

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

Community Academy of Philadelphia	:	
Charter School,	:	
Petitioner	:	
	:	
v.	:	CAB Docket No. 2013-12
	:	
School District of Philadelphia,	:	
School Reform Commission,	:	
Respondent	:	

OPINION

HISTORY

In accordance with the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, *as amended*, 24 P.S. §17-1701-A *et seq.* (hereinafter “CSL”), this matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter “CAB”) on the appeal by Community Academy of Philadelphia Charter School (hereinafter “Community Academy”) from the October 17, 2013 Resolution of the School District of Philadelphia, School Reform Commission (hereinafter “SRC”), to “nonrenew/revoke” Community Academy’s Charter.

Community Academy has been in operation since 1997, when the School District of Philadelphia (hereinafter “School District”) granted a Charter to it for a five-year term. Community Academy’s Charter was renewed in 2001 and again in 2006. The School District is presently governed by the SRC.¹ In December 2010, prior to the scheduled expiration of its 2006 Charter on June 30, 2011, Community Academy submitted an application to the SRC for a renewed Charter. In February 2011, the SRC’s Charter School Office recommended the renewal

¹ Upon a declaration that a first-class school district is distressed, pursuant to Section 6-691 of the Public School Code, Act of March 10, 1949, P.L., *as amended*, a School Reform Commission is established. *See* 24 P.S. § 6-696(a). The SRC is an instrumentality of a first-class school district and exercises the powers of the board of school directors. *Id.*

of Community Academy's Charter setting forth specific academic performance targets within the Charter term which, if not met, would be sufficient grounds to revoke the Charter.

The SRC voted twice in 2011, once on February 16, 2011 (SRC-21) and again on April 27, 2011 (SRC-53), on a proposed resolution to renew Community Academy's Charter. Both times the vote was two-to-one in favor of renewal, with one abstention due to a conflict of interest and with the fifth seat vacant. The SRC viewed both votes as failing for lack of a majority and therefore did not issue a Charter renewal to Community Academy. During the course of several appeals by Community Academy to various courts and CAB, the SRC took the position that no action had been taken with regard to the renewal of the 2006 Charter; and thus, it remained in effect, and Community Academy continued to operate.²

Subsequently the School District staff recommended to the SRC that Community Academy's Charter be revoked. On January 17, 2013, the SRC adopted a Resolution (SRC-5) which provided notice of intent to nonrenew/revoke Community Academy's Charter based on six (6) enumerated grounds. The SRC appointed a Hearing Officer who conducted hearings on April 29, May 6, 15, 22, 30 and 31 and June 4, 2013 on the SRC's proposed nonrenewal/revocation of Community Academy's 2006 Charter. After the last day of hearing, the SRC accepted public comments for thirty (30) days on the proposed nonrenewal/revocation of Community Academy's Charter.

On August 16, 2013, the SRC Hearing Officer issued his Report recommending denial of Community Academy's application for renewal of its Charter, or in the alternative, that the Charter be revoked based on three grounds. On October 17, 2013, the SRC voted to adopt the

² This position, *i.e.*, the charter school may continue to function as if its charter were still in effect absent the signing of a renewed charter or the issuance of a final determination of nonrenewal or of revocation, was affirmed in *Community Academy of Philadelphia Charter School v. Philadelphia School District School Reform Commission*, 65 A.3d 1023, 1031 (Pa. Cmwlth. 2013).

Hearing Officer's Report, Findings of Fact and Conclusions of Law and to deny Community Academy's request for renewal of its Charter, or in the alternative, to revoke Community Academy's Charter.

On November 15, 2013, Community Academy timely filed its Petition for Appeal before CAB. The parties have supplemented the record, filed briefs and other documents in support of their respective positions on appeal. They presented their arguments to CAB on March 31, 2015.

For the reasons set forth below, CAB holds that the SRC does not have sufficient legal grounds to justify its nonrenewal/revocation of Community Academy's Charter under the CSL at Section 1729-A, 24 P.S. §17-1729-A.

FINDINGS OF FACT

I. Procedural History

1. Community Academy was first granted a Charter in 1997, which was later renewed in 2001 and again in 2006. Joint Stipulation ¶ 1.³
2. Community Academy's original Charter was for grades 6-12, but during the 2001 renewal, it was permitted to expand to include grades K-12, and Community Academy currently operates a K-12 Charter. N.T. 5/6/13 at 226.⁴
3. Community Academy's 2006 Charter was scheduled to expire on June 30, 2011, and thus, in December 2010, Community Academy submitted an application to the SRC for a renewed Charter. Joint Stipulation ¶ 2.
4. On February 16, 2011, the SRC considered and voted on a Resolution ("SRC-21") for the five-year renewal of Community Academy's Charter that contained various conditions that included, but were not limited to, certain enumerated academic performance targets

³ "Joint Stipulation" refers to the Joint Statement of Undisputed Facts filed by the parties on December 3, 2014.

⁴ The pages of the transcripts from the various days of hearings before the SRC Hearing Officer will be referenced as "N.T. [date] at [page number]."

- to be met within the five-year renewal term, "in addition to all other requirements of the law." Joint Stipulation ¶ 3.
5. At the time of the February 16, 2011 vote, one (1) of the SRC's five (5) commissioner seats was vacant due to resignation. Of the remaining four (4) commissioners, one (1) abstained from voting, leaving three (3) voting commissioners. Joint Stipulation ¶ 4.
 6. Of the three (3) voting commissioners, two (2) commissioners voted in favor of renewal of Community Academy's Charter for a five-year term and one (1) voted against renewal. Joint Stipulation ¶ 5.
 7. The SRC did not issue a renewed Charter because it concluded a renewed Charter required three (3) affirmative votes or a majority of all five (5) commissioner seats; and therefore, the 2-to-1 vote was not a valid action by the SRC. Joint Stipulation ¶ 6.
 8. Community Academy disputed the SRC's position, claiming all that was required was that two (2) of the voting commissioners, *i.e.*, a majority of the voting commissioners, vote in favor of a renewal. Joint Stipulation ¶ 7.
 9. On April 27, 2011, the SRC again voted on the renewal of Community Academy's 2006 Charter, which vote was 2-to-1 in favor of renewal, with the fourth commissioner abstaining. Joint Stipulation ¶ 8.
 10. On June 3, 2011, Community Academy filed an appeal with CAB concerning the effect of the 2-to-1 vote. Community Academy's 2011 appeal was docketed as CAB Docket No. 2011-05. Joint Stipulation ¶ 9.
 11. The SRC filed a Motion to Quash the appeal, arguing CAB lacked jurisdiction to hear the matter. On July 12, 2012, CAB issued an opinion and order granting the SRC's Motion. Joint Stipulation ¶ 10.

12. On August 8, 2012, Community Academy filed a two-count Petition for Review with the Commonwealth Court:

- Count I of the Petition sought review of CAB's decision to quash Community Academy's appeal, invoking the appellate jurisdiction of the Commonwealth Court; and
- Count II of the Petition sought to invoke the original jurisdiction of the Commonwealth Court seeking a declaratory judgment and a writ of mandamus, requesting a declaration that the SRC's 2011 vote was an effective renewal and a mandamus directing the SRC to confirm Community Academy's renewed charter.

Joint Stipulation ¶ 11.

13. On August 20, 2012, the Commonwealth Court issued an Order bifurcating Count I and Count II of the Petition for Review. Specifically, the Commonwealth Court stayed Count II (seeking a declaratory judgment and writ of mandamus on the SRC's 2-to-1 renewal vote) and directed, upon disposition of Count I (appealing CAB's ruling), that Count II of the Petition for Review be transferred to the Court of Common Pleas for disposition of Community Academy's request to declare the SRC's 2-to-1 vote effective. Joint Stipulation ¶ 12.

14. On January 17, 2013, during the pendency of Community Academy's appeal to the Commonwealth Court, the SRC passed a Resolution to issue a Notice of Intent to Nonrenew/Revoke Community Academy's Charter. Joint Stipulation ¶ 13.

15. The SRC-5 Resolution, adopted on January 17, 2013, provided six (6) grounds for nonrenewal/revocation of the Charter:

- (i) The Charter School failed to make adequate yearly progress ("AYP") during the period 2007-12, as defined in the federal No Child Left Behind Act and in violation of the Charter School's Charter.
- (ii) The Charter School is in Corrective Action II, the lowest AYP status, for the sixth consecutive year.

(iii) The Charter School's PSSA proficiency scores have been consistently lower than the State targets, District average, and the Charter School average in both math and reading during the term of the Charter.

(iv) Based on Pennsylvania's Value-Added Assessment System ("PVAAS"), which measures academic growth, the Charter School consistently lags behind the State's normal growth standard as well as the District and Charter School growth averages in both math and reading in grades 9 to 11 in 2009-2012.

(v) Based on the PVAAS, which measures academic growth, the Charter School shows no significant growth when compared to the State's normal growth standard and the District's growth average and consistently lags behind Charter School growth averages in both math and reading in grades 4 to 8 in 2009-2012.

(vi) Financial documentation for the Charter School raises questions about the Charter School's financial health.

SDP Ex. 1, p. 2.⁵

16. On March 8, 2013, the Commonwealth Court issued an Opinion affirming CAB's decision that it lacked jurisdiction over whether the SRC's 2-to-1 majority vote in 2011 constituted an effective renewal of Community Academy's Charter, and directed the transfer of Count II--which sought to declare the SRC's 2011 2-to-1 vote valid--to the Court of Common Pleas pursuant to its August 20, 2012 Order. Joint Stipulation ¶ 14.⁶
17. In April 2013, the record from the Commonwealth Court was transferred to the Court of Common Pleas (April Term 2013 No. 01615). Joint Stipulation ¶ 15.
18. Based on its January 17, 2013 Notice of Intent to Nonrenew/Revoke Community Academy's Charter, the SRC appointed a Hearing Officer who conducted hearings on April 29, May 6, May 15, May 22, May 30, May 31 and June 4, 2013. Joint Stipulation ¶ 16.

⁵ Exhibits submitted before the SRC by the School District of Philadelphia will be referenced as "SDP Ex. __, p. __"; and those submitted by Community Academy will be referenced as "CAP Ex. __, p. __." These Exhibits are part of the record certified by the School District to CAB and are contained in electronic form on a disc filed with CAB on December 6, 2013.

⁶ See generally *Community Academy of Philadelphia Charter School v. Philadelphia School District School Reform Commission*, 65 A.3d 1023 (Pa. Cmwlth. 2013).

19. The SRC thereafter accepted public comments on their proposed nonrenewal/revocation of Community Academy's Charter. Joint Stipulation ¶ 17.
20. On August 16, 2013, the SRC Hearing Officer issued his Recommendation to Nonrenew/Revoke Community Academy's Charter. Joint Stipulation ¶ 18.
21. On October 17, 2013, the SRC voted to adopt the Hearing Officer's Recommendations and passed a Resolution nonrenewing/revoking Community Academy's Charter. Joint Stipulation ¶ 19.⁷
22. The SRC revoked/nonrenewed Community Academy's 2006 Charter based on three grounds:
 - (i) Community Academy failed to meet the requirements for student performance set forth in 22 Pa. Code Ch. 4;
 - (ii) Community Academy failed to meet the requirements for student performance set forth in its Charter; and
 - (iii) Community Academy failed to meet generally accepted standards of fiscal management.

SRC Index of Record, Document K, SRC Resolution SRC-5, adopted October 17, 2013, p. 7.

23. Community Academy timely filed its Petition for Appeal with CAB on November 15, 2013. Joint Stipulation ¶ 20.
24. On October 2, 2014, the Common Pleas Court entered an Opinion and Decision, ruling that the validity of the SRC's 2011 renewal was "moot" because CAB was proceeding with this revocation matter. Joint Stipulation ¶ 21.

⁷ While the parties stipulated that the 2006 Charter would expire on June 30, 2011, and the actual 2006 Charter provides for the term to expire on June 30, 2011, the Resolution of the SRC, SRC-5, adopted on October 17, 2013, nonrenewing/revoking the Charter incorrectly states that the Charter was set to expire on August 31, 2011. Cf. SDP Ex. 3, p. 2 to SRC Index of Record, Document K, SRC Resolution SRC-5, adopted October 17, 2013, p. 3.

25. Because it determined that the matter was moot as a result of the revocation proceedings, the Court of Common Pleas' October 2, 2014 Opinion and Decision did not address the legal issue of whether the SRC's 2011 2-to-1 vote to renew Community Academy's 2006 Charter was effective. Joint Stipulation ¶ 22.
26. On October 13, 2014, Community Academy filed a Post-Trial Motion with the Court of Common Pleas. Joint Stipulation ¶ 23.
27. On January 22, 2015, the Philadelphia Court of Common Pleas denied Community Academy's motion for Post-Trial Relief. Official Notice; *Community Academy of Philadelphia Charter School v. Philadelphia School District School Reform Commission*, Order of 1/22/2015 in the Court of Common Pleas of Philadelphia County, Civil Division, at 01615 April Term 2013.
28. On March 31, 2015, CAB heard argument from Community Academy and the School District regarding this appeal.

II. Community Academy General Background

29. Community Academy's mission is to serve "at-risk" students. The Mission Statement in its 1997 Charter Application stated as follows:

.... [Community Academy] serves urban, high-risk young people in search of a positive school experience in a supportive environment and an atmosphere free of negative labels. Our students come from widely divergent backgrounds that may include having been truant, dropped-out, repeatedly failed, or expelled from the Philadelphia public schools, as well as, those seeking an alternative to large, impersonal public schooling. As such, the Philadelphia Community Academy acts as a "second chance" for students whose needs have not or cannot be met by large comprehensive secondary schools.

SDP Ex. 2, p. 14; N.T. 5/31/13 at 1133-1135; N.T. 5/22/13 at 606-607; N.T. 6/4/13 at 1284; CAP Ex. 26H.

30. Throughout its existence, serving “at-risk” students has continued to be part of Community Academy’s mission. SDP Ex. 2, p. 14; N.T. 5/31/13 at 1133-1135; N.T. 5/22/13 at 606-607; N.T. 6/4/13 at 1284; CAP Ex. 26H.
31. Community Academy originally served grades 6 through 12, but in September 2001, Community Academy was permitted to expand its operations to and currently serves students in grades K through 12. SDP Ex. 2; Stipulation of Parties, filed December 2, 2014, Ex. 7.
32. Community Academy enrolls approximately 1200 students. Stipulation of Parties, filed December 2, 2014, Ex. 7.
33. Community Academy provides an on-site Emotional Support Team (hereinafter “EST”) consisting of nine professionals, including a psychiatrist, two psychologists, three licensed counselors, two licensed social workers, and one case manager. N.T. 5/22/13 at 612; CAP Ex. 26I.
34. During the 2011-2012 school year, about 709 Community Academy students, or approximately 58%, sought services from the EST, which included 6885 contacts for some form of emotional support. N.T. 5/22/13 at 615-16; CAP Ex. 26I.
35. During the first three quarters of the 2012-13 school year, approximately 591 Community Academy students sought services from the EST, which included 3956 contacts for emotional support. N.T. 5/22/13 at 616-617; CAP Ex. 26J.
36. Community Academy’s EST also provides group counseling sessions, including a cancer support group, a teen parent support group, an anger management support group, and a conflict resolution support group. N.T. 5/22/13 at 617-18. Community Academy also

provides its teen parent students free access to an on-site day care facility. N.T. 5/22/13 at 617; N.T. 5/31/13 at 1131.

37. Community Academy has a reputation for serving “at-risk” students who are in need of special education and emotional support services; and for these reasons, parents seek to send their children to Community Academy because of its extensive EST programs. N.T. 5/22/13 at 617-618, 624, 652.
38. Community Academy has received referrals of “at-risk” students from government agencies such as the Department of Health and Human Services, the Philadelphia District Attorney’s Office, and the Public Defender’s Association as well as from hospitals, churches and Community organizations and even from the School District itself. N.T. 5/22/13 at 618-622.
39. During the 2011 renewal process, the SRC’s Office of Charter Schools and Community Academy had meetings to discuss improving Community Academy’s students’ academic performance on state standardized tests, including suggesting that Community Academy hire outside consultants. N.T. 5/22/13 at 641.
40. The Accountability Agreement attached to Community Academy’s 2006 Charter provides that if it does not attain AYP status in accordance with federal law, *i.e.*, the No Child Left Behind Act and the CSL, the School District may require Community Academy to develop an “Accountability/School Improvement Plan,” may monitor student performance goals and all other requirements as per “No Child Left Behind,” and may require accountability related site visits. SDP Ex. 3, p.11.
41. During the 2011 Renewal Process and following its meetings with and recommendations from the Charter School Office, Community Academy memorialized its plans to improve

academic performance in a written document entitled "Actions for School Improvement," which detailed the various actions Community Academy had taken and was taking to improve academic performance. CAP Ex. 18.

42. Community Academy followed the recommendation of the Office of Charter Schools and its "Actions for School Improvement Plan" and hired outside academic consultants. N.T. 5/22/13 at 642.
43. Community Academy consulted with Nancy Clair, International Literacy Consultant, who was instrumental in introducing SchoolWorks to the School District. N.T. 5/22/13 at 643, 723-24, 727.
44. As a result of her review, Dr. Clair prepared a written report dated December 31, 2011 making recommendations to Community Academy. N.T. 5/22/13 at 643-44; CAP Ex. 17.
45. Community Academy is implementing Dr. Clair's recommendations in an effort to improve its literacy programs and standardized test scores in reading. N.T. 5/22/13 at 648.
46. In spring 2011, Community Academy engaged Dr. Chris Moersch, executive director of LoTi Connection (hereinafter "LoTi"), to improve student achievement in grades 3-8 math and to improve classroom instructional practices. N.T. 5/31/13 at 924-25, 1010.
47. Dr. Moersch, who testified at the SRC hearing, has approximately 30 years of experience as an educator, has a Doctorate in Education and a Master's degree in Educational Administration, and has authored two books concerning higher order thinking and technology-based education, as well as fifteen publications focusing on education, education technology and school improvement. N.T. 5/31/13 at 924-27.

48. LoTi is an acronym for “Levels of Teaching Innovation,” and the teaching methodology/program specializes in school improvement and curriculum development with the innovative use of technology-based learning. N.T. 5/31/13 at 924, 937-38.
49. LoTi’s primary focus is to assist underachieving Title I schools by improving student academic achievement and improving instruction in the classroom, both of which result in improving students’ standardized test scores. N.T. 5/31/13 at 927-928, 932.
50. LoTi implements its technology-based learning techniques in schools throughout the country, and its research and teaching frameworks are used internationally. N.T. 5/31/13 at 928.
51. The Pennsylvania Department of Education has chosen LoTi as the data collection vendor for the Keystone to Opportunities (KtO) program, which is part of a comprehensive literacy grant used statewide from preschool through high school and which has approved LoTi’s courses for administrators and teachers in Pennsylvania for purposes of Act 45 and Act 48 requirements. N.T. 5/31/13 at 931.
52. LoTi has used its methodology in the Atlantic City School District, 99% of which is classified as Title I schools, for the past six years, resulting in its state standardized scores improving dramatically against the state average to the point where in the 2011-2012 school year, Atlantic City was recognized as a “high performing school district” in New Jersey, meaning that it had seen “significant increase from year to year” across the board in academic achievement. N.T. 5/31/13 at 971-72.
53. Community Academy initially hired LoTi to use its “H.E.A.T.” program for math in grades 3 to 8 during the 2011-2012 school year. N.T. 5/30/13 at 906, 914; N.T. 5/31/13 at 939-40, 1012.

54. "H.E.A.T." is an acronym for Higher Order Thinking, Engaged Learning, Authentic Connections and Technology Use. CAP Exs. 19 and 61; N.T. 5/31/13 at 933-937.
55. LoTi staff worked with Community Academy's administrators and teachers to instruct them on "H.E.A.T." methodologies, including direct involvement with lesson plans, co-teaching with Community Academy teachers, and instruction on measuring and recording the "H.E.A.T." achievement levels. N.T. 5/31/13 at 942, 946-47, 950-52.
56. During the 2011-12 school year, Community Academy's classrooms consistently achieved higher "H.E.A.T." scores, demonstrating "significant" to "very significant" levels of positive achievement in each of LoTi's "H.E.A.T." categories. CAP Ex. 61.
57. LoTi did not begin providing services to Community Academy until after the 2011 PSSA was administered. N.T. 5/31/13 at 1011-12.
58. Community Academy's 2011-2012 PSSA scores for grades 3-8 math significantly improved compared to 2009-10. N.T. 5/31/13 at 974.
59. In the 2009-10 school year, only 94 out of 444 Community Academy students, or 21.2%, who took the PSSA math tests in grades 3-8 scored "proficient" or better; however, in the 2011-12 school year, 160 out of 449 students, or 35.6%, who took the PSSA math tests in grades 3-8 scored "proficient" or better. CAP Ex. 61, pp.6-7.
60. Statistically, this increase in PSSA math scores, 14.4%, was "extremely significant," because the odds that it resulted from mere chance would be 1 in 10,000. N.T. 5/31/13 at 981-82.
61. Community Academy, as a Local Educational Agency (hereinafter "LEA"), met AYP for mathematics in 2011-12. N.T. 5/30/13 at 769; CAP Ex. 26CC.

62. Community Academy also met AYP “safe harbor goals” in math for all subgroups except grades 6-8 IEP students in the 2011-12 school year. N.T. 5/30/13 at 769; CAP Ex. 26DD.
63. Because significant gains were achieved during the 2011-12 school year, Community Academy also engaged LoTi for the 2012-13 school year to continue its math programs and to use its “H.E.A.T.” methodologies for reading and literacy in grades 3-8. N.T. 5/30/13 at 907-09, 915; N.T. 5/31/13 at 993-94, 1013.

III. School Performance Profile and Academic Achievement Scores

64. In 2013, the Pennsylvania Department of Education (hereinafter “PDE”) sought and received a waiver from the United States Department of Education from the No Child Left Behind Act; and as a result of the waiver, the AYP system was eliminated by PDE. School District’s Motion to Supplement, filed 3/31/14, Ex. C, p. 2.
65. PDE created a new metric for measuring academic achievement called the School Performance Profile (hereinafter “SPP”). The SPP provides an academic performance score for all schools, including charter schools, while waiver designations are designed for Title I schools only. School District’s Motion to Supplement, filed 3/31/14, Ex. C.
66. The SPP is a formula that takes a variety of data points into consideration in measuring a school’s academic performance, including raw test scores on the PSSA and Keystone Exams, academic growth through the PVAAS, graduation rates, attendance rates, College Board testing, college attendance after graduation, and student achievement in Advanced Placement (hereinafter “AP”) testing in Mathematics, Reading/Literature, Science/Biology, and Writing, in order to provide a building level academic score that

will be used to track achievement for state-level accountability. School District's Motion to Supplement, filed 3/31/14, Ex. C.

67. Title I schools with a high percentage of low income students will receive a federal designation of "Priority," "Focus" or "Reward" based on four annual measurable objectives (hereinafter "AMO's"), and schools designated as "Priority" or "Focus" will have access to intervention and support services from PDE to assist them in improving student achievement. School District's Motion to Supplement, filed 3/31/14, Ex. B, p. 12; Ex. C.
68. The SPP is designed to serve several purposes, including informing the public of the academic performance measures of each school and offering a resource for LEAs to communicate and compare the school's performance to local schools or schools with similar demographics, to analyze performance indicators as related to achievement and to encourage best practices. School District's Motion to Supplement, filed 3/31/14, Ex. C.
69. Under the SPP system achievement results (PSSA) and growth results (PVAAS) must be used together to get a complete picture of student learning as PVAAS measures the academic growth for the same group of students for each grade each year. Official Notice; [http://www.education.pa.gov/K-12/Assessment and Accountability](http://www.education.pa.gov/K-12/Assessment%20and%20Accountability).
70. The SPP metric was used for the first time in the 2012-13 school year. Joint Stipulation Concerning Supplemental Record filed 6/12/14, ¶ 10.
71. Community Academy's 2012-13 SPP building level academic score is **61.4**. Joint Stipulation Concerning Supplemental Record filed 6/12/14, ¶ 10 (*emphasis supplied*).
72. The average 2012-13 SPP score for all School District public schools is **57.5**. Joint Stipulation Concerning Supplemental Record filed 6/12/14, ¶ 7 (*emphasis supplied*).

73. The average 2012-13 SPP score for all brick-and-mortar charter schools located in Philadelphia was **66.0**. Joint Stipulation Concerning Supplemental Record filed 6/12/14, ¶ 8 (*emphasis supplied*).
74. Community Academy Ex. 26KK, which was admitted as an exhibit before the SRC, contains a list of the School District neighborhood schools that students from Community Academy would have otherwise attended during the 2012-13 school year (hereinafter "Neighborhood Schools"). Joint Stipulation Concerning Supplemental Record filed 6/12/14, ¶ 11.
75. The list of Neighborhood Schools was generated by taking all of the addresses of Community Academy students and putting them into the School District's website school finder to determine which school each student would attend if he or she were enrolled in the School District, and then compiling those results to identify the Neighborhood Schools with the highest numbers of students at Community Academy. N.T. 5/30/13 at 790-93; CAP Ex. 26KK, 26LL, 57.
76. The average 2012-13 SPP score for the Neighborhood Schools serving grades K-8 is **56.3**. Joint Stipulation Concerning Supplemental Record filed 6/12/14, ¶ 13 (*emphasis supplied*).
77. The average 2012-13 SPP score for the Neighborhood Schools serving grades 9-12 is **42.6**. Joint Stipulation Concerning Supplemental Record filed 6/12/14, ¶ 14 (*emphasis supplied*).

78. The average 2012-13 SPP score for all School District and Renaissance⁸ Charter Schools (not including other brick-and-mortar charter schools) serving grades K-8 is **59.2**. Joint Stipulation Concerning Supplemental Record filed 6/12/14, ¶ 15 (*emphasis supplied*).

79. The average 2012-13 SPP score for all School District and Renaissance Charter Schools (not including other brick and mortar charter schools) serving grades 9-12 is **52.6**. Joint Stipulation Concerning Supplemental Record filed 6/12/14, ¶ 16 (*emphasis supplied*).

80. A chart of the 2012-13 SPP scores listed in paragraphs 70-78, above, for the various categories of Neighborhood and other Schools as compared to Community Academy is as follows:

Avg. all Philadelphia brick & mortar charter schools	66.0
Community Academy	61.4
Avg. all brick & mortar charter schools & all SDP public schools	59.7
Avg. all SDP & Renaissance charter schools (K-8)	59.2
Avg. all SDP public schools	57.5
Avg. all SDP Neighborhood Schools (K-8)	56.3
Avg. all SDP & Renaissance charter schools (9-12)	52.6
Avg. all SDP Neighborhood Schools (9-12)	42.6

Joint Stipulation Concerning Supplemental Record filed 6/12/14, ¶¶ 7-16 (*emphasis supplied*).

81. This comparison of the 2012-13 school year SPP scores establishes that Community Academy's building level academic score was higher than the average of all School District public schools and higher than the average of the Neighborhood Schools within the School District which Community Academy's students would otherwise be attending.

Joint Stipulation Concerning Supplemental Record filed 6/12/14, ¶¶ 7-16.

⁸ Renaissance Charter Schools are former Neighbor Schools which have been converted to charter schools as part of the School District's Renaissance Schools Initiative which still must enroll students from the neighborhood catchment area as agreed to in their charters. Some examples of such schools, as referenced in CAPCS Ex. 26KK, are: Philadelphia Charter for Arts at HR Edmunds, Mastery Charter School at Clymer, Mosaica Charter School at Birney, Memphis Street Charter at JP Jones, and ASPIRA John B. Stetson Charter School.

82. Community Academy's SPP building level academic score for the 2013-14 school year is

67.9. Stipulations filed 12/2/14, Supplemental Ex. 7.⁹

83. A chart of the 2013-14 SPP scores for various categories of schools as compared to

Community Academy is as follows:

Community Academy	67.9
Avg. all Philadelphia brick & mortar charter schools	63.6
Avg. all brick & mortar charter schools & all SDP public schools	59.1
Avg. all SDP public schools	57.3

Official Notice, <http://paschoolperformance.org>.

84. The comparison of Community Academy's 2013-14 school year SPP score to the average

score of the other school categories in paragraph 83, above, demonstrates Community

Academy's SPP building level academic score improved by 6.5 points from the 2012-13

school year while the average SPP scores for the remaining groups of schools listed

remained essentially the same or even declined. Official Notice,

<http://paschoolperformance.org>.

85. Community Academy's 2013-14 school year SPP building level academic score

exceeded the average of the School District's public schools, the average of the School

District public schools and the brick and mortar charter schools combined, and the

average of Philadelphia's brick & mortar charter schools. Official Notice,

<http://paschoolperformance.org>.

86. For the 2011-12 school year, the percentage of Community Academy's students for all

tested grades who scored Advanced/Proficient on the PSSA was 30.0% in math and

33.9% in reading. SDP Ex. 6, p. 4.

⁹ The parties also stipulated that SPP data for any particular school is admissible in this proceeding and can be obtained from PDE's website, <http://paschoolperformance.org>. Joint Stipulation Concerning Supplemental Record filed 6/12/14, ¶ 12.

87. For the 2012-13 school year, the percentage of Community Academy's students for all tested grades who scored Advanced/Proficient on the PSSA was 37.21% in Math/Algebra and 38.61% in Reading/Literature. School District's Motion to Supplement, filed 3/31/14, Ex. A.
88. For the 2013-14 school year, the percentage of Community Academy's students for all tested grades who scored Advanced/Proficient on the PSSA was 39.69% in Math/Algebra and 45.63% in Reading/Literature. Stipulations filed 12/2/14, Supplemental Ex. 7.
89. Community Academy's PSSA overall math scores increased from 30% in 2011-12 to 39.69% in 2013-14, and its overall reading scores increased from 33.9% to 45.63%, during the same time period. School District's Motion to Supplement, filed 3/31/14, Ex. A; Stipulations, filed 12/2/14, Supplemental Ex. 7.
90. The percentage of Community Academy's students for all tested grades who scored Advanced/Proficient on the PSSA in Science/Biology, increased from 26.37% in 2012-13 to 40.80% in 2013-14, an increase of 54.7% in one year. Official Notice, <http://paschoolperformance.org>.
91. Community Academy experienced growth in its writing proficiency rates as well, increasing from 46.45% in 2012-13 to 50.31% in 2013-14 for all tested grades who scored Advanced/Proficient on the PSSA in writing. Official Notice, <http://paschoolperformance.org>.

92. A comparison of 2013-14 SPP data for Community Academy with the School District's Neighborhood Schools¹⁰ for grades K-8 is as follows:

School Name	<u>CAP</u>	<u>Juniata Park</u>	<u>Hop-kinson Francis</u>	<u>Webster</u>	<u>Barton Clara</u>	<u>Harding Warren</u>	<u>Feltonville</u>
Academic Score	67.90	69.70	50.80	51.50	61.20	46.40	47.90
Academic Achievement							
Mathematics/Algebra 1	39.69	52.10	31.96	35.00	45.99	29.78	35.92
Reading/Literature	45.63	48.73	29.87	30.00	41.56	32.39	32.64
Science/Biology	40.80	39.83	17.01	47.06	N/A	11.57	16.02
Writing	50.31	59.20	37.16	24.14	N/A	30.94	37.58
Indicators of Academic Growth/PVAAS							
Mathematics/Algebra 1	80.00	100.00	65.00	72.00	N/A	61.25	54.50
Reading/Literature	100.00	100.00	70.00	60.00	N/A	66.00	57.00
Science/Biology	74.00	50.00	50.00	50.00	N/A	50.00	50.00
Writing	86.00	89.50	73.00	50.00	N/A	50.00	50.00

Official Notice, <http://paschoolperformance.org>.

93. Out of the six Neighborhood schools for grades K-8 compared in paragraph 92, above, only one, Juniata Park, has a higher building level academic score than Community Academy. Official Notice, <http://paschoolperformance.org>.

94. Out of the six Neighborhood schools for grades K-8 compared in paragraph 92, above, Community Academy has better PSSA scores than five of the other Neighborhood Schools in most of the categories. (Webster has a higher score only in science and Clara Barton has a higher score only in math). Community Academy has a better score than

¹⁰ See Findings of Fact ¶¶ 74-74, *supra*, for an explanation of which Neighborhood Schools were chosen as schools from its catchment area.

Juniata Park in science but not in the other three categories. Official Notice,

<http://paschoolperformance.org>.

95. A comparison of 2013-14 SPP scores for Community Academy and School District

Neighborhood Schools¹¹ for **grades 9-12** is as follows:

School Name	<u>CAP</u>	<u>Frankford</u>	<u>Kensington Intern</u>	<u>Edison</u>	<u>Fels Samuel</u>	<u>Lincoln</u>
Academic Score	67.90	38.00	39.20	49.00	35.00	38.90
Academic Achievement						
Mathematics/Algebra 1	39.69	10.47	19.23	7.22	8.68	18.48
Reading/Literature	45.63	20.56	44.23	17.42	30.33	26.79
Science/Biology	40.80	5.49	2.00	1.18	3.94	8.92
Writing	50.31	N/A	N/A	N/A	N/A	N/A
Indicators of Academic Growth/PVAAS						
Mathematics/Algebra 1	80.00	50.00	50.00	50.00	50.00	50.00
Reading/Literature	100.00	50.00	65.00	50.00	50.00	50.00
Science/Biology	74.00	50.00	50.00	50.00	50.00	50.00
Writing	86.00	N/A	N/A	N/A	N/A	N/A
Other Academic Indicators						
Cohort Graduation Rate	91.27	59.32	40.71	43.26	65.29	60.68
Dropout Rate	0.16	7.07	7.57	10.13	3.74	4.62

Official Notice, <http://paschoolperformance.org>.

96. Out of the five Neighborhood schools for grades 9-12 compared above, none of them has a higher school building level academic score than Community Academy. Official

Notice, <http://paschoolperformance.org>.

97. Out of the five Neighborhood schools for grades 9-12 compared above, none of them has higher PSSA scores than Community Academy; rather all of them have lower PSSA

¹¹ See Findings of Fact ¶¶ 74-74, *supra*, for an explanation of which Neighborhood Schools were chosen as schools from its catchment area.

scores than Community Academy -- most of them significantly lower. Official Notice, <http://paschoolperformance.org>.

98. The PVAAS is a system of the state standardized assessments through which progress among groups of students can be tracked for a given school, measuring the change of the achievement level for a group of students across grades. School District's Motion to Supplement, filed 3/31/14, Ex. B, p. 8.
99. While use of the PVAAS growth measure methodology was not an approved way to make AYP under Chapter 4, it now represents 40% of the school building level academic performance score under the SPP matrix, which replaced AYP as the appropriate federal accountability measure for schools in the 2012-13 school year. School District's Motion to Supplement, filed 3/31/14, Exs. A, p. 3 and C, pp. 2-3.
100. In comparing Community Academy's 2013-14 PVAAS scores to the selected Neighborhood Schools, both in grades K-8 and grades 9-12, Community Academy showed more growth in all categories as measured against all of the Neighborhood Schools, but one: Juniata Park, which is a grade K-8 school. See Findings of Fact ¶¶ 92, 95, *supra*; Official Notice, <http://paschoolperformance.org>.
101. In comparing Community Academy's 2013-14 PVAAS scores for grades K-8 to Juniata Park's, Community Academy's growth is equal to Juniata Park's in reading (100% to 100%), greater than Juniata Park's in science (74% to 50%), slightly lower than Juniata Park's in writing (86% to 89.5%), and lower in mathematics (80% to 100%). See Findings of Fact ¶ 92, *supra*; Official Notice, <http://paschoolperformance.org>.
102. It appears that if Community Academy's Charter is revoked and/or not renewed, most of its students in **grades 9-12** would have to return to schools that currently: (1) do

not have better proficiency rates in math/algebra, reading/literature, or science; (2) **do not** have as much academic growth in math/algebra, reading/literature, or science as Community Academy; (3) **do** have lower graduation rates; and (4) **do** have much higher dropout rates than Community Academy. *See* Finding of Fact ¶ 95, *supra*.

103. It appears that if Community Academy's Charter is revoked and/or not renewed, many, although not all, of the students in **grades K-8** may return to schools with lower proficiency rates in math/algebra, reading/literature, science and writing and with less academic growth. *See* Finding of Fact ¶ 92, *supra*.

104. According to Community Academy's SPP for the 2013-14 school year, 81.79% of Community Academy's students are Hispanic, 14.36% are African-American, 1.72% are Asian, 1.31% are white, and .77% are Multiracial or native Hawaiian. Stipulation of Parties, filed December 2, 2014, Ex. 7.

105. According to Community Academy's SPP for the 2013-14 school year, the enrollment by student groups is: 87.12% Economically Disadvantaged, 4.26% English Language Learners (hereinafter "ELL"), and 16.98% students with disabilities. Stipulation of Parties, filed December 2, 2014, Ex. 7.

106. During the 2010-11 renewal process, Community Academy scored very well in the Customer Satisfaction Domain, with an 80% average of parents responding positively to questions about school climate, safety, parent engagement, supportive environment, student performance and quality education. CAP Exs. 3 and 4; N.T. 5/22/13 at 534-35.

107. The post-hearing, written comments received by the SRC from members of the public were very positive and overwhelmingly urged the SRC not to revoke Community Academy's Charter. SRC Index of Record, Document G.

108. Community Academy has a student retention rate which is very high compared to other charter school and School District averages, 95.4% in 2009-10. CAP Ex. 4.
109. The School District compared Community Academy's retention rates to six School District comparison schools and concluded that Community Academy's student retention rates were consistently higher than each of those comparison schools, and were also consistently higher than the average School District charter and public schools. CAP Ex. 5; N.T. 5/22/13 at 535-36, 538-39.
110. Community Academy's overall graduation rate for 2012 was 85%, which exceeded the School District average of 55% and the overall Commonwealth average of 83%. CAP Ex. 26MM.
111. Community Academy's cohort graduation rate for 2013-14 was 91.27%, significantly higher than any of the comparison Neighborhood Schools whose graduation rates for 2013-14 ranged from 40.71% to 65.29%. See Finding of Fact ¶ 95, *supra*; Official Notice, <http://paschoolperformance.org>.
112. Community Academy's Hispanic graduation rate for 2012 was 86%, which was significantly higher than the School District's rate of 44% and the Commonwealth's rate of 65%. CAP Ex. 26MM.
113. Community Academy's graduation rate for IEP students for 2012 was 83%, which exceeded the School District's rate of 38% and the Commonwealth's rate of 71%. CAP Ex. 26MM.
114. Community Academy's PDE special education advisor, Walter Howard, considers Community Academy's special education program to be one of the best charter school programs in Philadelphia, and describes Community Academy's special education

teachers as “proactive” and “always on the front end” of special education issues. N.T. 6/4/13 at 1397-98.

115. Community Academy has a very low “dropout rate” compared to its Neighborhood Schools and the School District as a whole. Community Academy’s dropout rate in 2011-12 was .78% compared to the School District’s overall rate of 6.86%. In 2012-13 it was 0%, and in 2013-14 it was .16%. *See* Finding of Fact ¶ 95, *supra*; Official Notice, <http://paschoolperformance.org>; CAP Ex. 26QQ; N.T. 5/30/13 at 825-28.
116. A comparison of Community Academy’s graduates who go on to postsecondary education reveals that Community Academy ranked third out of nine Neighborhood Schools, with 74% of its graduates progressing on to postsecondary education after high school in the 2011-12 school year exceeding the School District’s rate of 72.5%. CAP Ex. 26PP; N.T. 5/30/13 at 820-22.
117. After graduating, Community Academy students also enroll in college at a higher rate than the national average, for example 57% and 55% in 2010 and 2011, respectively. The national average was 52%. CAP Ex. 26SS-26UU; N.T. 5/30/13 at 839-45.
118. The percentage of Community Academy students enrolled in college at any time during the first two years after high school was 62% in 2009 and 61% in 2010 exceeding the national average of 57%. CAP Ex. 26TT.
119. 75% of Community Academy’s students who enrolled in college the first year after high school returned for a second year (*i.e.*, freshman to sophomore persistence) exceeding the national average of 71% in 2010. CAP Ex. 26UU.

120. The performance of Community Academy students set forth in paragraphs 115 to 119 above was related to its educational program even before the reforms described in paragraphs 40 to 57 were implemented.

IV. Financial Information

121. Community Academy explained that its budget deficits between 2008 and 2010 resulted from the meltdown of the national economic system, not bad fiscal management by Community Academy. N.T. 6/4/13 at 1384-85; CAP Ex.7, p. 10.

122. Community Academy implemented several changes in 2009 in order to turn its financial position around, including reducing administrative staff, instituting budget cuts, putting a new financial management team in place, changing its budgeting process, and refinancing its bonds to a more favorable and stable interest rate. N.T. 5/31/13 at 1167-69; N.T. 6/4/13 at 1384-85; CAP Ex. 7, p. 10.

123. International Education and Community Initiatives (“IECI”), doing business as One Bright Ray, Inc. (“OBR”), owns the building that houses Community Academy. N.T. 5/31/13 at 1144, 1147; SDP Ex. 4, p. 442.

124. In 2002, IECI sold \$17,045,000 in Philadelphia Authority for Industrial Development (“PAID”) 2002A & B bonds to purchase and renovate the building which houses Community Academy. SDP Ex. 4, p. 442; N.T. 6/4/13 at 1312, 1320-21.

125. The 2002 Series A bonds were refinanced in 2008 and in 2009 as PAID Series 2009 bonds and were purchased in whole by Citizens Bank; and both IECI and Community Academy have financial obligations with respect to the bonds. SDP Ex. 4, p. 442; N.T. 6/4/13 at 1248-50.

126. Community Academy has a lease with IECI, and the lease payment is based on the square footage of the property as a percentage of the annual bond payment. SDP Ex. 4, pp. 15-17, 442; SDP Ex. 27, p. 1.
127. Community Academy has granted a security interest in all of its assets and revenues to IECI/OBR, which in turn has been assigned to OBR's bondholders. SDP Ex. 22, p.26, Note 14; N.T. 6/4/13 at 1367.
128. The debt service coverage ratio for the bonds is 1.20, which is a consolidated ratio between Community Academy and IECI that must be maintained each year. N.T. 6/4/13 at 1368-71.
129. Dianne Castelbuono, former supervisor of the School District's Charter School Office, acknowledged that if School District auditors had concerns over Community Academy's relationship with IECI/OBR or any transactions between Community Academy and IECI/OBR, she would have expected any such concerns to be raised in the School District auditors' report in 2011; but that report contained no such concerns. N.T. 5/22/13 at 553-54.
130. Michael Whisman, CPA ("Whisman"), is founder/shareholder of Charter Choices, currently the accounting firm utilized by Community Academy. N.T. 6/4/13 at 1288.
131. Whisman disagreed with the School District's auditor, Mayer Krain, who stated that Community Academy's financial position looked stronger because its lease was not capitalized; rather, Whisman testified that the original debt, the 2002 bond transaction, was properly recorded as an operating lease on Community Academy's books. N.T. 6/4/13 at 1320-21.

132. The existence of a bond commitment by Community Academy through the repayment via its lease agreement by Community Academy is noted in its audited financial documents for fiscal years ending 2007, 2008, 2009, 2010, 2011, 2012, and 2013. SDP Exs. 17, 18, 19, 20, 21, 22; Community Academy's Motion to Supplement, filed 3/31/14, Ex. H.
133. Community Academy did not forgive any debt of IECl/OBR from 2007 through 2013. N.T. 5/31/13 at 1155; N.T. 6/4/13 at 1328.
134. Community Academy's "net assets" were: +\$274,085 at year-end 2011, +\$803,063 at year-end 2012 and +\$1,589,745 at year-end 2013. CAP Ex. 66, Table 1; Community Academy's Motion to Supplement Record, filed 3/31/14, Ex. H, p. 6.
135. Community Academy's "general fund balance" was \$315,061 at year-end 2012 and \$1,161,233 at year-end 2013. CAP Ex. 66, Table 1; Community Academy's Motion to Supplement Record, filed 3/31/14, Ex. H, p. 6.
136. Community Academy's "current ratio," which is the current assets over liabilities, was .75 at year-end 2011, 1.21 at year-end 2012, 1.81 at year-end 2013 and 3.57 as of January 31, 2014. CAP Ex. 66, Table 1; Community Academy's Motion to Supplement Record, filed 3/31/14, Ex. I, p. 1.
137. Community Academy's "days of cash on hand," which is the amount of cash Community Academy has on hand to pay its upcoming bills at the end of the fiscal year, reflects growth with 10.1 days in 2011, 14.8 days in 2012, 40 days in 2013, and 55 days as of January 31, 2014. CAP Ex. 66, Table 1; Community Academy's Motion to Supplement Record, filed 3/31/14, Ex. I, p. 1.

138. Community Academy has also established a "contingency fund," which is earmarked for potential emergency situations. In 2011-12 the contingency fund was \$50,000, and in 2012-13 the contingency fund was \$214,493. CAP Ex. 67; N.T. 6/4/13 at 1323-25.

139. The following contains a summary of Community Academy's financial health metrics based on Community Academy's Audited Financial Statements:

Year ended June 30	<u>2007</u> <i>audited</i>	<u>2008</u> <i>audited</i>	<u>2009</u> <i>audited</i>	<u>2010</u> <i>audited</i>	<u>2011</u> <i>audited</i>	<u>2012*</u> <i>audited</i>	<u>2013*</u> <i>audited</i>	(as of 1/31/14)
Net Assets								
Beginning	775,654	643,957	196,626	(275,269)	450,424	274,084	803,062	
Change	<u>(131,697)</u>	<u>(447,331)</u>	<u>(471,895)</u>	<u>725,693</u>	<u>(176,339)</u>	<u>528,978</u>	<u>786,683</u>	
End of year	643,957	196,626	(275,269)	450,424	274,085	803,062	1,589,745	
% of Change	-17%	-69%	-240%	264%	-39%	193%	98%	
General Fund								
Beginning	138,769	160,887	(150,384)	(415,722)	(191,500)	(334,593)	315,063	
Change	<u>22,118</u>	<u>(311,271)</u>	<u>(265,338)</u>	<u>303,881</u>	<u>(143,093)</u>	<u>649,654</u>	<u>846,170</u>	
End of year	160,887	(150,384)	(415,722)	(111,841)	(334,593)	315,061	1,161,233	
% of Change	1.6%	-1.9%	-17.6%	-7.3%	-7.5%	19.4%	26.9%	
Current Ratio	1.15	0.87	0.72	0.86	0.75	1.21	1.81	3.57
Cash Balance	241,201	267,392	281,083	130,838	423,119	607,570	1,748,818	
Days Cash on Hand	7.3	7.4	7.6	3.4	10.1	14.8	40.0	55

*The 2012 & 2013 Audits list the Net Assets, beginning for 2012 as \$274,084, even though the 2011 Audit lists the Net Assets, ending for 2011 as \$274,085.

SDP Exs. 17, 18, 19, 20, 21, 22; Community Academy Motion to Supplement, filed 3/31/2014, Exs. H & I.

140. Community Academy has been operating without budget deficits since 2011. SDP Exs. 17, 18, 19, 20, 21, 22; Community Academy Motion to Supplement, filed 3/31/2014, Exs. H & I.

CONCLUSIONS OF LAW

1. CAB has jurisdiction of this matter. 24 P.S. § 17-1729-A.
2. The CSL governs the charter application/approval process, the revocation/renewal of charters and the operation of charter schools in Pennsylvania. 24 P.S. §17-1701-A *et seq.*
3. Community Academy is a charter school operating pursuant to the CSL within the School District of Philadelphia. 24 P.S. §17-1701-A *et seq.*
4. The intent of the General Assembly in enacting the CLS was, *inter alia*, to establish and maintain schools that improve pupil learning, to increase learning opportunities for all pupils, and to hold charter schools accountable for meeting measurable academic standards. 24 P.S. §17-1701-A.
5. During the term of the charter or at the end of the term of a charter, the local board of school directors of a school district may choose to revoke or not to renew the charter of a charter school based on any of the following:
 - (1) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 17-1720-A.
 - (2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22

Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.

- (3) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (4) Violation of provisions of this article.
- (5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
- (6) The charter school has been convicted of fraud.

24 P.S. § 17-1729-A(a).

6. The local board of school directors of a school district must give notice of nonrenewal/revocation of the charter to the governing board of the charter school, which notice must state the grounds for such action with reasonable specificity and must give reasonable notice of the date on which a public hearing concerning the written nonrenewal/revocation will be held. 24 P.S. § 17-1729-A(c).
7. The local board of school directors of a school district must conduct a hearing, present evidence in support of the grounds for nonrenewal/revocation as stated in its notice, and give the charter school reasonable opportunity to offer testimony before taking final action. 24 P.S. § 17-1729-A(c).
8. The local board of school directors of a school district must take formal action regarding the nonrenewal/revocation of a charter school at a public meeting pursuant to the Act of July 3, 1986 (P.L. 388, No. 84), known as the "Sunshine Act," after the public has had thirty (30) days to submit comments to the board. All proceedings of the local board

pursuant to this subsection are subject to the Local Agency Law. 2 Pa.C.S. Ch.5
Subchapter B. 24 P.S. § 17-1729-A(c).

9. The SRC complied with all the procedural requirements of the CSL set forth at Section 17-1729-A(c). 24 P.S. § 17-1729-A(c); Findings of Fact ¶¶ 14-23.
10. In addition, the essential elements of due process in an administrative matter are notice of governmental action and an opportunity to be heard to challenge that action. *Barasch v. Pennsylvania Public Utility Commission*, 546 A.2d 1296, 1305 (Pa. Cmwlth. 1988); *Pocono Mountain Charter School, Inc. v. Pocono Mountain School District*, 88 A.3d 275, 285-286 (Pa. Cmwlth. 2014).
11. The SRC complied with the requirements of due process regarding notice and opportunity to be heard on the grounds supporting nonrenewal/revocation. *Barasch v. Pennsylvania Public Utility Commission*, 546 A.2d 1296, 1305 (Pa. Cmwlth. 1988); *Pocono Mountain Charter School, Inc. v. Pocono Mountain School District*, 88 A.3d 275, 285-286 (Pa. Cmwlth. 2014).
12. In determining whether a school board's nonrenewal/revocation of a charter is appropriate, CAB shall give due consideration to the findings of the local board of school directors and specifically articulate reasons for agreeing or disagreeing with the board. 24 P.S. § 17-1729-A(d); *see also West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180, 571 Pa. 503, 516-17 (Pa. 2002).
13. In determining whether the nonrenewal/revocation of a charter was appropriate, CAB shall review the record made in the proceeding below and may supplement the record at its discretion with information that was previously unavailable. 24 P.S. § 17-1729-A(d).

14. In addition to the record, CAB may consider the charter school plan, annual reports, student performance and employee and Community support for the charter school. 24 P.S. § 17-1729-A(d).
15. Because the statutory standards for CAB's review of charter nonrenewals/revocations are the same as those for the review of charter denials, CAB shall make a *de novo* review of the SRC's determination to not renew/revoke Community Academy's Charter. *Compare* 24 P.S. § 17-1729-A(c) with 24 P.S. § 17-1717-A(i)(6); *West Chester, supra*, 812 A.2d at 1180, 571 Pa. at 516-17.
16. The School District has the burden of proof to present sufficient evidence to substantiate its reasons for nonrenewal/revocation. 24 P.S. § 17-1729-A(c).
17. The School District did not meet its statutory obligation of presenting sufficient evidence to substantiate its reasons for nonrenewal/revocation under 24 P.S. § 17-1729-A(c).
Findings of Fact ¶¶ 29-139.
18. Community Academy did not fail to meet 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. 24 P.S. § 17-1729-A(a)(2); Findings of Fact ¶¶ 29-119.
19. Community Academy did not fail to meet performance standards set forth in its written Charter. 24 P.S. § 17-1729-A(a)(2); Findings of Fact ¶¶ 29-119.
20. Community Academy did not fail to meet generally accepted standards of fiscal management. 24 P.S. § 17-1729-A(a)(3); Findings of Fact ¶¶ 120-139.
21. Following an independent review of the record before CAB, including the supplemental evidence, and after giving due consideration to the findings of the SRC, CAB finds that

the record does not support the nonrenewal/revocation of Community Academy's
Charter. 24 P.S. § 17-1729-A; Findings of Fact ¶¶ 1-139.

DISCUSSION

I. Preliminary Matters

A. Due Process Claim

Community Academy raises a due process claim alleging that the SRC adjudicated certain issues without giving Community Academy proper notice as required by 24 P.S. §17-1729-A. Specifically, Community Academy states that the SRC “failed to give [Community Academy] any reasonably specific ground related to the fiscal management aspect of the SRC’s case.” *See* Community Academy’s 12/3/14 Brief, pp. 62-66. Community Academy alleges that this lack of notice was exacerbated by the SRC’s Hearing Officer’s refusal to respond to reasonable, pre-hearing requests for source documents from the SRC’s Charter School Office. *Ibid.* As a result, Community Academy claims to have been surprised and therefore denied the opportunity to present evidence or witnesses to refute those claims. Community Academy’s arguments are without merit.

The CSL requires that the local school board, in its notice, state the grounds for nonrenewal/revocation of a charter “with reasonable specificity.” 24 P.S. §17-1729-A(c). A review of the nonrenewal/revocation notice adopted by the SRC on January 17, 2013 reveals that the SRC did so state. The SRC-5 Resolution provides, *inter alia*, “6. Financial documentation for the Charter School raises questions about the Charter School’s financial health.” SDP Ex. 1, p. 2. This statement was sufficient to put Community Academy on notice that the SRC had questions about Community Academy’s financial health based on the school’s financial documentation.

Community Academy claims, however, that it did not learn specifically what the SRC was questioning until the hearing on May 6, 2013, when the SRC’s auditor witness, Mayer

Krain, testified. Community Academy claims that at that time, during the course of the hearing, it objected to the testimony and to the introduction of those documents due to surprise.

Community Academy admits, however, that the SRC Hearing Officer eventually agreed to give Community Academy additional time to review the document being used by the School District and to conduct recross-examination of Mr. Krain at a later date in order to accommodate Community Academy's claim of surprise and lack of notice. Community Academy's 12/3/14 Brief, p. 64. Thus, Community Academy points to no harm resulting from any alleged vagueness in the grounds for revocation. *See Pocono Mountain Charter School, Inc. v. Pocono Mountain School District*, 88 A.3d 275, 285-286 (Pa. Cmwlth. 2014) (mere demonstration of a potential procedural error, without showing resulting harm, is insufficient to establish due process violation).

CAB finds that the notice in the SRC's January 2013 Resolution was reasonably specific to inform Community Academy that its financial condition was at issue based on its own documentation; and further, CAB finds that Community Academy had the opportunity to be heard on those matters. Notice and opportunity to be heard on the matter are all that is required to satisfy due process in an administrative proceeding. *Barasch v. Pennsylvania Public Utility Commission*, 546 A.2d 1296, 1305 (Pa. Cmwlth. 1988). Thus, Community Academy's due process rights were not violated with regard to the specificity of the grounds for nonrenewal/revocation of its Charter in the SRC's January 2013 revocation notice.¹²

¹² In its December 3, 2014 Brief, p. 39, n. 10, Community Academy renews its request to defer these proceedings pending the SRC's compliance with Community Academy's Right to Know Request. This request was previously denied on May 9, 2014 by the hearing officer appointed by CAB. This decision was appealed to CAB by Community Academy; however, Community Academy did not pursue this argument before CAB. Thus, CAB did not consider this aspect of Community Academy's argument for deferral. *See Community Academy of Philadelphia Charter School v. School District of Philadelphia and School Reform Commission*, CAB Docket No. 2013-12, p. 2, n. 2 (September 8, 2014). Having previously waived this argument, it is not properly before CAB and will not be considered.

B. Community Academy's Motion for Alternative Rulings

Following the issuance of an Order setting briefing deadlines on the merits of this appeal, Community Academy filed a Motion for Alternative Rulings to Account for Uncertainty Regarding a Necessary Finding Lying Within the Exclusive Jurisdiction of Another Tribunal. On November 19, 2014, the hearing officer assigned by CAB to this matter deferred the School District's obligation to respond to the Motion, stating that the briefing schedule would proceed as scheduled, and that the motion would be ruled upon as part of the final decision on the merits in this matter.

In its Motion, Community Academy asks CAB to issue two alternative rulings: one ruling which assumes its Charter was renewed pursuant to the SRC vote of February 11, 2011, and the other ruling which assumes its Charter was not renewed in 2011. With respect to the former ruling, Community Academy states that all evidence concerning the condition of Community Academy before July 1, 2011 should be excluded and not considered by CAB when making its decision. With respect to the latter ruling, it states that all evidence concerning the condition of the Academy prior to July 1, 2011, otherwise admissible, may be admitted and considered by CAB in consideration of its appeal of the SRC's revocation. Community Academy further argues that since CAB lacks jurisdiction to determine the validity of the 2011 SRC 2-to-1 vote on its Charter renewal request, CAB must issue two alternative rulings because to do otherwise would result in CAB implicitly ruling on a question over which it lacks jurisdiction. CAB disagrees with this conclusion.

As previously stated in CAB's September 8, 2014 decision on the Community Academy's motion to reverse the hearing officer's May 9, 2014 order, Community Academy is

currently operating under its 2006 Charter. *See Community Academy of Philadelphia Charter School v. School District of Philadelphia, School Reform Commission*, CAB Docket No. 2013-12, p. 4 (September 8, 2014). In that decision CAB recognized that no new charter was executed in 2011 by the SRC and Community Academy. The 2006 Charter is extended, by operation of law, until a new charter is executed or until the appeal of adverse action by the SRC is finally disposed of, if such an appeal is taken. *Ibid.*; *Community Academy of Philadelphia Charter School v. School District of Philadelphia, School Reform Commission*, 65 A.3d 1023, 1030 (Pa. Cmwlth. 2013) (holding 2006 Charter remains in effect until final disposition of an appeal, if taken). That is the law of the case herein.

Additionally, the CSL imposes no temporal limitations on the filing of a revocation notice. A school district may initiate charter revocation proceedings at any time during the term of the charter or at the end of the term of the charter. Thus, Community Academy's 2006 Charter, which extended by operation of law when no new charter was executed, was revoked, or in the alternative was not renewed, by the SRC on October 17, 2013. It is from that action that Community Academy appealed. It is that decision that is under review here.¹³

Moreover, to render two alternative rulings in this matter would defeat the concept of finality of judgment. Judgments are entered in adverse proceedings in order to establish a point at which the parties and courts may regard a contested action as having been completed.

Granting Community Academy's motion would result in uncertainty and would delay a final

¹³ As stated in CAB's September 8, 2014 decision, if a court of competent jurisdiction determines that SRC's February 2011 2-to-1 vote was valid, the SRC would be required to issue a charter renewal at that time; but at present, there is no 2011 charter. *Community Academy of Philadelphia Charter School v. School District of Philadelphia, School Reform Commission*, CAB Docket No. 2013-12, p. 4 (September 8, 2014).

adjudication on this matter. Therefore, Community Academy's Motion for Alternative Rulings is denied.¹⁴

II. Standard of Review

The Pennsylvania General Assembly enacted the CSL to provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system. It was the intent of the Legislature that charter schools improve pupil learning, increase learning opportunities for all students and offer diverse and innovative educational techniques while operating independently of the traditional public school system. *See* 24 P.S. § 17-1702-A. In addition, the General Assembly intended to hold charter schools "accountable for meeting measurable academic standards," in order to assure that these schools were accomplishing the goals of the CLS. 24 P.S. § 17-1702-A(6). The charter school application process is rigorous as the intent of the CSL is to improve educational opportunities for students. *See generally*, 24 P.S. §§ 17-1719-A, 17-1702-A. When a charter is granted by a local board of school directors, the charter school is required to comply with the terms and conditions of the charter, as well as the information contained in the charter school application, which is incorporated into the charter. 24 P.S. §§ 17-1720-A, 17-1729-A(a)(1).

Section 1729(a) of the CSL, sets forth the causes for nonrenewal or revocation of the charter by a school district. Those causes include:

- (1) One or more material violations of any conditions, standards or procedures contained in the written charter.
- (2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter.

¹⁴ Given the decision on the merits of this appeal, Community Academy's Motion is also denied as moot.

- (3) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (4) Violation of provisions of [the Charter School Law].
- (5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
- (6) The charter school has been convicted of fraud.

See, 24 P.S. § 17-1729-A(a). In order to legally revoke or not renew a charter, a school district must prove that a charter school violated at least one of these provisions.

CAB applies a *de novo* standard of review when entertaining appeals from the denial of a charter school application under Section 1717-A(i)(6). 24 P.S. § 1717-A(i)(6); *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172 (Pa. 2002). The CSL requires that CAB “give ‘appropriate consideration’ to the findings of the local school board, while making an independent determination as to the merits of the charter school application.” *West Chester*, 812 A.2d at 1180. Since the standard of review for appeal of the nonrenewal/revocation of a charter school’s charter is the same as review of a denial of a charter school’s application, *cf.* 24 P.S. § 17-1729-A(d) with 24 P.S. § 1717-A(i)(6), the review in this matter is also a *de novo* review. CAB is required to independently review the findings of the local school board for nonrenewal/revocation of a charter in light of the record while giving “due consideration” to them, and then specifically articulate its reasons for agreeing or disagreeing with those findings. 24 P.S. § 17-1729-A(d). In other words, after review, CAB has authority either to adopt or to substitute its own findings and independent judgment for that of the local school board. *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 461 (Pa. Cmwlth. 2000), *aff’d*, 812 A.2d 1172 (Pa. 2002). CAB was given this authority because the General Assembly recognized that local school boards may be biased against charter schools for a variety of reasons, and therefore, an independent review must take place. *Ibid.*

III. Burden of Proof

It appears that Community Academy may be arguing that the School District must provide “compelling” evidence that a charter school violated the provisions of Section 17-1729-A(a) in order to nonrenew or revoke a charter, citing *In Re Fell Charter School*, CAB Docket No. 2007-04 at 7. To the extent that Community Academy may be suggesting it, there is no statutory basis for a “compelling evidence” standard.¹⁵ Rather, the degree of proof required to establish a case before an administrative tribunal is the same degree of proof used in most civil proceedings, *i.e.*, a preponderance of the evidence. See *Graystone Academy Charter School v. Coatesville Area School District*, CAB Docket No. 2012-01, p. 38; *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). Preponderance of the evidence generally means evidence “that demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the proponent’s case must weigh slightly more than the opposing evidence.” *Graystone Academy Charter School, id. at 38.*

In the present case, the SRC voted on January 17, 2013, to revoke Community Academy’s Charter based on three reasons: (1) Community Academy failed to meet the requirements for student performance set forth in 22 Pa. Code Ch. 4¹⁶; (2) Community Academy failed to meet the requirements for student performance set forth in its 2006 Charter; and (3) Community Academy failed to meet generally accepted standards of fiscal management.

¹⁵ In *Renaissance Charter School*, CAB clarified that “compelling” in the *In Re: Fell Charter School*, CAB Docket No. 2007-04 decision referred to the type of violation, *i.e.*, significant, material or fundamental, which needed to be shown before the charter school’s charter could be terminated, not the type of evidence that needed to be produced. *Renaissance Charter School*, CAB Docket No. 2008-07, 3, n.3.

¹⁶ Chapter 4 has replaced 22 Pa. Code Ch. 5. See *In Re Sugar Valley Rural Charter School*, CAB Docket No. 2004-04.

IV. Community Academy Is Meeting the Applicable Requirements for Student Performance Under the CSL.¹⁷

The SRC found that Community Academy failed to meet the standards for student performance set forth in the CSL. Utilizing its PSSA results in both reading and math from 2006 through 2012, the SRC found that Community Academy's performance on PSSA, as a whole, was worse than the average of all School District schools and worse than the average of all brick-and-mortar charter schools in Philadelphia. It noted that Community Academy had failed to make AYP for most of the years of its 2006 Charter. While the SRC noted improvements in math, particularly after implementation of the "H.E.A.T." program in 2011, it discounted those improvements as meaningful, and stated that they were not significant enough for Community Academy to make AYP in the foreseeable future.¹⁸ Given the abolition of AYP as a method for measuring student performance and the continued improvement in Community Academy's student performance since 2011, CAB disagrees with the SRC's findings in this regard. Thus, this basis for nonrenewal/revocation is rejected, and the reasons are further discussed below.

The CSL requires charter schools to participate in the requirements of Pennsylvania's State System of School Assessment, PSSA, found in Chapter 4 of the Pa. Code, *see* 22 Pa. Code §§4.1-4.83; 24 P.S. §§ 17-1715-A(8) and 17-1729-A(a)(2). The purpose of Chapter 4 is "to

¹⁷ On appeal, Community Academy argues that because the SRC voted to renew its Charter in 2011, the SRC improperly considered evidence of its academic performance prior to 2011. Community Academy also argues that because the February 2011 2-to-1 charter renewal vote established specific "academic performance targets," Community Academy had two years to fulfill those targets before the SRC could begin the revocation proceedings; and that during those two years, Community Academy actually met the performance targets early. Given the decision on Community Academy's Motion for Alternative Rulings, *see* pp. 35-37, *supra*, these arguments are rejected. The SRC had the right to review all evidence available during the term of the 2006 Charter to date.

¹⁸ During the course of the SRC hearing, Community Academy questioned the use of comparisons of its PSSA scores to the Philadelphia School District schools' PSSA scores, from 2009 through 2011, given that many of the schools were under investigation for potential cheating. N.T. 4/29/13 at 100-02. Despite the fact that there was a decline in PSSA scores by School District students after increased security measures were imposed in 2012, the SRC found that at the time it made its decision no allegations of cheating had been substantiated, it was reviewing school years beyond the years in question, and security measures were put in place during the 2012 testing period that should have cured any continued cheating. The SRC determined that the School District's PSSA test scores, as a whole, were appropriately compared with Community Academy's. Given the updated school information being utilized in this decision, CAB does not have to address this claim.

establish rigorous academic standards and assessments to facilitate the improvement of student achievement and to provide parents and communities a measure by which school performance can be determined.” 22 Pa. Code §§4.2; *see also* 24 P.S. §17-1702-A(6). The General Assembly, consistent with its expression of intent to hold charter schools accountable for meeting measurable academic standards, provided for a basis of nonrenewal/revocation of a charter in the event that a charter school failed to meet the requirements for student performance as set forth in Ch. 4 of the State Board of Education regulations. 24 P.S. § 17-1729-A(a)(2).

Prior to 2013, Section 4.51 of Ch. 4 regulations required schools to demonstrate that their students were proficient or better on the PSSA tests every year, pursuant to the mandates of No Child Left Behind, utilizing AYP. 22 Pa. Code § 4.51(a)(1). However, in 2013, Pennsylvania sought and received a waiver from the United States Department of Education from No Child Left Behind, and as a result PDE abolished AYP as a school’s accountability measure. PDE created a new metric for measuring academic achievement called the School Performance Profile (hereinafter “SPP”).

The SPP is a formula that takes a variety of data points into consideration in measuring a school’s academic performance, including raw test scores on the PSSA and Keystone Exams, academic growth through PVAAS scores, graduation rates, attendance rates, College Board testing, college attendance after graduation, and student achievement in Advanced Placement (“AP”) testing in Mathematics, Reading/Literature, Science/Biology, and Writing. All of these data elements are evaluated in order to create a “building level academic score” that is used to track achievement for state-level academic accountability. In fact, the SPP has replaced AYP for determining accountability measures. Further, the SPP is to be utilized to inform the public of the academic performance measures of each school, to offer a resource for LEAs, to

communicate and compare the school's performance to local schools or schools with similar demographics, to analyze performance indicators as related to achievement and to encourage best practices. Accordingly, under this new metric, achievement results (PSSA) and growth results (PVAAS) must be used together to get a complete picture of student learning.

The SPP metric was used for the first time in the 2012-13 school year. The SRC issued its decision nonrenewing/revoking Community Academy's Charter on October 17, 2013. *See* SRC Index of Record, Document K, SRC Resolution SRC-5, adopted October 17, 2013. It did not utilize the SPP in evaluating student academic achievement at Community Academy, but rather relied only on Community Academy's PSSA scores and its failure to meet AYP under No Child Left Behind.¹⁹ While the SRC recognized that the School District as a whole failed to meet state academic standards, it concluded that schools that Community Academy's students might otherwise attend were achieving better academic results than Community Academy based solely on PSSA scores. Despite the fact that the SRC recognized that Community Academy was beginning to achieve measurable academic improvement, it concluded that Community Academy's achievement would not be sufficient within the foreseeable future and therefore, decided that "it is likely that Community Academy students would receive a better education elsewhere if the charter is not renewed, or is revoked." SRC Index of Record, Document K, SRC Resolution SRC-5, adopted October 17, 2013, p. 19. Based on the current record before it, CAB disagrees with the SRC's conclusion and finds that the record establishes that students would not receive a better education elsewhere if Community Academy's Charter is not renewed or is revoked. *See* Findings of Fact ¶¶ 81-103.

¹⁹ The SRC's review of Community Academy ended in the 2011-12 school year. However, the record before CAB was supplemented by both parties with SPP information from the 2012-13 and the 2013-14 school years, all of which is properly before it and which must be reviewed by CAB in making this decision, even though the SRC did not review the information from those school years.

PDE is now utilizing the SPP to evaluate the performance of a school. The SPP includes many factors, not just PSSA scores, which integrates many of the requirements of Chapter 4. The record establishes that Community Academy is as good as or better than many School District schools and significantly better than most Neighborhood Schools in its catchment area. Community Academy's 2012-13 SPP building level academic score is 61.4 for the 2012-13 school year and 67.9 for the 2013-14 school year, both higher than the average SPP score for all School District's schools. Community Academy established that since 2011, it has consistently and significantly improved its PSSA scores. In addition, in the context of growth according to the PVVAS growth evaluation, Community Academy is meeting annual academic growth expectations in math, reading, science and writing. Community Academy has an overall graduation rate that is higher than the School District average and the overall State average. Community Academy's Hispanic graduation rate is significantly higher than the School District's and the State's. Further, Community Academy demonstrated that its students enroll in college after graduating from high school at a higher rate than the national average. Moreover, those students who do enroll also tend to return for a second year. The record evidence also established that Community Academy's graduation rate for IEP students was higher than the School District's rate and the State's rate. In further support of its position, a PDE special education advisor testified that Community Academy's special education program is one of the best in any charter school program in the School District. Finally, Community Academy established that it has a very low dropout rate compared to the School District and those Neighborhood Schools in its catchment area. Based on a review of the evidence, CAB does not agree with the SRC's finding that Community Academy's recent improvement in performance is insignificant and does not indicate continued improved future performance. In fact, the evidence

from the 2012-13 and 2013-14 school years belies the SRC's conclusion that Community Academy's improved academic performance was not likely to continue.²⁰

Community Academy argues that the Commonwealth Court, in *New Hope Academy Charter School v. School District of City of York*, 89 A.3d 731, 737 (Pa. Cmwlth. 2014), established a two-pronged standard which must be established by a school district prior to nonrenewal/revocation of a charter for failure to meet student performance standards under Chapter 4. Commonwealth Court stated:

[a] consistently low percentage of students scoring proficient or better on the PSSA constitutes a failure to satisfy Chapter 4 student performance requirements and is a valid ground for nonrenewal of a school's charter under Section 1729-A(a)(2) of the Charter School Law where the charter school's proficiency rates are lower than those of its school district's schools as a whole **and** no clear pattern of significant improvement in its PSSA results is shown.

Ibid. at 737. CAB agrees with Community Academy that the SRC has not met its burden under the *New Hope* standard. As discussed above, Community Academy has shown a clear pattern of significant improvement in its PSSA results, meeting one prong of the *New Hope* standard. See also Findings of Fact ¶¶ 58-62, 71-72, 80-97.²¹

Community Academy argues that under *New Hope*, the SRC has also failed to establish that Community Academy's proficiency rates are lower than those of the School District's schools as a whole, as well as those Neighborhood Schools to which the students of Community

²⁰ Community Academy has demonstrated significant academic improvement over the last 2-3 school years based on specific reforms it has put in place, which it acknowledges. See Community Academy Reply Brief, p. 6 (... "the accelerated growth in the last two years is especially significant precisely **because** it is recent; it demonstrates that [Community Academy's] reforms are effective and provides an indicator of continuing and future performance as a result of such reforms." *Emphasis in original*). It is this improvement in student performance results that has impacted the outcome of this case. CAB strongly urges Community Academy to **diligently** remain on the path of improvement upon which it has embarked, especially during the period of its renewal term. Community Academy is reminded that the legislative mandate of the CSL is to improve pupil learning and increase learning opportunities for all students, which suggests that Community Academy should look to implement whatever **additional** reforms are necessary to continue to improve student performance.

²¹ This pattern in improvement includes not only reading and math, but also science/technology and writing. These additional areas are also identified under Chapter 4 as areas for development and improvement and are measured by the PSSA. See 22 Pa. Code § 4.12.

Academy would return if its Charter is nonrenewed/revoked. *See New Hope Academy*, 89 A.3d at 737. The SPP data for 2012-13 and 2013-14 demonstrates that if Community Academy were closed, many of its students would be forced to attend schools with a lower academic building score, lower PSSA scores, and significantly less evidence of growth, *i.e.*, lower PVAAS, particularly for grades 9-12, and lower dropout and graduation rates. Findings of Fact ¶¶ 64-103. The evidence does not support the SRC's conclusion that Community Academy's students would receive a better education elsewhere if its Charter is not renewed, or is revoked. Rather, the evidence of record establishes that the results achieved by the Neighborhood schools that **most** of Community Academy's students would otherwise attend, are consistently lower than Community Academy's results. Findings of Fact ¶¶ 71-103. CAB finds that the record is insufficient to support the SRC's conclusion that Community Academy students would receive a better education elsewhere if the Charter is not renewed, or is revoked. Therefore, the decision of the SRC should be reversed. Community Academy's Charter should not be revoked/nonrenewed.

The School District argues that *Truebright* supports revocation of Community Academy's Charter. *See Truebright Science Academy Charter School v. The School District of Philadelphia and School Reform Commission*, CAB Docket No. 2013-11. CAB disagrees. In *Truebright*, CAB upheld the nonrenewal of a charter because of Truebright's failure to make AYP in two of the five years of its charter, failure to meet state academic performance targets in math and reading, and failure to show significant gains in its math and reading proficiency scores. However, *Truebright* is distinguishable in several aspects. *Truebright* was decided without utilizing the SPP method now applicable to charter schools. Truebright's charter included a **guarantee** that it would make AYP for each year of its five-year charter, which it did

not honor nor accomplish. There is no similar guarantee in Community Academy's 2006 Charter, as is discussed below in Section V. While Truebright also had a low percentage of its students consistently scoring proficient or better on the PSSA, unlike Community Academy, it showed no clear signs of improvement over the course of its charter; and, unlike Community Academy, Truebright did not meet the PVAAS growth standards. Further, Truebright did not submit any evidence that it was trying to improve its performance. On the contrary, Community Academy hired consultants to help improve performance and then implemented the consultants' recommendations in order to achieve academic improvement. Unlike the record in *Truebright*, the record here establishes that there has been a significant improvement in Community Academy's students' overall performance from the time improvements were implemented (2011) to the present. For all of the foregoing reasons, CAB disagrees with the findings and reasoning of the SRC and concludes that the School District has failed to establish that Community Academy is not meeting student performance standards in Chapter 4 as required by the CSL. Thus, this is not a ground for revocation/nonrenewal of the Charter.

V. Community Academy Is Meeting the Applicable Requirements for Student Performance Under Its Charter.

The SRC found that Community Academy failed to comply with the provisions of its Charter in violation of the CSL in that it failed to meet the minimum performance targets associated with No Child Left Behind, for the same reasons it found that Community Academy failed to meet the performance requirements of Chapter 4. See SRC Index of Record, Document K, SRC Resolution SRC-5, adopted October 17, 2013, p. 14. The SRC did not further discuss the provisions of Community Academy's 2006 Charter.

The Statement of Assurances for Community Academy's 2006 Charter provides:

The Charter School will administer the School District's citywide academic assessments and set forth as a minimum performance standard the performance

targets associated with the academic components of the School District's professional responsibility system, and the annual yearly progress as required by 'No Child Left Behind'.

SDP Ex. 3, p. 12. The 2006 Charter further provides in the Accountability Agreement that pursuant to, *inter alia*, No Child Left Behind and the CSL, the School District has implemented an accountability system which includes, but is not limited to, the following:

- Development of an Accountability/School Improvement Plan when the Charter School does not attain AYP status.
- Monitoring of student performance goals and all other requirements as per 'No Child Left Behind'.

SDP Ex. 3, p. 11.

Community Academy argues that this Charter language does not set specific academic targets which it must achieve, and so distinguishes it from the charter language in *Truebright* and *In re Renaissance Charter School*, CAB Docket No. 2008-07. Community Academy claims that this 2006 Charter language merely sets goals, contemplates the possibility of Community Academy not meeting AYP and its goals, and in that event, requires that Community Academy create a school improvement plan, which it claims it has done, and which has been approved by PDE for the 2013-14 school year. *See* Community Academy's 12/3/14 Brief, pp. 45-48. Finally, Community Academy also argues that since PDE has abolished AYP as a measure of accountability, any requirement that it meet AYP as a goal in its 2006 Charter can no longer be the standard by which Community Academy's performance must be measured or suffer the consequence of revocation/nonrenewal. *See* Community Academy's Reply Brief, pp. 21-24.

The record of evidence establishes that Community Academy did administer academic assessments, did set forth as a minimum performance standard the performance targets associated with the academic components of the School District's professional responsibility system and the annual yearly progress as required by No Child Left Behind while AYP was still

the appropriate measure, did develop an accountability/improvement plan that was approved by PDE after it failed to meet AYP while AYP was still the appropriate measure, and did monitor student performance goals. Because of CAB's disposition of the case based on the new SPP metrics which establishes improved academic performance and growth at Community Academy, the supplemental evidence admitted into the record including the approval by PDE of Community Academy's accountability/improvement plan, and for the other reasons set forth above in Section IV including higher comparison achievement and growth rates of Community Academy compared to the School District's and Neighborhood Schools, CAB finds that Community Academy is not violating material provisions of the 2006 Charter. Thus, this basis for nonrenewal/revocation is rejected.

VI. Community Academy Is Meeting Generally Accepted Standards of Fiscal Management.

The SRC decided to nonrenew/revoke Community Academy's Charter because it found that Community Academy did not meet generally accepted standards of fiscal management. The SRC found that Community Academy had a negative fund balance in 2007-08, 2008-09, 2009-10 and 2010-11, had wide fluctuations in its net assets from year to year with a negative net assets balance at the end of 2008-09, had minimal cash on hand through 2011-12, and had high risk ratios as a result of deficit spending. After reviewing the record and supplementary material, CAB disagrees with the SRC's holding and finds that Community Academy has addressed any potential financial issues and is meeting generally accepted standards of fiscal management.

Although Community Academy operated at a deficit for several years throughout the term of its 2006 Charter, Community Academy is now operating in the black and has been since

2010-11.²² Community Academy explained that the reason for its budget deficits between 2008 and 2010 were a result of the meltdown of the national economic system, not bad fiscal management. Community Academy began to implement several changes in 2009 in order to turn its financial position around including reducing administrative staff, freezing pay, reworking medical benefits, putting in place a new financial management team, changing its budgeting process and refinancing its 2002A bonds to a better interest rate. Because of the actions taken by Community Academy, its revenue has been exceeding expenditures since 2011 through fiscal year 2013-14, which is the latest financial information submitted in evidence.

While the SRC did not have Community Academy's latest financial information to review, it ignored uncontroverted testimony in the record that during the years in question, 2006-2011, Community Academy always had enough cash to pay its bills, met payroll and met its debt obligation with Citizens Bank. No evidence was presented that Community Academy was overdue on accounts payable or that it was in default on its bond obligations. The record establishes that while Community Academy had some fiscal fluctuations during the 2008-2010 global financial crisis, it then turned things around and has been on a sound financial basis since 2011-12. As a result, this case can be distinguished from *In re RPAH*, CAB Docket No. 2007-03, where that charter school operated at a deficit, never made any payments on a half-million dollar loan and never reworked the loan terms. Unlike the charter school in *RPAH*, Community Academy has acted responsibly and the evidence establishes that it has turned its financial

²² Community Academy's **net assets** were +\$274,085 at year-end 2011, were +\$803,063 at year-end 2012, and were +\$1,589,745 at year-end 2013. Community Academy's **general fund balance** was \$315,061 at year-end 2012 and was \$1,161,233 at year-end 2013. Community Academy's **current ratio**, which is the current assets over liabilities, was .75 at year-end 2011, was 1.21 at year-end 2012, was 1.81 at year-end 2013 and was 3.57 as of January 31, 2014. Community Academy's **days of cash on hand**, which is the amount of cash Community Academy has on hand to pay its upcoming bills at the end of the fiscal year reflects growth with 10.1 days in 2011, 14.8 days in 2012, 40 days in 2013, and 55 days as of January 31, 2014. Community Academy has also established a **contingency fund**, which is earmarked for potential emergency situations. In 2011-12, the contingency fund was \$50,000 and in 2012-13, the contingency fund was \$214,493. See Findings of Fact ¶¶ 120-139.

situation around. CAB rejects the SRC's conclusion that Community Academy has failed to meet generally accepted standards of fiscal management.

The SRC also found that Community Academy's Charter should be revoked because it has a 20-year bond obligation. Relying on *RAPAH*, the SRC found that Community Academy's guarantee to pay "millions of dollars in bonds over a 20-year period, when it had no assurance that it would retain its charter for that entire period," was fiscally "irresponsible."²³ SRC Index of Record, Document I, p. 12. CAB disagrees. This case is distinguishable from *RAPAH*, as discussed above. Further, the CSL authorizes a charter school to acquire real property from public or private sources by purchase or lease for use as a charter school facility and to incur debt for the construction of school facilities. 24 P.S. § 17-1714-A(a). The evidence of record establishes that the bonds were initially issued in 2002 to purchase and renovate the building which Community Academy now leases. Community Academy's decision to lease the facility in which it operates is permitted under the CSL. In order to finance a charter school facility the size of Community Academy, approximately 189,000 sq. ft., it would not make fiscal sense and is highly unlikely that such a large amount of money would be loaned over a five-year period. If a charter school tried to finance a \$17-\$20 million debt for only five years, the annual repayments would be prohibitively high, potentially causing the charter school financial failure. Debt payments spread out over a longer period of time make more fiscal sense, even though there is no guarantee that a charter renewal is certain. Community Academy has been in

²³ The SRC also found that the bond obligation was approved outside the public realm in violation of the Sunshine Act, 65 Pa.C.S. § 701 *et seq.* First, CAB does not have authority to determine whether there was a Sunshine Act violation. The Court of Common Pleas has original jurisdiction over open meeting challenges for local agencies. See 65 Pa.C.S. § 715. Second, even if there were a violation of the Sunshine Act, it is unclear that it is materially sufficient to shut down the charter school. Mr. Prioetta offered to cure the alleged violation when it was brought to his attention during the hearing. He stated that he would put the Board's approval of the refinancing of the bonds, which occurred by unanimous consent in writing pursuant to the provisions of Community Academy's bylaws, on Community Academy's website because he did not realize it should have been there. N.T. 6/4/13 at 1252-53, 1270-71. As stated above, CAB does not have authority to determine whether this would cure any alleged violation of the Sunshine Act.

operation since 1997. Its Charter had been renewed on two separate occasions, 2001 and 2006. The bonds were initially issued in 2002 and were refinanced in 2008 in order to obtain better terms in response to the global financial crisis. Reworking the loan terms in order to place Community Academy in a better financial position seems fiscally prudent. There is no evidence that Community Academy defaulted on any of its debt obligations. For the foregoing reasons, and based on the evidence of record and the Findings of Fact, ¶¶ 120-139, CAB finds that the record does not support a finding that Community Academy failed to meet generally accepted standards of fiscal management. Therefore, Community Academy's Charter cannot be nonrenewed or revoked on this ground.

CONCLUSION

After reviewing the record below, reviewing the supplemental information provided to CAB, considering the significant improvement in student performance in the last several school years, comparing the achievement and growth rates of the Charter school to those schools the students would otherwise attend if the Charter school were closed, considering the community support for the Charter school and giving due consideration to the findings of the SRC, but disagreeing with them for the reasons set forth above, CAB finds that the record does support the SRC's nonrenewal/revocation of Community Academy's Charter. Accordingly, the following Order will issue:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD

Community Academy of Philadelphia
Charter School, Petitioner

v.

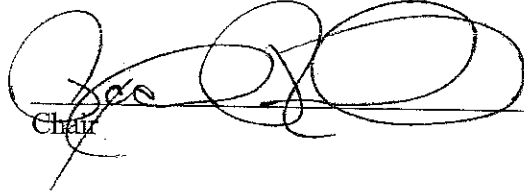
School District of Philadelphia and
School Reform Commission, Respondent

CAB Docket No. 2013-12

ORDER

AND NOW, this 1st day of June, 2015, based upon the foregoing and the vote of this Board,²⁴ the appeal of Community Academy of Philadelphia Charter School is **GRANTED**; and the School District of Philadelphia, School Reform Commission, is directed to grant the renewal of and sign a Charter for Community Academy of Philadelphia Charter School pursuant to §1720 of the Charter School Law, 24 P.S. § 17-1720-A.

For the State Charter School Appeal Board


Chair

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Huntingdon Valley, PA 19006

Date Mailed: June 2, 2015

²⁴ At the Board's meeting on April 28, 2015, the appeal was granted by a vote of 4 to 3 with Members Cook, Munger, Peri and Yanyanin voting to grant and Members Bracey, Miller and Rivera voting to deny.