

COMMONWEALTH OF PENNSYLVANIA
STATE CHARTER SCHOOL APPEAL BOARD

In Re: Ronald H. Brown Charter School :
:
Appeal from Revocation/Denial of : Docket No. CAB 2005-08
Renewal of Charter by Harrisburg:
City School District :

OPINION AND ORDER

BACKGROUND AND PROCEDURAL ISSUES

Background

This matter comes before the State Charter School Appeal Board ("CAB") on appeal filed by the Ronald H. Brown Charter School ("Ron Brown") pursuant to §17-1729-A(d) of the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, (24 P.S. §17-1729-A(d)) due to the Harrisburg City School District's ("School District") denial of renewal/revocation of Ron Brown's charter. Ron Brown submitted a renewal application to the School District on November 30, 2004. (Tr. pp. 338-39).¹ The School District's Board of Control held hearings regarding the renewal application on March 22, 23, & 24, 2005. (Exh. D).² The Board of Control issued an Adjudication and Order dated September 12, 2005 by which it denied Ron Brown's renewal application and revoked its charter. (Exh. I).

On October 14, 2005, CAB received Ron Brown's Petition appealing the School District's decision to deny renewal/revoke Ron Brown's charter. By letter dated November 18, 2005, CAB's counsel stated that CAB accepted the appeal, established a briefing schedule and noted that the certified record, along with the appeal, answer and briefs would be presented to

¹ Tr. refers to the transcript from the hearings before the School District's Board of Control on March 22, 23 & 24, 2005.

² Exhibits are as identified in the record submitted to CAB by the School District.

CAB at its January 11, 2006 meeting. Furthermore, CAB's counsel stated that the matter would be placed on CAB's January 11, 2006 agenda and each party's counsel would have an opportunity to present argument at that meeting.

On November 28, 2005, CAB received the School District's Motion to Supplement the Record. The School District wanted to supplement the record with: (1) a November 2005 letter from the Pennsylvania Department of Health stating that Ron Brown failed to complete mandated screenings for the 2004-2005 school year; and, (2) the results of Ron Brown's 2004-2005 Pennsylvania System of School Assessment ("PSSA") and Ron Brown's alleged failure to fulfill requirements of the No Child Left Behind Act ("NCLB") regarding supplemental educational services ("SES"). Ron Brown filed an Answer to the Motion to Supplement the Record on December 8, 2005 arguing that the letter from the Department of Health raised a new issue and, therefore, should not be admissible. Ron Brown did not object to admission of its PSSA results as long as they were admitted in their entirety, and Ron Brown stated that it had provided evidence to the Board of Control about the availability of SES to students.

On January 5, 2006, CAB received Ron Brown's Motion to Correct the Record. In its Motion, Ron Brown requested that: (1) minutes of the April 18, 2005 Board of Control meeting be added to the record; (2) the transcript of the Board of Control's September 12, 2005 meeting be added to the record; and, (3) Ron Brown's Proposed Findings of Fact and Conclusions of Law that were included as an exhibit in the record from the School District be replaced with a copy that did not include editorial comments. CAB subsequently received a letter from the School District on January 13, 2006 stating that it did not oppose the corrections/additions to the record proposed by Ron Brown's Motion. Thus, by letter dated February 2, 2006, CAB's counsel ordered that the record be amended as requested in Ron Brown's Motion.

Prior to January 11, 2006, the parties' counsel were notified that the meeting had to be cancelled because of the lack of a quorum. The School District filed a letter with CAB on January 12, 2006, stating that it believed CAB violated time provisions of the CSL, which would make a decision by CAB untimely. Thus, the School District requested that CAB be divested of its jurisdiction over the appeal and that the School District's decision be upheld as justified and proper.

Subsequently, CAB accepted the certified record and heard oral argument from counsel at its February 28, 2006 meeting. At this meeting, Ron Brown provided CAB with three bound packets of documents evidencing support of Ron Brown by parents, the community, staff and students. The School District objected to CAB accepting these documents. CAB noted that it would take the following under advisement: (1) the School District's Motion to Supplement the Record; (2) the School District's request that CAB be divested of its jurisdiction over the appeal; and, (3) Ron Brown's request that CAB accept its submission of documents supporting Ron Brown.

Procedural Issues

CAB's Jurisdiction

The School District has argued that CAB has been divested of its jurisdiction over this appeal because, in the School District's opinion, CAB failed to comply with timeframes set forth in the Charter School Law ("CSL"). The School District notes that section 1717-A(i)(7) of the CSL provides that CAB must meet and officially review the certified record not later than thirty days after the date of the notice of the acceptance of the appeal. In addition, section 1717-A(i)(8) of the CSL requires CAB to issue a written decision affirming or denying the appeal not

later than sixty days following CAB's review of the certified record. The School District claims that CAB violated these time frames and thus must dismiss the appeal for lack of jurisdiction.

However, section 1717-A of the CSL pertains to the establishment of a charter school. This appeal from Ron Brown is an appeal from the nonrenewal/revocation of its charter rather than an appeal from denial of an application to establish a charter school. Thus, the time frames in section 1717-A are not applicable in this appeal. Section 1729-A of the CSL sets forth the causes for nonrenewal or termination of a charter and the procedures to appeal a nonrenewal or termination. Subsection (d) of section 1729-A provides that a charter school may appeal the nonrenewal or revocation to CAB and CAB shall review the record and has the discretion to supplement the record if supplemental information was previously unavailable. In addition, CAB may consider the charter school plan, annual reports, student performance and employee and community support in addition to the record. CAB must 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). Section 1729-A does not set forth any time frames within which CAB must review the record or issue a written decision regarding the appeal of the nonrenewal or termination of a charter.

Thus, the School District's request that CAB be divested of its jurisdiction over this appeal is denied.

The School District's Motion to Supplement the Record

The School District sought to supplement the record with: (1) a November 2005 letter from the Pennsylvania Department of Health stating that Ron Brown failed to complete mandated screenings for the 2004-2005 school year; and, (2) the results of Ron Brown's 2004-2005 Pennsylvania System of School Assessment ("PSSA"), which includes designation of the

percentage of highly qualified teachers, and its alleged failure to fulfill requirements regarding SES.

Ron Brown objects to the Department of Health letter being added to the record because it raised a new issue that was not one of the grounds cited by the School District in its nonrenewal/revocation notice to Ron Brown. Ron Brown does not object to the PSSA information being added to the record if it is added in its entirety, which is represented by Exhibits A and B attached to Ron Brown's Answer to Motion to Supplement the Record. Ron Brown denies the School District's averment that Ron Brown allegedly failed to fulfill its requirements regarding SES. In addition, Ron Brown objects to allowing into the record the material identifying the percentage of teachers who are considered highly qualified since teachers do not have to be highly qualified until the end of the 2005-2006 school year to comply with the No Child Left Behind Act ("NCLB").

CAB agrees with Ron Brown that the letter from the Department of Health should not be added to the record. There were no health-related issues identified in the School District's notice of charges as grounds for nonrenewal/revocation. Thus, the letter is not relevant to the charges that are the subject of this appeal. Although the letter may evidence the violation of a law that is applicable to charter schools, allowing the Department of Health's letter into the record would deprive Ron Brown of due process since it did not have notice and an opportunity to be heard on that issue before either the School District or CAB.

CAB agrees to allow Exhibits A and B attached to Ron Brown's Answer to Motion to Supplement the Record into the record, which represents the complete record of Ron Brown's 2004-2005 PSSA results. However, reference to the highly qualified status of Ron Brown's teachers shall not be included since teachers do not have to be highly qualified until the end of

the 2005-2006 school year. Since Ron Brown stated that it provided evidence to the Board of Control on the issue of notifying parents about the availability of SES, CAB will allow the School District's averments and Ron Brown's answer on this issue into the record.

Ron Brown's Submission of Documentation of Support

At the beginning of CAB's February 28, 2006 meeting, Ron Brown asked that CAB accept into the record three bound packets of documents that evidenced support for Ron Brown from parents, students, staff and the community. (N.T., p. 7).³ The School District objected to CAB accepting these documents as part of the record because of the late submission, because some of the documents were duplicates of documents that had been presented previously to the School District, and because some pages contained only signatures without any information on the pages identifying the reason for the signatures. (N.T., pp. 7-10). Ron Brown argued that the documents were not being submitted as supplemental information but were submitted as additional information that CAB may consider pursuant to section 1729-A(d) of the Charter School Law ("CSL"). (N.T., p. 10).

In the School District's Amended Notice of Revocation/Nonrenewal Charges and of Hearing, the School District did not identify lack of support as a basis to revoke/nonrenew the charter. Although there may be some merit to Ron Brown's argument that the documents constitute additional information that CAB may review in the appeal of a revocation/nonrenewal, CAB does not need to resolve that issue in this case because lack of community support was not one of the School District's reasons for revocation/nonrenewal. Thus, the documents submitted by Ron Brown at the CAB hearing to evidence support for the charter school will not be admitted into the record as they are not relevant to any issue before CAB in this appeal.

³ N.T. refers to the hearing before CAB on February 28, 2006.

FINDINGS OF FACT

1. Ron Brown has not had a full-time business manager since 2003 and, as of March 2005, the Chief Administrative Officer and the site coordinator have been responsible for fiscal operations. (Tr. p. 303).

2. The site coordinator manages the business office and has some accounting background in payroll bookkeeping for private businesses but is not a certified public accountant. (Tr. pp. 303-04).

3. A Mosaica employee, who is not a CPA and never audited a school district or public school entity, assists numerous Mosaica operated charter schools with financial management, and works directly with Ron Brown. (Tr. pp. 451, 466).

4. The 2001-2002 audit of Ron Brown showed that: (a) Ron Brown had a positive general fund balance of \$114,314 as of July 1, 2001; (b) during the 2001-2002 school year, Ron Brown's total expenditures exceeded total revenues by \$222,881; and (c) as of June 30, 2002, Ron Brown had a negative general fund balance of \$108,567. (Exh. B.15).

5. Ron Brown's 2002-2003 audit was not issued until July 2004 because of management's delay in providing records or not having them in the correct format for the auditors. (Tr. pp. 40-42).

6. In the 2002-2003 audit report, the auditors did not express an opinion on the accompanying general purpose financial statements as of June 30, 2003 because Ron Brown: (a) did not maintain complete and accurate accounting records, particularly with respect to the general ledger; (b) did not, in all cases, have available adequate, evidentiary matter in support of records or transactions; and (c) had changes in employees and in the accounting systems during

the period of audit, which created a lack of continuity in the accounting system. (Exh. B. 16; Tr. pp. 42-44).

7. In the year ending June 30, 2003, Ron Brown's expenditures exceeded its revenues by \$902,551 and the general fund balance had a deficit of \$1,055,443. (Exh. B.15, p. 4; Tr. pp. 44-45).

8. For years ending June 30, 2001, 2002 and 2003, Ron Brown was engaged in a dispute about the amount of funds owed to its management company, Mosaica Education, Inc. (Exh. B.16, p. 16; Tr. p.45).

9. For year ending June 30, 2003, Ron Brown continued to resolve issues with the IRS regarding unpaid claims for employee withholding taxes that totaled \$58,000 from the quarter ended June 30, 2003. Penalties and interest increased this amount to \$79,003. (Exh. B.16, p. 16; Tr. pp. 46-48).

10. The audit ending June 30, 2003 identified material weaknesses that included: (a) serious deficiencies involving the recording, summarizing and reporting of financial data; (b) no ongoing reconciliations performed for general ledger accounts; (c) weaknesses in the payroll area, which included payroll check discrepancies and control over adding new employees and dropping terminated employees; (d) weaknesses in the food service area, which included not filing a reimbursement claim for April 2003 and significant uncertainty over meal counts. (Exh. B.16, pp. 24-26; Tr. pp. 51-52).

11. For the year ending June 30, 2004, Ron Brown's expenditures exceeded its revenues by \$340,349 and it overspent its budgeted general fund appropriations by \$610,239. (Exh. B.17, pp. 14-15, 31; Tr. pp. 53-55).

12. Ron Brown did not have sufficient cash to pay Mosaica its management fees for the fiscal year ending June 30, 2004, so Ron Brown entered into note payable agreements with Mosaica that totaled \$303,518. (Exh. B. 17, p. 28; Tr. pp. 55-56).

13. As of June 30, 2004, the principal amount of Ron Brown's long-term debt, which included a mortgage on its building, totaled \$853,840. (Exh. B.17, p. 28; Tr. p. 56).

14. During the 2003-2004 fiscal year, Ron Brown continued to have problems with the IRS and at the end of the fiscal year Ron Brown owed the IRS \$189,702, which was subsequently paid to the IRS. (Exh. B.17, p. 31; Tr. p. 57).

15. In September and October 2004, Ron Brown issued two additional promissory notes to Mosaica that totaled \$561,416. (Exh. B.17, p. 31; Tr. p. 61).

16. After the October 2004 note was issued, the principal amount of Ron Brown's long-term debt totaled \$1,415,256, minus any amounts that might have been paid on the two previously issued notes. (Tr. p. 62).

17. As of June 30, 2004, Ron Brown had property and equipment with a depreciated cost of \$1,454,849. (Exh. B.17, p. 6).

18. Material weaknesses were found for fiscal year 2003-2004 that included: (a) serious deficiencies involving the recording, summarizing and reporting of financial data; (b) no ongoing reconciliations performed for general ledger accounts; (c) miscoding of some employees wages to the incorrect general ledger account; (d) lack of records showing monies collected from students for food service on a daily basis and a large difference between the number of meals paid to the meal provider and the number of meals submitted for reimbursement to the state or paid for by students; (e) errors in student billings to school districts; and (f) maintaining one

general ledger that combined the general fund with the food service and childcare funds. (Exh. B.17, pp. 33-35; Tr. pp. 62-63).

19. As of June 30, 2004, Ron Brown had a negative general fund balance of \$451,329 and a negative childcare fund balance of \$25,221. (Exh. B.17, p. 32).

20. Subsequent to June 30, 2004, Ron Brown effectively eliminated the general fund deficit by converting \$561,416 of accounts payable to Mosaica to long-term debt. (Exh. B.17, p. 32).

21. To eliminate the childcare fund deficit, there would have to be future profitable operations or a transfer of funds from the general fund. (Exh. B.17, p. 32).

22. For fiscal year 2004-2005, approximately 19% of Ron Brown's budgeted expenditures were obligations to Mosaica and Ron Brown's long-term debt. (Exh. B.26; Tr. p. 83).

23. At the CAB hearing, Ron Brown testified that the size of the note to Mosaica was approximately \$750,000, which was the same as the year before, and even though it was currently an interest-only note, Ron Brown was not paying the interest. (N.T. pp. 48-49).

24. Ron Brown stated in its initial application that its objectives included higher standardized test scores, and steady improvement in the quality of performance-based assessments. (Exh. B.1, p. 4).

25. Pennsylvania uses the Pennsylvania System of School Assessment ("PSSA") as the basis for determining whether a school entity has made Adequate Yearly Progress ("AYP") under the No Child Left Behind Act ("NCLB").

26. Ron Brown's 2004 Pennsylvania System of School Assessment ("PSSA") scores of 8th grade students in mathematics showed zero percent scored advanced, ten percent scored

proficient, twenty percent scored basic and seventy percent scored below basic. In comparison to the 2003 scores, the 2004 scores show no change in the advanced percentage, one percent more students scoring proficient, six percent less students scoring basic, and five percent more students scoring below basic. (Exh. B.32).

27. Ron Brown's 2004 PSSA scores of 8th grade students in reading showed zero percent scored advanced, twenty-seven percent scored proficient, thirty-six percent scored basic, and thirty-six percent scored below basic. In comparison to the 2003 scores, the 2004 scores show no change in the advanced percentage, three percent less students scored proficient, three percent less students scored basic, and six percent more students scored below basic. (Exh. B.32).

28. Ron Brown's 2004 PSSA scores of 5th grade students on reading showed two percent scored advanced, thirteen percent scored proficient, twenty-six percent scored basic, and sixty percent scored below basic. In comparison to the 2003 scores, the 2004 scores show two percent more students scored advanced, seven percent more students scored proficient, no change in students scoring basic, and nine percent less students scored below basic. (Exh. B.33).

29. Ron Brown's 2004 PSSA scores of 5th grade students on mathematics showed zero percent scored advanced, four percent scored proficient, eleven percent scored basic, and eighty-five percent scored below basic. In comparison to the 2003 scores, the 2004 scores show two percent less scored advanced, two percent less scored proficient, twelve percent less scored basic, and sixteen percent more scored below basic. (Exh. B.33).

30. The 2004 PSSA results for Ron Brown and the School District show that Ron Brown's 5th grade students scored 80 points lower than the School District's 5th grade students in math and 50 points lower in reading. Ron Brown's 8th grade students scored 20 points lower in

math but 20 points higher in reading than the School District's 8th grade students. (Exh. B.12; Tr. pp. 617-18).

31. Ron Brown's 5th grade scaled score for reading was better than one of the twelve School District schools, and the scaled score for math was better than three of the twelve School District schools. (Exh. B. 35; Tr. pp. 600-02).

32. Of the three School District schools that had a scaled score lower than Ron Brown in 5th grade math, one has a number of English as a Second Language ("ESL") students, one is an alternative school for disruptive students, and one has beginners who are ESL students. Ron Brown's scaled score in reading was only better than the School District school that had beginners who are ESL students. (Tr. pp. 600-06).

33. Under the No Child Left Behind Act ("NCLB"), scores are disaggregated in Pennsylvania for certain groups if the number of students within the group totals forty or more. If one group fails to make Adequate Yearly Progress ("AYP"), the school is identified as failing to make AYP. (Tr. pp. 637-39).

34. The School District had six subgroups that were counted towards its calculation of AYP and Ron Brown had one subgroup that was counted towards its calculation of AYP. (Tr. pp. 641-42).

35. In 2004, the PSSA test scores resulted in five School District schools being placed in Corrective Action II and the School District's district-wide status from 2003-2004 stayed at Corrective Action II. (Tr. pp. 633-35).

36. Ron Brown's status for 2004 was School Improvement II, which was a decline from the 2002-2003 school year when its status was School Improvement I. (Exh. B.13; Tr. p. 613).

37. Ron Brown also uses the Iowa Test of Basic Skills ("Iowa") as a standardized assessment. Iowa is a criterion-referenced test based on a norm in order to determine the progress of a child with information the child is taught. Students are tested in the fall and spring of a particular school year. (Tr. p. 517).

38. For the Iowa, the normal curve equivalent is a statistical score with 50 being the mean, which determines proficiency. (Tr. p. 522).

39. Between the fall of 2000 and the spring of 2004, the core total of the normal curve equivalent for all test takers at Ron Brown increased from 31.6 to 40.9. (Exh. C.4).

40. The Iowa test scores show scores for all test takers in the school, but the group of students taking the Iowa test in the spring of 2004 may include different students than the group that took the test in the spring of other years. (Tr. pp. 549-50).

41. Ron Brown stated in its initial application that its distance-learning program would serve to engage students significantly in the science curriculum. (Exh. B.1, p. 9).

42. Ron Brown does not have a distance-learning program in science. (Tr. pp. 312-13).

43. Ron Brown's initial application stated that the math curriculum would be Everyday Mathematics, which is a skills-based program geared to high achieving students, stresses writing about and discussing mathematics and is a constructionist approach by which teachers do not tell the answers but the students discover the answers. (Exh. B.1, p. 12; Tr. pp. 218-19).

44. During the 2004-2005 school year, Ron Brown was in its second full year of implementing Saxton Mathematics, which is the opposite of Everyday Mathematics, because it

has the teacher give students information that is learned and then regurgitated on a test. (Tr. pp. 219, 538).

45. Changes were made to the curriculum to meet the needs of its students, but Ron Brown did not notify the School District of changes to the curriculum and did not obtain the School District's approval to make such changes. (Tr. pp. 593-94).

46. Students at Ron Brown were to progress through grades K-2 and 3-5 with the same teacher, which is known as primary care teaching. (Exh. B.1, p. 18).

47. Most of Ron Brown's teachers did not follow their students from one grade to the next because of turnover and parent requests for different teachers. Some students had multiple teachers in one year because of high staff turnover (Tr. pp. 314-15), and some teaching assignments were changed mid-year because of layoffs due to a decrease in enrollment. (Tr. pp. 357-59.)

48. In its initial application, Ron Brown stated that the school would be equipped with a computer for every two to three students and that extensive access to computer technology would be available as an authentic learning tool to enable students to address career challenges and be ready for global opportunities facing them in the 21st century. (Exh. B.1, pp. 3, 13).

49. During its visit to Ron Brown, the School District noticed approximately 23-26 students per classroom and 6 computers per classroom but not all the computers were working (Tr. pp. 197-99).

50. Ron Brown told the School District that each teacher had a schedule for when students could have access to the computers but the School District only saw a schedule for about 1/3 to 1/2 of the classrooms. The schedules allowed only a certain number of students to

have access at one time and this meant a student might have access to a computer every third day for 15 minutes. (Tr. pp. 199-200).

51. Ron Brown was to have a library styled as a Media and Resource Center, which was to supply a library of excellent books and CD-ROMs, as well as TV/VCRs, overhead and slide projectors for pedagogy. (Exh. B.1, p. 13).

52. Ron Brown does not have a separate room as a library but some classrooms have a classroom library, each of which has approximately 20-30 books. (Tr. pp. 192-93, 323, 362).

53. In its revised application, Ron Brown identified school-wide weaknesses that its leadership believed had to be addressed to achieve increased school-wide achievement and one of the identified weaknesses was lack of a school library. (Exh. B.10, p. 13).

54. In the budget for 2004-2005, which was revised in February 2005, Ron Brown did not budget any money for library books. (Exh. B.26; Tr. p. 83).

55. Ron Brown's original budget included a Director of Curriculum and a Director of Technology but the 2003-2004 and 2004-2005 staff rosters do not include these positions. (Exhs. B.1, exh. c; B.20, 21, 22).

56. During each of the School District's three visits to Ron Brown during the 2003-2004 and 2004-2005 school years, there were employees who did not have Act 34 (criminal history) or Act 151 (child abuse) clearances in their files, or the documents were outdated. (Exhs. B.18, 19 & 27; Tr. pp. 255-56, 268, 273).

57. The CSL requires that at least 75% of a charter school's professional staff hold appropriate State certification. 24 P.S. §17-1724-A(a).

58. During the School District's February 2004 visit, approximately 29% of Ron Brown's professional staff was not appropriately certified. (Exh. B.18; Tr. p. 264).

59. During the School District's November 2004 visit, approximately 31.25% of Ron Brown's professional staff was not appropriately certified. (Exh. B.19, Tr. p. 268).

60. During the School District's February 2005 visit, approximately 25% of Ron Brown's professional staff was not appropriately certified. (Exh. B.27, Tr. pp. 272-73).

61. The professional employee identified on Ron Brown's 2003-2004 staff roster as the Special Education Coordinator had neither a job description nor the required supervisory certificate in her personnel file. (Tr. pp. 260-61).

62. Certification and Staffing Policy Guidelines ("CSPG") developed by the Department of Education require charter schools to maintain a copy of a professional staff member's position description in the personnel files. (Exh. B.23; Tr. p. 253).

63. During the School District visits to Ron Brown in 2004 and 2005, there were no position descriptions in any personnel files. (Tr. p. 253-54, 267-68, 272-73, 349).

64. The School District found during its three visits to Ron Brown that there were some professional employees who were identified on the charter school's staff roster in positions different than in their employment contracts. (Tr. pp. 253-54).

65. The School District calculated a thirty-nine percent turnover rate of Ron Brown's professional staff between February 2004 and December 2004 but Ron Brown testified it was between 30-35%. (Tr. p. 274-75; 310).

CONCLUSIONS OF LAW

1. Ron Brown failed to meet generally accepted standards of fiscal management.
2. Ron Brown failed to meet its performance standard that it would have higher standardized test scores and a steady improvement in the quality of performance based assessments.

3. Ron Brown violated one or more of the material conditions of its charter when it: (a) failed to provide a distance-learning program in science; (b) changed the Math curriculum without notice or approval from the School District; (c) failed to implement primary care teaching; (d) failed to provide a computer for every two to three students and failed to provide extensive access to computer technology as a learning tool; and, (e) failed to provide a library styled as a Media and Resource Center.

4. Ron Brown violated provisions of the Charter School Law when it failed to have criminal history (Act 34) or child abuse clearances (Act 151) for all individuals who had direct contact with students.

5. Ron Brown violated laws, regulations and guidelines applicable to charter schools when it: (a) failed, at times, to have at least 75% of its professional staff holding appropriate State certification; (b) failed to have its Special Education Coordinator appropriately certified; and, (c) failed to have copies of professional staff members' position descriptions in their personnel files.

DISCUSSION

Section 1729-A of the CSL authorizes a chartering school district to revoke or not renew a charter school's charter based on any of the following: (a) a material violation of the charter; (2) failure to meet student performance set forth in 22 Pa. Code, or failure to meet a performance standard set forth in the charter; (3) failure to meet generally accepted standards of fiscal management or audit requirements; (4) violation of the CSL; (5) violation of any law from which charter schools have not been exempted, including Federal laws and regulations governing children with disabilities; and, (6) the charter school has been convicted of fraud. There is sufficient evidence in this case to establish several of the grounds for revocation or nonrenewal

of Ron Brown's charter. Thus, CAB denies Ron Brown's appeal and upholds the decision of the School District to revoke/nonrenew Ron Brown's charter.

Generally Accepted Standards of Fiscal Management

Ron Brown began operating in the 2000-2001 school year. Since 2003, Ron Brown has not had a full-time business manager and, as of March 2005, the Chief Administrative Officer ("CAO") and the site coordinator have been responsible for fiscal operations. (Tr. p. 303). The site coordinator manages the business office and has some accounting background in payroll bookkeeping for private businesses, but this person is not a certified public accountant. (Tr. pp. 303-04). An employee of Ron Brown's management company, Mosaica Education, Inc. ("Mosaica"), who is not a certified public accountant and never audited a school district or public school entity, assists numerous Mosaica operated charter schools with financial management, and works directly with Ron Brown. (Tr. pp. 451, 466).

The 2001-2002 audit of Ron Brown showed that Ron Brown had a positive general fund balance as of July 1, 2001, but a negative general fund balance of \$108,567 as of June 30, 2002. (Exh. B.15).

The 2002-2003 audit report was not issued until July 2004 because of Ron Brown's delay in providing records or not having them in the correct format for the auditors. (Tr. pp. 40-42). According to this audit, Ron Brown's expenditures exceeded revenues by \$902,555 and Ron Brown had a negative general fund balance of \$1,055,443 for the year ending June 30, 2003. The auditors did not express an opinion on the accompanying general purpose financial statements as of June 30, 2003 because Ron Brown did not maintain complete and accurate accounting records, did not have available adequate evidentiary material in support of transactions or records, and had changes in employees and in the accounting system that created

a lack of continuity in the accounting system. (Exh. B.16; Tr. 42-44). In addition, the audit identified material weaknesses that included: serious deficiencies involving the recording, summarizing and reporting of financial data; no ongoing reconciliations for the general ledger accounts; and weaknesses in the payroll and food service areas. (Exh.B.16, pp. 24-26; Tr. pp. 51-52).

The 2003-2004 audit showed that Ron Brown's expenditures exceeded revenues by \$340,349 and Ron Brown overspent its budgeted general fund appropriations by \$610, 239. (Exh.B17, pp. 14-15, 31; Tr. pp. 53-55). As of June 30, 2004, Ron Brown had a negative general fund balance of \$451,329 and a negative childcare fund balance of \$25,221. (Exh. B.17, p. 32). Many of the material weaknesses found in the 2002-2003 fiscal year were also found in the 2003-2004 fiscal year. (Exh.B.17, pp. 33-35; Tr. pp. 62-63).

For years ending June 30, 2001, 2002 and 2003, Ron Brown was engaged in a dispute about the amount of funds it owed Mosaica. (Exh.B.16, p. 16; Tr. p. 45). In addition, Ron Brown did not have sufficient funds to pay Mosaica its management fees for the fiscal year ending June 30, 2004 so it entered into note payable agreements with Mosaica that totaled \$303,518. (Exh.B.17, p, 28; Tr. pp. 55-56). As of June 30, 2004, Ron Brown's long-term debt, which included a mortgage for its building, totaled \$853,840. (Exh. B.17, p. 28; Tr. p. 56). In September and October 2004, Ron Brown issued two additional promissory notes to Mosaica that totaled \$561,416. (Exh. B.17, p. 31; Tr. p. 61). By converting the accounts payable to Mosaica in the amount of \$561,416 to long-term debt, Ron Brown effectively eliminated the general fund deficit. (Exh. B.17, p. 32). After issuance of the October 2004 note, Ron Brown's long-term debt totaled \$1,415,256, minus any payments that might have been paid on the two

previously issued notes. (Tr. p. 62). As of June 30, 2004, Ron Brown had property and equipment with a depreciated cost of \$1,454,849. (Exh. B.17, p. 6).

Ron Brown also had issues with the Internal Revenue Service ("IRS"), and for the year ending June 30, 2003, unpaid claims for employee withholding taxes totaled \$58,000, with penalties and interest increasing the amount to \$79,003. (Exh. B.16, p. 16; Tr. pp. 46-48). Ron Brown continued to have problems with the IRS and at the end of the 2003-2004 fiscal year owed the IRS \$189,702, which was subsequently paid. (Exh. B.17, p. 31; Tr. p. 57).

For the 2004-2005 fiscal year, approximately 19% of Ron Brown's budget expenditures were obligations to Mosaica and other long-term debt. (Exh. B.26; Tr. p. 83). In addition, Ron Brown testified at the hearing before CAB that the note to Mosaica was approximately \$750,000, which was the same as the year before. Even though this was currently an interest-only note, Ron Brown was not paying the interest. (N.T. pp. 48-49).

All of the above noted fiscal issues evidence Ron Brown's failure to meet generally accepted standards of fiscal management. Ron Brown has had a general fund deficit since at least June 30, 2002. Even though Ron Brown eliminated the general fund deficit after June 30, 2004, this was only done by converting the accounts payable to Mosaica into long-term debt. However, Ron Brown is not paying Mosaica even the interest on the approximately \$750,000 note. Ron Brown stated that, as of June 30, 2004, its assets were greater than its liabilities. It had property and equipment with a depreciated cost of \$1,454,849; however, with its long-term debt of approximately \$1,415,256, Ron Brown's assets are only approximately \$39,593 greater than its long-term debt. In addition, Ron Brown still had a negative childcare fund balance that could only be eliminated if future operations were profitable or funds were transferred from the general fund. (Exh. B.17, p. 32). With Ron Brown's history of operating with general fund

deficits since June 30, 2002, CAB can only conclude that Ron Brown is unable to reverse its fiscal difficulties and remain a viable entity into the future. For the reasons set forth herein, CAB concurs with the School District's conclusion that Ron Brown has failed to meet generally accepted standards of fiscal management.

Performance Standard

Ron Brown stated in its initial application that its objectives included higher standardized test scores, and steady improvement in the quality of performance-based assessments. (Exh. B.1, p. 4). Ron Brown failed to meet this performance standard.

The Pennsylvania System of School Assessment ("PSSA") is Pennsylvania's basis for determining whether a school entity has made Adequate Yearly Progress ("AYP") under the No Child Left Behind Act ("NCLB"). In 2004, Ron Brown's PSSA scores in 8th grade Math, 8th grade Reading, and 5th grade Math showed more students scoring below basic than had done so in 2003. (Exhs. B.32 & 33).

The 2004 PSSA results show that Ron Brown's 5th grade students scored 80 points lower in Math and 50 points lower in Reading than the School District's 5th grade students. In addition, Ron Brown's 8th grade students scored 20 points lower in Math but 20 points higher in Reading than the School District's 8th grade students. (Exh. B.12; Tr. pp. 617-18). Ron Brown's 5th grade scaled score for reading was better than only one of the twelve School District schools, and the scaled score for math was better than only three of the twelve School District schools. (Exh. B.35; Tr. pp. 600-02). Of the three School District schools that had a scaled score lower than Ron Brown in 5th grade math, one has a number of English as a Second Language ("ESL") students, one is an alternative school for disruptive students, and one has beginners who are ESL.

students. Ron Brown's scaled score in reading was only better than the School District school that had beginners who are ESL students. (Tr. pp. 600-06).

In determining whether a school entity has made AYP, scores are disaggregated for certain groups if the number of students within the group totals forty or more. If one group fails to make AYP, the entire school is identified as failing to make AYP. (Tr. pp. 637-39). While the School District had six subgroups that were counted in the calculation of AYP, Ron Brown had only one subgroup that was counted in the calculation of AYP. (Tr. pp. 641-42). Ron Brown's status for 2004 was School Improvement II, which was a decline from 2003 when its status was School Improvement I. (Exh. B.13; Tr. p. 613).

Although Ron Brown's 8th grade students scored 20 points higher in Reading in 2004 than the School District's students, and Ron Brown's 5th grade Reading scores in 2004 showed less students in the below basic category, the overall PSSA scores do not evidence higher standardized test scores or steady improvement in the quality of performance-based assessments.

Ron Brown also used the Iowa Test of Basic Skills ("Iowa") as a standardized assessment and tested students in the fall and spring of a particular school year. (Tr. p. 517). For the Iowa, the mean score is 50, which determines proficiency. (Tr. p. 522). Between the fall of 2000 and the spring of 2004, the core total of the normal curve equivalent for all test takers at Ron Brown increased from 31.6 to 40.9. (Exh. C.4). Although Ron Brown's testimony was that the test was given to the same students in the fall and in the spring, there would be some changes in students during that time. More importantly, however, the scores were for all test takers in the school, but students taking the test in the spring of 2004 may have included many different students than the group who took the test in the spring of other years. (Tr. pp. 549-50). In addition, the data was not compiled in cohorts, which would allow comparison of the students as they progressed from

first grade to second grade to third grade, etc. (Tr. pp. 624-26). Thus, this data, in conjunction with the PSSA scores, does not provide sufficient evidence that Ron Brown met its objective of providing higher standardized test scores and steady improvement in the quality of performance-based assessments. This ground for nonrenewal/revocation is also adopted.

Violation of Material Conditions of Charter

Ron Brown stated in its initial application that its distance-learning program would serve to engage students significantly in the science curriculum. (Exh. B.1, p. 9). However, Ron Brown does not have a distance-learning program in science. (Tr. pp. 312-13). Therefore, Ron Brown failed to meet this condition of its charter.

In its initial application, Ron Brown stated it would use Everyday Mathematics as its mathematics curriculum. This is a skills-based program geared to high achieving students, stresses writing about and discussing mathematics and is a constructionist approach by which teachers do not tell the answers but the students discover the answers. (Exh. B.1, p. 12; Tr. pp. 218-19). During the 2004-2005 school year, Ron Brown was in its second full year of implementing Saxton Mathematics. Saxton is the opposite of Everyday Mathematics because it has the teachers give students information that is learned and regurgitated on a test. (Tr. pp. 219, 538). This change in the mathematics curriculum absent School District approval is a violation of the conditions of the charter.

Ron Brown also stated in its initial application that it would have students progress through grades K-2 and 3-5 with the same teacher, which is known as primary care teaching. (Exh. B.1, p. 18). Most teachers did not follow their students through the particular grades. Some of this was due to parents requesting different teachers, but this was also the result of high staff turnover, which caused some students to have multiple teachers in one school year. (Tr. pp.

314-15). There were also teaching assignment changes made mid-year because of layoffs due to a decrease in enrollment. (Tr. pp. 357-59). The failure to implement primary care teaching was also a violation of the charter.

In its initial application, Ron Brown stated that the school would be equipped with a computer for every two to three students and extensive access to computer technology would provide an authentic learning tool to enable students to address career challenges and meet global opportunities facing them in the 21st century. (Exh. B.1, pp. 3, 13). During visits to Ron Brown, the School District noticed approximately twenty-three to twenty-six students per classroom and six computers per classroom, but all the computers were not working. (Tr. pp. 197-99). In addition, teachers were to have schedules for when students could access the computers, but the School District only saw a schedule for about 1/3 to 1/2 of the classrooms. The schedules allowed only a certain number of students to have access at one time and this meant a student might have access to a computer every third day for fifteen minutes. (Tr. pp. 199-200). This does not meet the charter condition of providing a computer for every two to three students or providing extensive access to computer technology.

Ron Brown's initial application described a library styled as a Media and Resource Center, which was to supply a library of excellent books and CD-ROMs, as well as TV/VCRs, overhead and slide projectors for pedagogy. (Exh. B.1, p. 13). Not only does Ron Brown not have the Media and Resource center it described in its application, it does not even have a library as a separate room. There are some classrooms that have a classroom library with approximately 20-30 books. (Tr. pp. 192-93, 323, 362). Even in Ron Brown's renewal application, it identified the lack of a school library as a school-wide weakness that leadership believed needed to be addressed. (Exh. B.10, p. 13). However, even though Ron Brown acknowledged this weakness,

its budget for the 2004-2005 school year, which was revised in February 2005, did not include any funds for library books. (Exh. B.26; Tr. p. 83).

Ron Brown's failure to meet these several conditions of its charter collectively constitutes a material violation of the charter. Ron Brown not only changed its mathematics curriculum but it did not provide a distance-learning program to engage students significantly in the science curriculum, as it stated in its application. The curriculum a charter applicant sets forth in its charter is a material provision of that charter because curriculum is obviously a very significant part of the charter school's program. The charter is legally binding on the charter school and the chartering school district. 24 P.S. §17-1720-A. Thus, unilaterally changing the curriculum is a material violation of the charter.

Ron Brown also failed to provide primary care teaching, extensive access to computer technology and, a Media and Resource Center. Failure to provide any of these individually may not necessarily constitute a material violation of the charter. However, in the aggregate, they do constitute a material violation of the charter because together they comprise a significant part of Ron Brown's charter school plan.

This is not to say that every unilateral change a charter school might make in its school over the years would constitute a material violation of its charter. One must look at the significance of the thing being changed or not being provided. In this case, the curriculum, the method of teaching, the extensive use of technology, and the use of a Media and Resource Center, were, as stated above, all significant parts of Ron Brown's charter. Thus, changes to these items, or failure to provide them, constituted a material violation of Ron Brown's charter and serve as an adequate basis for the School District's action.

Violations of the Charter School Law and Other Laws, Regulations and Guidelines

The CSL requires that a charter school have a report of criminal history record (Act 34), and an official clearance statement regarding child injury or abuse (Act 151), for all individuals who have direct contact with students. 24 P.S. §17-1719-A(15, 16). The CSL also requires that at least 75% of the professional staff hold appropriate State certification. 24 P.S. §17-1724-A(a).

During the three visits the School District made to Ron Brown in the 2003-2004 and 2004-2005 school years, there were employees who did not have Act 34 records or Act 151 clearances in their files, or the documents were outdated. (Exhs. B.18, 19; Tr. pp. 255-56, 268, 273). This is a violation of the CSL.

During the February and November 2004 visits, less than 75% of Ron Brown's professional staff held appropriate State certification, which is a violation of the CSL. (Exh. B.18 & 19; Tr. pp. 264, 268). During the February 2005 visit, 75% of Ron Brown's professional staff held appropriate certification. (Exh. B.27; Tr. 272-73). Since there was no evidence that having less than 75% of the professional staff appropriately certified was a persistent deficiency through the entire five years of operation, this, on its own, would not constitute a basis to not renew or to revoke the charter.

However, other concerns about staff, when combined with the issues raised in this opinion, support the decision not to renew or to revoke the charter. The professional employee identified on Ron Brown's 2003-2004 staff roster as the Special Education Coordinator had neither a job description nor a required supervisory certificate in her personnel file. (Tr. pp. 260-61). During both the 2003-2004 and 2004-2005 school years, there was also a special education teacher not appropriately certified in the area of special education. Department regulations

require that all special education teachers hold appropriate State certification and they cannot be part of the 25% that are not required to hold appropriate State certification. 22 Pa. Code §711.5.

In addition, a CSPG requires charter schools to maintain a copy of a professional staff member's position description in the member's personnel file. (Exh.B.23; Tr. p. 253). During the School District visits to Ron Brown in 2004 and 2005, there were no position descriptions in any personnel files. (Tr. pp. 253-54, 267-68, 272-73, 349). There were also some professional employees who were identified on Ron Brown's staff roster in positions different than in their employment contracts. (Tr. pp. 253-54).

The failure to have required documents in personnel files, the failure, at certain times, to meet the requirement of having at least 75% of the professional staff holding appropriate State certification, and the failure of the Special Education Coordinator and a special education teacher to have appropriate certification, evidence Ron Brown's violation of laws, regulations and guidelines applicable to charter schools. 24 P.S. §17-1729-A(a)(5). These violations, coupled with Ron Brown's failure to meet generally accepted standards of fiscal management, its failure to meet performance standards, and its violation of material conditions of the charter, provide further support to uphold the decision of the School District to revoke/nonrenew Ron Brown's charter.

CONCLUSION

In summary, CAB's most significant concerns about Ron Brown are the fiscal problems it has had since at least June of 2002 when it began a consistent pattern of operating with general fund deficits. Ron Brown has paid penalties and interest to the IRS for not making prompt payments. Ron Brown has entered into notes payable with Mosaica because it has been unable to pay Mosaica's management fees, and is currently not even making interest payments on the

interest-only note. In addition, Ron Brown has violated material provisions of its charter, it has violated laws, regulations and guidelines applicable to charter schools, and it has not shown that it has higher standardized test scores or made steady improvement in the quality of performance-based assessments. Thus, CAB upholds the decision of the School District to revoke/nonrenew Ron Brown's charter.

ORDER

AND NOW, this 19th day of July, 2006 based upon the foregoing and the vote⁴ of the State Charter School Appeal Board:

1. The School District's Motion to Dismiss is denied;⁵
2. The School District's Motion to Supplement the Record with a letter from the Department of Health is denied;⁶
3. Ron Brown's request to have three packets of documents evidencing support for the charter school added to the record is denied;⁷
4. Ron Brown's appeal of the School District's decision to revoke/nonrenew Ron Brown's charter is denied.⁸

For the State Charter School Appeal Board,



Gerald L. Zahorchak, D.Ed.
Chairman

Date Mailed: July 19, 2006

⁴ Board member Marcia Reeves was in attendance at the May 23, 2006 meeting but did not vote having recused herself from taking part in this appeal.

⁵ At CAB's May 23, 2006 meeting, the vote was 3-0 to deny the Motion to Dismiss with members Bunn, Shipula and Zahorchak voting to deny the Motion.

⁶ At CAB's May 23, 2006 meeting, the vote was 3-0 to deny the Motion to Supplement the Record with a letter from the Department of Health with members Bunn, Shipula and Zahorchak voting to deny the Motion.

⁷ At CAB's May 23, 2006 meeting, the vote was 3-0 to deny Ron Brown's request to have three packets of documents added to the record with members Bunn, Shipula and Zahorchak voting to deny the Motion.

⁸ At CAB's May 23, 2006 meeting, the vote was 3-0 to deny Ron Brown's appeal with members Bunn, Shipula and Zahorchak voting to deny the appeal.