

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

**In Re:**

<b>Thurgood Marshall Academy</b>	:	
<b>Charter School</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. CAB 2001-5</b>
	:	
<b>Wilkesburg School District</b>	:	

**OPINION AND ORDER**

**I. Background**

The Thurgood Marshall Academy Charter School (“TMA”) brings this appeal to challenge the decision of the Board of Directors of the Wilkesburg School District (“WSD”) terminating its charter to operate as a charter school within the school district. TMA has requested that the Charter School Appeal Board (“CAB”) reverse WSD’s revocation of its charter and reinstate TMA’s charter, alleging that the WSD Board of Directors’ decision was made in error. WSD, on the other hand, maintains that the revocation of TMA’s charter was justified and proper pursuant to Section 1729(a) of the Commonwealth’s Charter School Law. 24 P.S. § 17-1729-A(a).

After giving due consideration to the record below and to the additional information and documents submitted by stipulation of the parties to the CAB for its review, the CAB finds that WSD properly found that TMA: (1) violated material terms of its charter; (2) failed to meet the standards for student performance set forth in the charter and in the Department of Education’s (“Department”) regulations; (3) failed to meet the generally accepted standards for fiscal management or audit requirements; (4) violated the Commonwealth’s Charter School Law; and (5) violated other laws applicable to the charter school. Thus, the CAB concludes that WSD properly terminated TMA’s charter pursuant to Section 1729(a) of the Charter School Law. See 24 P.S. § 17-1729-A(a)(1)-(5). Accordingly, WSD’s termination of TMA’s charter is upheld and TMA’s appeal of that termination is denied.

In November 1997, TMA’s the Board of Trustees applied to WSD for a charter with WSD pursuant to the application procedures set forth in the Charter School Law. See R.<sup>1</sup> 3A-

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<sup>1</sup> For the purpose of this Adjudication, “R.” refers to the record of the proceedings below.

186A; N.T.<sup>2</sup> p. 15; see also 24 P.S. § 17-1717-A. Effective November 24, 1997 the Board of Directors of the WSD granted a charter to TMA in order to commence operation of a charter school within the school district in the 1998-1999 school year and for three additional school years thereafter. See R. 187A-188A; N.T. p. 16. This charter was expressly conditioned upon TMA's operation of the charter school in accordance with the Charter School Law and upon TMA's operation of the school in conformity with the information supplied in the charter school application. See R. 187A-188A; N.T. pp. 16-18.

Upon the request of TMA, the WSD Board of Directors approved a delayed start-up date for the charter school until the 1999-2000 school year, and this approval imposed an additional condition that TMA operate the charter school in compliance with all policies of the WSD. See R. 353A. As requested by TMA and approved by the WSD Board of Directors, the charter school eventually opened in the fall of 1999 and, to date, has since completed two full school years.

WSD became concerned with the operation of the charter school based upon complaints from parents and receipt of notice that TMA was not complying with its financial obligations related to the charter school's Public School Employee's Retirement System allotments and to the WSD for lunch program and crossing guard expenses. The WSD Board of Directors passed a resolution on January 23, 2001 instructing TMA to comply with the terms of the charter, the Charter School Law, the policies of the WSD and all other applicable laws. See R. 827A. The resolution also instructed TMA to provide certain documents and information to the WSD for review by February 23, 2001. Id.

Upon reviewing the documents and information that TMA submitted to the WSD pursuant to the January 23, 2001 resolution, the Board of Directors concluded that TMA was operating in violation of its charter. The WSD sought revocation of the charter by voting unanimously on May 22, 2001 to charge TMA with material violations of the charter, failing to meet the requirements for student performance, failing to meet the generally accepted standards for fiscal management and audit requirements, violation of provisions of state and federal law governing children with disabilities, violation of the Commonwealth's Ethics Act, and violation of the Commonwealth's Sunshine Act. See R. 1A; N.T. pp. 12-13.

In accordance with Section 1729(c) of the Charter School Law (24 P.S. § 17-1729-A(c)), the WSD Board of Directors advertised that a public hearing would be conducted on June 12, 2001. See R. 2A; N.T. pp. 13-14. At the hearing, following the submission of evidence by the WSD, TMA and the public were provided an opportunity to submit evidence and provide comment on the proposed revocation of TMA's charter. See N.T. pp. 111-175. Upon consideration of the entire record and the comments heard from TMA and the public, the WSD Board of School Directors voted unanimously on July 16, 2001 to revoke TMA's charter, and the

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<sup>2</sup> For the purpose of this Adjudication, "N.T." refers to the notes of testimony from the June 12, 2001 hearing held by the WSD Board of Directors on the termination of TMA's charter.

charter school was properly notified. See Appeal Petition<sup>3</sup>, Ex. A.

Thereafter, on August 13, 2001, TMA filed with the CAB a Petition entitled “Appeal from Action of Board of Directors of Wilkinsburg School District Revoking the Charter of Thurgood Marshall Academy Charter School.” On August 28, 2001, the CAB accepted the appeal and appointed a hearing officer in accordance with the General Rules of Administrative Practice and Procedure. 1 Pa.Code Ch. 35. WSD submitted an Answer to the Appeal Petition on September 4, 2001. Following a pre-hearing conference held on September 12, 2001, the parties submitted to the hearing officer the record below pursuant to 24 P.S. §17-1717-A(i)(6) as well as several pieces of additional information and documents to which the parties were able to stipulate as to admissibility for the purpose of the instant appeal.

The parties were given the opportunity to submit both initial and reply briefs, and oral argument was held in this matter before the CAB at its meeting on November 5, 2001. At that meeting, the hearing officer also certified the record to the CAB, including the supplemental information agreed upon by the parties.

Accordingly, the CAB has jurisdiction over this matter pursuant to 24 P.S. §17-17-A(i), and this appeal stands ready for adjudication.

## **II. Findings of Fact**

1. Petitioner is the Thurgood Marshall Academy Charter School (“TMA”), which is located at 747 South Avenue, Wilkinsburg, Pennsylvania 15221.
2. Respondent is the Board of Directors of the Wilkinsburg School District (“WSD”), which district is located at 718 Wallace Avenue, Wilkinsburg, Pennsylvania 15221.
3. TMA submitted a charter school application to WSD Board of Directors in 1997. R. 3A-186A; N.T. p. 15.
4. The charter was granted by the WSD Board of Directors at its November 24, 1997 meeting allowing the operation of a charter school by TMA within the district in the 1998-1999 school year and for three years thereafter. R. 187A-188A; N.T. p. 16.
5. The charter was expressly conditioned upon TMA’s operation of the charter school in accordance with the Commonwealth’s Charter School Law and upon TMA’s operation of the school in conformity with the information supplied in the charter school application. R. 187A-188A; N.T. pp. 16-18.
6. The charter could not be changed absent a written amendment. R. 187A-188A.

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<sup>3</sup> For the purpose of this adjudication, “Appeal Petition” refers to the Petition entitled “Appeal from Action of Board of Directors of Wilkinsburg School District Revoking the Charter of Thurgood Marshall Academy Charter School” that was filed with the CAB on August 13, 2001.

7. Upon the request of TMA, WSD Board of Directors approved a delayed start-up date for the charter school until the 1999-2000 school year, and this approval imposed an additional condition that TMA operate the charter school in compliance with all policies of the WSD. R. 353A.
8. At the January 23, 2001 regular meeting of the WSD Board of Directors, the Board passed a resolution instructing TMA to comply with the terms of its charter, the Charter School Law and the policies of the WSD Board of Directors. R. 827A
9. At the May 22, 2001 regular meeting of the WSD Board of Directors, the Board passed a resolution proposing to revoke TMA's charter and setting forth the date for the public hearing. See R. 1A; N.T. pp. 12-13.
10. On June 12, 2001, a public hearing was conducted regarding the Board's revocation of TMA's charter. R. 2A; N.T. pp. 13-14.
11. TMA's application indicated that their curriculum would be offered by the Modern Red Schoolhouse and Comer Models. R. 3A-186A; N.T. pp. 18-20.
12. TMA, by its own admission, did not use the Modern Red Schoolhouse and Comer Models. R. 267A-269A; N.T. p. 20.
13. TMA never requested an amendment to their charter to allow for use of a curriculum other than the Modern Red Schoolhouse and Comer Models. N.T. pp. 20-21.
14. With regard to TMA's educational program, TMA's charter school application indicated that the charter school would use, inter alia, the following educational programs and activities:
  - a. Project learning;
  - b. Partnerships with community organizations and businesses;
  - c. Student internships;
  - d. A student-teacher ratio of eleven to one at the elementary level;
  - e. A mixed age group for first and second grades;
  - f. The same teachers for two consecutive years for students in grades three through six;
  - g. Academies for technology and math/science for students at the middle and high school levels;
  - h. Significant community involvement;
  - i. A computer network within the first year of the charter school's operation wherein every student at the charter school would have access to a computer; and
  - j. A 212 day school year implemented through a trimester program.R. 3A-186A; N.T. pp.27-34

15. Based upon the course outlines provided to the Board by TMA, there is no clear indication of the charter school's use of project learning, internships, or partnerships with community organizations and businesses, contrary to the information provided by TMA in its charter school application. R. 3A-186A, 532A-562A; N.T. pp. 27-32.
16. Based upon the course outlines provided to the Board by TMA, there is no clear indication of significant community involvement in TMA, contrary to the information provided by TMA in its charter school application. R. 3A-186A, 532A-562A; N.T. p. 33.
17. Based upon the course outlines provided to the Board by TMA, there is no clear indication that students in grades three through six retain the same teacher for two consecutive years, contrary to the information provided by TMA in its charter school application. R.3A-186A, 532A-562A; N.T. 28.
18. Based upon the charter school abstract/annual report in the record, the student-teacher ratio for TMA is sixteen to one, which is higher than the eleven to one ratio indicated in TMA's charter school application. R. 3A-186A, 189A-266A; N.T. p.28.
19. Based upon the March 5, 2001 letter and appendices from TMA to WSD, the student teacher ratio ranges from eighteen to one to twenty-four to one, which is higher than the eleven to one ratio indicated in TMA's charter school application. R. 3A-186A, 277A-652A.
20. Based upon the course outlines provided to the WSD Board of Directors by TMA, there are no academies for technology and math/science available to students at the middle and high school levels, contrary to the information provided in TMA's charter school application. R. 3A-186A, 189A-266A; N.T. 29-30.
21. The record contains no sufficient information relating to the availability of a computer for each student at TMA as provided for in TMA's charter school application. R. 3A-186A; N.T. 29-30.
22. The November 13, 2000 letter from TMA demonstrates that the school year for TMA is only 200 days implemented through a quarter system as opposed to a 212 day school year implemented through a trimester system, which was proposed in TMA's charter school application. R. 3A-186A, 269A; N.T. 33-34.
23. On January 23, 2001, the WSD Board of Directors passed a resolution requiring TMA to comply with the terms of its charter, the Charter School Law, all Board policies, and all other applicable laws. R. 827A.
24. TMA's by-laws submitted as part of the charter application provided for the members of TMA's Board of Trustees to be elected for staggered three-year terms at the Board of Trustees annual meeting. R. 3A-186A.

25. Although there was a change in the TMA Board of Trustees members reflected in the 1998 and 1999 IRS 990 forms, the minutes of the TMA Board of Trustees do not reflect the proper election or removal of members as provided for in the by-laws that were part of TMA's charter school application. R. 3A-186A, 314A-551A, 569A-597A.
26. TMA's charter school application provides that TMA students will achieve high nationally recognized academic standards. R. 3A-186A.
27. The Pennsylvania State School Assessment test ("PSSA") results demonstrate that the students of the TMA scored significantly below the statewide average.
  - a. In Math, none of TMA's students scored in the highest grouping, only one scored in the high-middle grouping, six scored in the low-middle grouping and twenty-seven scored in the lowest grouping.
  - b. In reading, none of TMA's students scored in the highest grouping, only four scored in the high-middle grouping, ten scored in the low-middle grouping, and eighteen scored in the lowest grouping.R. 599A-601A; N.T. pp. 49-53
28. The Stanford Achievement Tests indicated that the students at TMA tested significantly below the national average. R. 201A-219A, 964A; N.T. 51-53.
29. TMA's charter school application and TMA's financial policy manual indicate that an independent CPA will perform annual audits of the charter school's accounts. R. 3A-186A, 435A-462A.
30. Although TMA submitted an independent audit report for the year ending June 1999, no independent audit report was submitted for the year ending June 2000. N.T. p. 54.
31. As of November 15, 2000, the Public School Employee's Retirement System informed TMA that they had failed to make quarterly employee and employer contributions for four quarters with a total delinquent amount owed of \$50, 234.20. R. 680A-681A; N.T. pp.54-59.
32. As of January 30, 2001, TMA was delinquent in their school meal payments to WSD in the amount of \$28,958.30. R. 682A; N.T. pp. 59-60.
33. As of January 30, 2001, TMA was delinquent in their crossing guard expense payments to WSD in the amount of \$867.37. R. 682A; N.T. pp. 59-60.
34. At the end of the 1999-2000 school year, TMA had a deficit of \$50,422.00.R. 683A-732A; N.T. p. 62.

35. The State Auditor General's audit report of TMA found, without disagreement from TMA, that the charter school overspent its budget in the 1999-2000 school year by \$142,216.00. WSD S.I.<sup>4</sup> p. 3.
36. On several occasions, TMA has frustrated the efforts of WSD to obtain important information in a timely manner that would allow WSD to determine whether TMA was in compliance with the Charter School Law and its charter. See e.g. R. 273A; N.T. pp. 23-24.
37. TMA allowed persons to take positions at the charter school without first submitting the required state police criminal history report and child injury and abuse certifications as required by Section 1724(i) and (j) of the Charter School law. 24 P.S. § 17-1724-A(i), (j). R. 835A; N.T. 43-44.
38. In violation of the State Ethics Law, 65 Pa.C.S. §§ 1101 et. seq., the members of the TMA Board of Trustees consistently failed to submit timely Statements of Financial Interest by May 1 of each year that the school was in operation. N.T. p. 64.
39. TMA has violated the State Sunshine Act (65 P.S. § 701 et. seq.) by failing to hold its meetings in a public forum.
40. The State Auditor General's Report finds that TMA violated both the State Ethics Law and the State Sunshine Act. WSD S.I. p. 3.
41. Should any of these findings of fact be deemed to be conclusions of law, the ones so found are incorporated therein.

### **III. Conclusions of Law**

1. The Charter School Law, Act of June 19, 1997, P.L. 225, No. 22 (24 P.S. §§ 17-1701-A et. seq.) governs the termination of a charter granted to a charter school by a school district in the Commonwealth of Pennsylvania.
2. Section 1729 of the Charter School Law sets forth the bases upon which a school district's board of directors may terminate a school's charter. 24 P.S. § 17-1729-A(a)(1) – (6).

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<sup>4</sup> For the purpose of this Adjudication, WSD S.I. refers to the supplemental information submitted by WSD and stipulated by both parties. The Auditor General's Report was unavailable at the time of the hearing because the audit had not yet been completed. N.T. pp. 80-81. TMA did not stipulate to the relevancy of the Auditor General's Report, and to the extent that such lack of stipulation constitutes a formal evidentiary objection to the relevancy of the information, such objection is overruled by the CAB. The information in the report is directly relevant to the instant appeal, especially since it reflects data from TMA's 1999-2000 school year, which is directly at issue.

3. In determining whether a school district's revocation of a charter is appropriate, the CAB shall give due consideration to the findings of the school district's board of directors and specifically articulate its reasons for agreeing or disagreeing with the board of directors. 24 P.S. § 17-1729-A(d); see also West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa.Cmwlth. 2000).
4. In determining whether the revocation of a school's charter was appropriate, the CAB shall review the record made in the proceedings below and may supplement the record at its discretion with information that was previously unavailable. 24 P.S. § 17-1729-A(d).
5. Because the statutory standards for review of charter terminations are the same as those involved in the review of charter denials, the CAB shall make a de novo review of WSD's termination of TMA's charter. Compare 24 P.S. § 17-1717-A(i)(6) with 24 P.S. § 17-1729-A(d); see also West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa.Cmwlth. 2000).
6. Once a charter is granted, the charter school is required to comply with the terms and conditions contained in the charter, as well as the school's charter school application, which is incorporated into the charter. 24 P.S. § 17-1720-A.
7. The Charter School Law allows a school district to terminate a school's charter if the charter school has committed a material violation of the charter. 24 P.S. § 17-1729-A(a)(1).
8. TMA has committed several material violations of its charter, thereby giving WSD proper cause to terminate TMA's charter pursuant to 24 P.S. § 17-1729-A(a)(1).
9. The Charter School Law allows a school district to terminate a school's charter if the charter school fails to meet the requirements for student performance set forth in the Department of Education's ("Department") regulations (22 Pa.Code Ch. 5) or the charter itself. 24 P.S. § 17-1729-A(a)(2).
10. TMA has failed to meet the requirements for student performance set forth in the Department's regulations and in its charter.
11. The Charter School Law allows a school district to terminate a school's charter if the charter school fails to meet the generally accepted standards of fiscal management or audit requirements. 24 P.S. § 17-1729-A(a)(3).
12. TMA has failed to meet the generally accepted standards of fiscal management or audit requirements.
13. The Charter School Law allows a school district to terminate a school's charter if a charter school violates any of the provisions of the Charter School Law. 24 P.S. § 17-1729-A(a)(4).



14. TMA has violated the Charter School Law by failing to allow WSD to have “ongoing access” to TMA’s records as required by 24 P.S. § 17-1728-A(a) and by failing to require child abuse injury and abuse clearances of its staff as required by 24 P.S. § 17-1724-A(j).
15. The Charter School Law allows a school district to terminate a school’s charter if a charter school violates any provision of law from which the charter school has not been exempted. 24 P.S. § 17-1729-A(a)(5)
16. TMA has violated provisions of laws from which it has not been exempted, namely the State Ethics Act (65 Pa.C.S. §§ 1101 et. seq.) and the State Sunshine Act (65 P.S. § 701 et. seq.).
17. Should any of these conclusions of law be deemed to be findings of fact, the ones so found are incorporated therein.

#### **IV. Discussion**

The Pennsylvania General Assembly enacted the Charter School Law to provide school children with additional opportunities to attend public schools that offer diverse and innovative educational techniques, operating independently of the traditional state public school system. See 24 P.S. § 17-1702-A. Once a charter is granted by a local school district’s board of directors, the charter school is required to comply with the terms and conditions of that charter, as well as the information supplied by the school in its charter school application, which is incorporated therein. 24 P.S. § 17-1720-A.

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

- (i) One or more material violations of any of the conditions, standards or procedures contained in the written charter [ . . . ] .
- (ii) 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 [ . . . ].
- (iii) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (iv) Violations of any provisions of [the Charter School Law].
- (v) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.

(vi) The charter school has been convicted of fraud.

24 P.S. § 17-1729-A(a). In order to have proper legal authority to terminate a charter, a school district must demonstrate at least one of the failures or violations enumerated above.

Pursuant to these guidelines for the termination of a charter, WSD terminated TMA's charter based upon criteria (i) through (v) above. Specifically, WSD asserts that TMA has: (1) committed numerous violations of the terms and conditions of its charter; (2) failed to meet the requirements for student performance pursuant to both the Department of Education's regulations and the charter issued by the WSD; (3) failed to meet generally accepted standards of fiscal management and audit requirements by, *inter alia*, creating a deficit in the charter school's budget in the amount of \$50,422.00 during the 1999-2000 school year, failing to make the required quarterly Public School Employee's Retirement System payments in a timely manner for at least four quarters, and being delinquent in making its payments for school meals and crossing guard expenses; (4) violated the Charter School Law by failing to obtain proper state police criminal record reports and child injury and abuse clearances from all staff prior to taking a position at the charter school, as well as failing to provide WSD with "ongoing access" to the charter school's records; and (5) violated laws from which TMA has not been exempted, including the State Ethics Law and the State Sunshine Act.

In accord with the discussion below, the CAB now finds, based upon its independent review of the record below and the supplemental materials submitted by stipulation of the parties, that WSD properly terminated TMA's charter pursuant to Section 17-1729-A.

#### *Standard of Review*

Before addressing the merits of this appeal, it is first necessary to discern the proper standard of review to be applied by the CAB in this matter. Section 1729(d) of the Charter School Law states that the CAB must give "due consideration" to the findings of the local school board and state its reasons for agreeing or disagreeing with those findings. 24 P.S. §17-1729(d). In determining whether the revocation of a school's charter was appropriate, the CAB is required to review the record made in the proceedings below. *Id.* The CAB may also supplement the record at its discretion with information that was previously unavailable. *Id.* The Commonwealth Court in West Chester Area School District v. Collegium Charter School, 760 A.2d 452 (Pa.Cmwlth. 2000), discusses the proper standard that is to be applied by the CAB in its review of a school district's denial of a charter school application:

By giving the [CAB] the right to disagree with the local school board and requiring it to specifically articulate reasons for doing so, the General Assembly has unquestionably granted the [CAB] the authority to substitute its own findings and independent judgment for that of the local school board.

*Id.* at 461. Accordingly, the Commonwealth Court has found that the proper standard of review that is to be applied by the CAB in charter denial cases is to be "de novo." Although the Collegium decision involved a charter denial, the principles and standards established by the

Commonwealth Court in that case are equally applicable to charter terminations, as the same statutory review standards apply. Compare 24 P.S. § 17-1717-A(i)(6) with 24 P.S. § 17-1729-A(d). Therefore, the CAB shall make a *de novo* review of charter termination appeals.

*TMA's charter was properly terminated because there has been one or more material violations of the conditions, standards or procedures contained in the written charter.*

One of the grounds in Section 1729 of the Charter School Law upon which WSD relies in support of its termination of TMA's charter is the occurrence of one or more material violations of the conditions, standards or procedures contained in the written charter. 24 P.S. §17-1729-A(a)(1). Section 1720 of the Charter School Law provides that a charter granted by a school district shall contain the provisions of the charter school application and the charter shall be legally binding on both the local school board of directors and the charter school. 24 P.S. § 17-1720-A. Because the charter school application is required by the Charter School Law to be extremely detailed and specifically identify the manner in which the charter school will operate (see 24 P.S. § 17-1719-A) and because the information contained in the charter school application eventually becomes part of the charter itself, the information in the charter school application is intrinsic to the charter and is essentially the heart of the charter school. For this reason, the CAB has held in prior adjudications that:

[o]nce a charter is granted, the charter school is required to comply with its terms and to achieve the goals specified therein. Thus, a violation of the terms specified in the charter is a proper basis for revocation.

In re: Creative Educational Concept Charter School, Docket No. CAB 1999-15 (March 15, 2000).

In the Creative Educational Concepts adjudication cited above, one of the grounds upon which the CAB upheld a district's termination of a charter was the school's failure to deliver the computer-assisted instructional programs that were identified in the charter application. Consistent with the Creative Educational Concepts adjudication, the record in the instant appeal presents several violations of the charter and the charter school application that could be considered a "material" violation.

First, TMA failed to even provide the curriculum that was identified in its charter school application. In its charter school application, TMA indicated that it would use the Modern Red Schoolhouse and Comer Models for its curriculum. However, without seeking an amendment of the charter, TMA has not employed these curriculum models and as of January 5, 2001, TMA indicated that the curriculum was still in development.

The curriculum of a charter school is essentially a roadmap to the school's operation, goals, teaching strategies and learning methodology. A charter school's curriculum provides parents, school districts and the general community with an identification of the educational ideology of the school. In fact, parents might rely on the identification of a particular curriculum in their decision to enroll their children. Also, a school district will closely analyze a charter

school's choice of curriculum model in determining whether or not to grant a charter to the school. Therefore, TMA's failure to follow the curriculum identified in the charter school application without seeking amendment of the charter clearly constitutes a "material violation" pursuant to 24 P.S. § 17-1729-A(a)(1). Consequently, WSD had sufficient grounds to terminate TMA's charter.

In addition to TMA's failure to follow the curriculum identified in its charter application, WSD also cites several other violations of TMA's charter that provide sufficient bases to terminate TMA's charter. It is apparent in the record that TMA failed to provide its students with several other key educational programs and activities that the school had identified in its original charter school application. These educational programs and activities include:

- a. Project learning;
- b. Partnerships with community organizations and businesses;
- c. Student internships;
- d. A student-teacher ratio of eleven to one at the elementary level;
- e. A mixed age group for first and second grades;
- f. The same teachers for two consecutive years for students in grades three through six;
- g. Academies for technology and math/science for students at the middle and high school levels;
- h. Significant community involvement;
- i. A computer network within the first year of the charter school's operation wherein every student at the charter school would have access to a computer; and
- j. A 212 day school year implemented through a trimester program.

Because each of these items are identified in the charter school application, they intrinsically became part of the charter that was granted by WSD and TMA was legally bound and obligated to provide such educational programs and activities to its students.

The evidence in the record demonstrates that TMA failed to provide these important aspects of the educational program proposed in their charter school application. For example, based upon the curriculum outlines provided to the Board by TMA, there is no indication of the use of project learning, internships, or partnerships with community organizations and businesses, contrary to the information provided by TMA in its charter school application. In addition, TMA has provided no documentation in its course outlines provided to the Board of significant community involvement in TMA. This, as well, is contrary to the information provided by TMA in its charter school application. These important educational programs and activities were clearly promised to be offered by TMA in its charter school application, and TMA's failure to follow through with its promises in this regard constitutes a material violation of its charter. Therefore, WSD had sufficient justification and legal basis to terminate TMA's charter pursuant to 24 P.S. § 17-1729-A(a)(1).

Furthermore, students in grades three through six do not retain the same teacher for two consecutive years as proposed in TMA's charter application. In addition, based upon the

Abstract Report in the record, the student-teacher ratio for TMA is sixteen to one, which is higher than the eleven to one ratio indicated in TMA's charter school application. In fact, the March 5, 2001 letter from TMA to WSD and the appendices thereto indicate that the student teacher ratio ranges from eighteen to one to twenty-four to one, which is significantly higher than the eleven to one ratio indicated in TMA's charter school application. These aspects of TMA's proposed instructional framework are not only material to the educational program offered at the charter school, they are of central importance. Because TMA has fallen far short of the mark it set for itself in the charter school application, TMA has committed material violations of its charter, and WSD properly terminated the charter pursuant to 24 P.S. § 17-1729-A(a)(1).

TMA's charter application also provided that the charter school would include academies for technology and math/science that would be available to the students at the middle and high school levels. However, based upon the curriculum outlines provided to the WSD Board of Directors by TMA, no such academies for technology and math/science were ever made available to students at the charter school. Furthermore, TMA's charter school application indicated that the charter school would be networked so that each student would have a computer available to him/her. It does not appear that this networking was ever completed, and TMA has provided no information to either WSD or the CAB relating to the availability of a computer to each student at TMA. In today's society, technology and computer instruction are material aspects of any educational program. Because TMA has failed to provide the technology and computer instruction that they had promised, they have committed a material violation of the charter and WSD properly terminated TMA's charter pursuant to 24 P.S. § 17-1729-A(a)(1).

Finally, TMA's charter school application proposed that the charter school's educational year would last for 212 days, and the school year would be broken into trimesters. However, the November 13, 2000 letter from TMA to WSD demonstrates that the school year for TMA is actually only 200 days and the school year is broken into quarters as opposed to trimesters. The length of school year is clearly material to the educational program provided to students, especially when a charter school proposed to provide an extended school year for its students. TMA's failure to provide the full amount of school days for its students as proposed in its charter school application constitutes a material violation its charter. Thus, pursuant to 24 P.S. § 17-1729-A(a)(1), WSD properly terminated TMA's charter.

The record is abundantly clear that TMA has committed numerous, substantial and material violations of the charter. As highlighted above and contrary to its charter school application, TMA has, *inter alia*, failed to: (1) use the specified curriculum; (2) provide several key educational programs and activities to its students; (3) maintain the promised instructional scheme and student-teacher ratio; (4) implement important technology and computer educational programs; and (5) provide an extended school year structure for its students. These failures are each material violations of TMA's charter and in of itself, this provides sufficient basis for termination. Thus, CAB finds that WSD properly and legally terminated TMA's charter pursuant to 24 P.S. § 17-1729-A(a)(1).

*WSD also terminated TMA's charter because TMA allegedly failed to meet the requirements for student performance set forth in 22 Pa.Code Ch. 5 and in the written charter.*

Although TMA's material violations of the charter alone are sufficient to support WSD's termination of TMA's charter, WSD has also identified several other causes for the termination of the charter. One such other cause for the termination is TMA's alleged failure to meet the requirements for student performance set forth in 22 Pa.Code Ch. 5 and in the charter. See 24 P.S. §17-1729-A(a)(2).

In its charter school application, TMA proposed that its students would achieve high nationally recognized academic standards and would master a core curriculum. The Stanford Achievement Test evaluates just that, and compares a school's test scores to other schools across the nation. Based upon the Stanford test scores in the record, it appears that many of TMA's students scored significantly lower than the national average in many subjects. However, in view of the fact that TMA has only been in operation for 1½ years, we find it somewhat premature to use student performance as a ground for termination in this case.

Moreover, we note that TMA asserts in its brief that students are making educational progress at the charter school. Accordingly, the CAB finds that WSD improperly relied upon 24 P.S. § 17-1729-A(a)(2) in its decision to terminate TMA's charter.

*TMA's failure to meet generally accepted standards of fiscal management or audit requirements demonstrates that WSD properly terminated TMA's charter.*

Besides asserting that TMA committed material violations of its charter and failed to meet the requirements for student performance, WSD also asserts that TMA failed to meet the generally accepted standards of fiscal management and audit requirements. See 24 P.S. §17-1729-A(a)(3). The CAB has previously upheld a charter termination where the financial affairs of the charter school were clearly in disarray. See In re: Creative Educational Concepts, supra. As in Creative Educational Concepts, the record here provides equally significant evidence of TMA's failure to manage the charter school's fiscal operations. For example, at the end of the 1999-2000 school year, TMA had a budget deficit of \$50,422.00 and the State Auditor General's report finds, without disagreement from TMA, that the school had overspend its budget by \$142,216.00.

Also, as of November 15, 200, the Public School Employee's Retirement System informed TMA that they had failed to make quarterly employee and employer contributions for four quarters with a total delinquent amount owed of \$50,234.20. Additionally, as of January 30, 2001, TMA was delinquent in their school meal and crossing guard expense payments to WSD in the amounts of \$28,958.30 and \$867.37 respectively. Finally, TMA's charter school application and TMA's financial policy manual indicate that an independent CPA will perform annual audits of the charter school's accounts. Although TMA submitted an independent audit report for the year ending June 1999, no independent audit report was submitted for the year ending June 2000.

As highlighted above, there are numerous indicators in the record that TMA's finances and fiscal operations were in disarray. At best, TMA has failed to meet the generally accepted standards of fiscal management and audit requirements as prescribed by 24 P.S. §17-1729-A(a)(3). Therefore, WSD properly terminated TMA's charter for this reason as well.

*TMA's violation of provisions of the Commonwealth's Charter  
School Law support WSD termination of TMA's charter.*

In addition to relying on TMA's violation of the provisions of its charter, failure to meet the requirements for student performance in the Department's regulations and its charter, and failure to meet the generally accepted standards for fiscal management and audit requirements, WSD also based its termination of the charter on TMA's purported violation of the Charter School Law.

WSD alleges that TMA violated Section 1728 of the Charter School Law (24 P.S. § 17-1728-A(a)) by failing to provide WSD with the required "ongoing access" to TMA's records that would allow WSD to ensure that the charter school is in compliance both with its charter and the requirements of the Charter School Law. Based upon the record, it appears that on several occasions TMA frustrated the efforts of WSD to obtain requested information and documentation in a timely fashion. Some requests for information were wholly ignored, while others languished for months before a response was provided to WSD. The failure of TMA to provide WSD with the information that the school district had requested in order to determine whether TMA was complying with its charter and applicable laws constitutes a violation of the Charter School Law, and is a valid basis for WSD's termination of TMA's charter pursuant to 24 P.S. § 17-1729-A(a)(4).

WSD also alleges that TMA failed to comply with Sections 1724(i) and (j) of the Charter School Law. See 24 P.S. § 17-1724-A(i), (j). Those provisions require all applicants for positions in a charter school to submit the official clearance statement regarding child injury or abuse from the Department of Public Welfare as required by 23 Pa.C.S. Ch. 63 SubCh. C.2 and a state police criminal record report. Based upon the information submitted by the parties, it appears that TMA has not complied with Section 1724 of the Charter School Law. TMA has allowed some staff members to take positions at the charter school without first obtaining the proper reports and clearances. This is an alarming finding that constitutes a plain violation of Section 1724(j) of the Charter School Law, so WSD properly terminated TMA's charter pursuant to 24 P.S. § 17-1729-A(a)(4).

*TMA's charter was properly revoked based upon  
TMA's violation of laws from which the charter school was not exempted.*

Besides the reasons identified in the discussion above, WSD also terminated TMA's charter pursuant to 24 P.S. § 17-1729-A(a)(5) because it allegedly violated several laws applicable to charter schools. Two applicable laws that WSD alleges have been violated by TMA are the State Ethics Law (65 Pa.C.S. §§ 1101 et. seq.) and the State Sunshine Act (65 P.S. §§ 701 et. seq.).

With regard to the State Ethics Law, Sections 1715 and 1727 of the Charter School Law impose upon a charter school's board of trustees and certain charter school employees the same responsibilities and standards for ethical conduct as are expected of school district board of directors and other public officials. See 24 P.S. § 17-1715-A(11); see also 24 P.S. § 17-1727-A. As such, the board of trustees of a charter school is subject to the State Ethics Law's financial interest disclosure mandates that all public officials and certain public employees submit statements of financial interest by May 1 of each year. 65 Pa.C.S. § 1104(a). Furthermore, no public official is permitted to continue his/her duties unless and until the statement has been filed. 65 Pa.C.S. § 1104(d). It is troubling that the record demonstrates that none of the members of the TMA's Board of Trustees submitted a financial interest statement for any year since the charter school's inception until after WSD had voted to terminate the charter. As such, because the members of the Board of Trustees of TMA are clearly public officials pursuant to Sections 1715 and 1727 of the Charter School Law, there has been a violation of the State Ethics Law.

In addition to a violation of the State Ethics Law, WSD also relies on a purported violation of the State Sunshine Act (65 P.S. §§ 701 et. seq.) as a ground for termination of the charter pursuant to Section 1729-A(a)(5) of the Charter School Law. Charter Schools are explicitly subject to the State Sunshine Act (see 24 P.S. § 17-1716-A(c)), which imposes a responsibility on a charter school's Board of Trustees to conduct the business of the school in a public manner. Based upon the record, it appears that TMA's Board of Trustees has occasionally conducted the business of the charter school in a private forum in violation of the State Sunshine Act. See N.T. 66-67.

TMA argues in its brief that neither WSD nor the CAB are authorized to determine whether violations of the State Ethics Law or the State Sunshine Act have occurred because each of those laws have specific complaint and enforcement procedures. However, neither WSD nor the CAB have made these findings blindly. The State Auditor General also found that TMA has violated these laws in its audit of the 2000 school year. More importantly, the Auditor General's report indicates in the audit that TMA "agree[s] with [the] findings stated in the audit with one exception: paraprofessional/certification language." See WSD S.I. p.5. TMA has explicitly agreed with the determination made by the State Auditor General that the charter school has violated both the State Ethics Law and the State Sunshine Act, despite the fact that neither of these laws provides the State Auditor General with authority to make such a determination. In sum, the record contains a valid admission of violations of these laws, and that is sufficient support for WSD's termination of the charter pursuant to 24 P.S. § 17-1729-A(a)(5).

## V. Conclusion

In sum, WSD had sufficient legal grounds pursuant to Section 1729(a) of the Charter School Law to terminate TMA's charter. 24 P.S. § 17-1729(a). The record contains substantial evidence that TMA has: (1) committed numerous violations of the terms and conditions of its charter; (2) failed to meet generally accepted standards of fiscal management and audit requirements; (3) violated the Commonwealth's Charter School Law by failing to obtain proper



state police criminal record reports and child injury and abuse clearances from all staff prior to taking a position at the charter school, as well as failing to provide WSD with “ongoing access” to the charter school’s records; and (4) violated laws from which TMA has not been exempted, including the State Ethics Law and the State Sunshine Act.

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

**In Re:**

<b>Thurgood Marshall Academy</b>	:	
<b>Charter School</b>	:	
	:	
<b>vi.</b>	:	<b>Docket No. CAB 2001-5</b>
	:	
<b>Wilkinsburg School District</b>	:	

**ORDER**

AND NOW, this 15th day of January, 2002, based upon the foregoing and the vote of the State Charter School Appeal Board,<sup>5</sup> the August 13, 2001 appeal of Thurgood Marshall Academy Charter School is DENIED and the decision of the Wilkinsburg School District to terminate the charter issued to Thurgood Marshall Academy Charter School is AFFIRMED.

For the State Charter School Appeal Board,

\_\_\_\_\_  
Charles B. Zogby  
Chairman

<sup>5</sup> At its December 17, 2001 meeting, the appeal was denied by a vote of 6-0, with members Aliota, Bunn, Melnick, Reeves, Shipula and Zogby voting to deny the appeal.