

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

Fell Charter School	:	
	:	
v.	:	Docket No. 2017-02
	:	
Carbondale Area School District	:	

OPINION

BACKGROUND

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). The District approved renewals to Fell’s charter in 2007 and 2012. On November 29, 2016, Fell submitted its letter of intent to renew its charter for another five-year period to the District. The District acknowledged the 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 hold a public hearing relative to Fell’s charter renewal application or allow any input by Fell or the public. However, on June 30, 2017, the District Board unanimously voted to deny Fell’s charter renewal. On July 31, 2017, Fell filed a Petition to Appeal the District’s nonrenewal with CAB.

On August 18, 2017, the District’s solicitor filed a letter with CAB, which stated:

Please be advised that I represent the Carbondale Area School District in the above-referenced Petition to Appeal. The 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, a conference call was held with counsel during which it was agreed to bring this matter before CAB to consider whether the District should be held in default and the appeal granted.

DISCUSSION

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 School District v. Souderton Charter School 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." 22 Pa. Code § 35.35.

The certified record in this appeal is scant. It contains two documents, the Petition to Appeal filed by Fell and the letter filed by the District indicating that they 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 amended appeal, the issue before CAB is whether the District should be deemed in default because it did not answer the averments in the Petition. Were the District to be deemed in default, then the facts averred in the appeal would be deemed admitted, and as a result, the appeal would of necessity be granted and the charter renewed. To deem the District in default under these circumstances is consistent with the position taken by CAB in prior cases. *See Lehigh*

Valley Academy Regional Charter School v. Bethlehem Area School District and Saucon Valley School District, Docket No. 2005-04, 2005-06, 2011-06; 2016-14.

At the CAB meeting on October 24, 2017, 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:

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ORDER

AND NOW, this 22nd day of November, 2017, based upon the foregoing, the Carbondale Area School District is deemed to be in default in this matter, and the appeal of Fell Charter School is granted.¹

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

For the State Charter School Appeal Board



Pedro A. Rivera
Chairman

Date Mailed: November 28, 2017

¹ At the CAB meeting on October 24, 2017, members Yanyanin, Peri, Munger, Cook, Miller, and Rivera voted to deem the District in default and grant the appeal.