Education wrote a letter commending FCS for achieving resolution of noncompliant areas and for being in complete compliance with state and federal special education laws. Cert. R. Exh. B-21D. Carbondale's contrary conclusions are unfounded. Therefore, the charter will not be revoked/not renewed on this ground.

VI. Conclusion

In sum, Carbondale did not have sufficient legal grounds, pursuant to Section 1729(c) of the CSL, to deny FCS' request for renewal of its charter. 24 P.S. § 17-1729-A(c). The record does not contain substantial evidence that FCS: (a) violated material terms of the charter; (b) failed to meet generally accepted standards of fiscal management; (c) violated provisions of the

⁴ Carbondale also found that because FCS had experienced turnover in recent years, its charter should not be renewed. Employee turnover is irrelevant as there is not a requirement in the CSL that a charter school maintain a specific number of veteran teachers. Simply stated, employee turnover is not a valid reason to revoke/not renew a charter.

CSL, including provisions relating to the employment of personnel, and other laws applicable to charter schools; or (d) violated federal and state law concerning the provision of special education services to children with disabilities.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

STATE CHARTER SCHOOL APPEAL BOARD

FELL CHARTER SCHOOL, :
Petitioner, :
 :
v. : Docket No. CAB 2007-04
 :
CARBONDALE AREA SCHOOL DISTRICT, :
Respondent. :
 :

ORDER

AND NOW, this 19th day of September, 2007, based upon the foregoing and the vote of this Board⁵, the appeal of the Fell Charter School is **GRANTED**, and the Carbondale Area School District is directed to grant the renewal and sign a charter for Fell Charter School pursuant to § 1720 of the Charter School Law, 24 P.S. § 17-1720-A.

For the State Charter School Appeal Board

/s/
Gerald L. Zahorchak, D.Ed.
Chairman

Date Mailed: 09/19/07

⁵ At the Board's August 21, 2007 meeting, the appeal was granted by a vote of 4-0 with members Zahorchak, Shipula, Green and Barker voting to grant the appeal.