

section 17-1717-A(e)(2)(ii) of the Charter School Law and that it will improve pupil learning and increase the learning opportunities for all pupils in compliance with the legislative intent set forth in Section 17-1792-A of the Charter School Law”; (3) it has an admissions policy that is prohibited by the Charter School Law; and (4) it “failed to include information required by Section 1719-A as required by Section 17-1717-A(e)(2)(iii) of the Charter School Law.”

AEACS then submitted a revised Application (“Revised Application”) to the District on May 6, 2013. The District evaluated the Revised Application between May 6, 2013 and June 27, 2013 and denied AEACS’s Revised Application by way of a Resolution dated June 27, 2013. The District based its decision to deny AEACS’s Revised Application on the same general grounds as its denial of AEACS’s Initial Application, with the notable exception of the allegedly illegal admission policy.

Subsumed within the reasons for the District’s June 27, 2013 denial based upon AEACS’s failure to demonstrate “sustainable support ... by teachers, parents, community members and students,” the District cited the absence of letters of support from teachers, testimony by teachers, or teacher applications. The District also cited the lack of official partnerships between community businesses and AEACS; the lack of attendance at three AEACS open houses; an insufficient number of pre-enrollment forms, data, parent surveys, and letters of support; and lack of public comment as the basis for its denial.

When determining that AEACS failed to demonstrate that it “will provide comprehensive learning experiences to students ... and ... improve pupil learning and learning opportunities...,” the District found that AEACS’s curriculum and instruction did not align with State academic standards. The District also found that AEACS’s proposed program was not innovative, and that

AEACS did not demonstrate that it would encourage the use of different and innovative teaching methods.

Within its stated reasons for denying AEACS's Revised Application for failing to include information required by Section 1719-A and Section 17-1717-A(e)(2)(iii) of the CSL, the District found that AEACS Revised Application failed to include an adequate financial plan/budget and failed to provide a report of the criminal history record of individuals who will have direct contact with students including official clearance statements regarding child injuries or abuse.

AEACS timely filed a Petition for Determination of the Sufficiency of a Petition with the Court of Common Pleas of Lehigh County on October 11, 2013. By Order dated February 6, 2014, the Lehigh County Court of Common Pleas granted AEACS's Petition for Determination of the Sufficiency of a Petition.

On February 27, 2014, AEACS timely filed the present appeal from the District's denial of its charter request. On April 8, 2014, the District filed its Answer to the AEACS Petition for Appeal and an Index of Record Documents. The Parties, thereafter, agreed to submit this appeal on briefs, which briefs were subsequently filed. The appeal was heard by CAB on September 30, 2014.

III. JOINT STIPULATION OF EXHIBITS

1. Record 1: Charter School Application of Allentown Engineering Academy Charter School, November 15, 2012.

2. Record 2: Supplemental Submission to Allentown Engineering Academy Charter School Application, January 10, 2013.

3. Record 3: Revised Charter School Application of Allentown Engineering Academy Charter School, May 6, 2013.
4. Record 4: Transcript of Testimony taken by the Allentown School District Board of Directors, December 18, 2012. (“N.T.”).
5. Record 5: Allentown Engineering Academy Charter School enrollment forms and letters of support.
6. Record 6: Allentown School District Proof of Publication for Morning Call advertisement.
7. Record 7: Allentown School District Notice of Public Hearing from mcall.com.
8. Record 8: Allentown School District Program of Studies.
9. Record 9: Side-by-side comparison of curricular offerings.
10. Record 10: Charter and Cyber school enrollment figures.
11. Record 11: Intermediate Unit 21 expense chart.
12. Record 12: February 28, 2013 Resolution of the Allentown School District Board of Directors denying Allentown Engineering Academy Charter School’s Initial Application.
13. Record 13: June 27, 2013 Resolution of the Allentown School District Board of Directors denying Allentown Engineering Academy Charter School’s Revised Application.

IV. FINDINGS OF FACT

1. On November 15, 2012, AEACS filed an Initial Application with the District to open and operate a public charter school pursuant to the Pennsylvania Charter School Law (“CSL”), 24 P.S. § 17-1701-A *et. seq.* (Joint Stipulation of Facts/ Stipulated Record 1.)
2. The District conducted a public hearing to address the Initial Application on December 18, 2012. (Joint Stipulation of Facts.)

3. On or about January 10, 2013, AEACS provided the District with a Supplemental Submission (“Supplemental Materials”). (Stipulated Record 2.)

4. The District’s Board denied AEACS’s Initial Application by way of Resolution dated February 28, 2013. (Joint Stipulation of Facts/ Stipulated Record 12.)

5. The District denied AEACS’s Initial Application for: (1) failure to meet the criteria for demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students; (2) failure to evidence, in terms of support and planning, that it will provide comprehensive learning experiences to students and that it will improve pupil learning and increase the learning opportunities for all pupils; (3) proposing an admissions policy prohibited by the CSL; and (4) failing to include information required by Section 1719-A of the CSL. (Stipulated Record 12.)

6. AEACS submitted a Revised Application to the District on May 6, 2013. (Joint Stipulation of Facts/ Stipulated Record 3.)

7. The District evaluated the Revised Application between May 6, 2013 and June 27, 2013. (Stipulated Record 13.)

8. The District denied AEACS’s Revised Application by way of Resolution dated June 27, 2013. (Joint Stipulation of Facts/ Stipulated Record 13.)

9. The District transmitted the June 27, 2013 Resolution to AEACS, the Charter School Appeal Board, and to the Pennsylvania Department of Education on July 3, 2013. (Joint Stipulation of Facts.)

10. The District based its decision to deny AEACS’s Revised Application on the same grounds as in finding of fact #5, with the exception of ground 3. (Joint Stipulation of Facts/Stipulated Record 13.)

11. Subsumed within the reasons for the District's June 27, 2013 denial based upon AEACS's failure to demonstrate sustainable support from teachers, parents, community members and students, the District cited the absence of letters of support from teachers, testimony by teachers, or teacher applications. The District also cited the lack of official partnerships between community businesses and AEACS; the lack of attendance at three AEACS open houses; an insufficient number of pre-enrollment forms, data, parent surveys, and letters of support; and lack of public comment as the basis for its denial. (Stipulated Record 13.)

12. When determining that AEACS failed to demonstrate that it will provide comprehensive learning experiences to students and improve pupil learning and learning opportunities, the District found that AEACS's curriculum and instruction did not align with State academic standards. The District also found that AEACS's proposed program was not innovative, and that AEACS did not demonstrate that it would encourage the use of different and innovative teaching methods. (Stipulated Record 13.)

13. Within its stated reasons for denying AEACS's Revised Application for failing to include information required by Section 1719-A and Section 17-1717-A(e)(2)(iii) of the CSL, the District found that AEACS's Revised Application failed to include an adequate financial plan/budget and failed to provide a report of the criminal history record of individuals who will have direct contact with students including an official clearance statement regarding child injuries or abuse. (Stipulated Record 13.)

14. AEACS timely filed a Petition for Determination of the Sufficiency of a Petition with the Court of Common Pleas of Lehigh County on October 11, 2013. (Joint Stipulation of Facts.)

15. By Order dated February 6, 2014, the Lehigh County Court of Common Pleas granted AEACS's Petition for Determination of the Sufficiency of a Petition. (Joint Stipulation of Facts.)

16. AEACS timely filed the present appeal from the District's denial of its charter request on February 27, 2014. (Joint Stipulation of Facts.)

17. On April 8, 2014, the District filed its Answer to the AEACS Petition for Appeal and an Index of Record Documents. (Joint Stipulation of Facts.)

18. The Parties agreed to submit this appeal on brief without the need for a formal hearing as memorialized in a May 29, 2014 Order of the Hearing Examiner. (Board Records-Official Notice.)

19. AEACS plans to enroll 180 students in grades 6 through 8 during its first year of operation. (Stipulated Record 3, Revised Application, Exh. II, p. 78, Exh. VIII, p.1.)

20. AEACS plans to enroll 240 students in grades 6 through 9 during its second year of operation. (Stipulated Record 3, Revised Application, Exh. II, p. 78 and Exh. VIII, p.1.)

21. AEACS plans to enroll 300 students in grades 6 through 10 during its third year of operation. (Stipulated Record 3, Revised Application, Exh. II, p. 78 and Exh. VIII, p.1.)

22. AEACS plans to enroll 360 students in grades 6 through 11 during its fourth year of operation. (Stipulated Record 3, Revised Application, Exh. II, p. 78 and Exh. VIII, p.1.)

23. AEACS plans to enroll 420 students in grades 6 through 12 during its fifth year of operation. (Stipulated Record 3, Revised Application, Exh. II, p. 78 and Exh. VIII, p.1.)

24. AEACS anticipates providing Science, Technology, Engineering, and Mathematics ("STEM") programming using the Project Lead the Way ("PLTW") model.

(Stipulated Record 2, Supplemental Materials, Exh. II; Stipulated Record 3, Revised Application, Exh. I, p. 2, Exh. II, pp. 6-9, 20, 37-38.)

25. AEACS anticipates offering a Summer Camp-Gateway Academy which will concentrate on STEM classes. (Stipulated Record 3, Revised Application, Exh. II.)

26. AEACS submitted petitions supporting the Charter School which contained approximately 600 names. (Stipulated Record 1, Original Application, Tab 18.)

27. AEACS included with its Revised Application approximately 13 Online Pre-Enrollment requests representing the pre-enrollment of approximately 14 students as well as additional pre-enrollment forms for approximately 120 students. (Stipulated Record 3, Revised Application, Exh. VI.)

28. Each pre-enrollment request pertained to the enrollment of students in grades 6 through 8 and identified the names and addresses of the parents and the prospective students. (Stipulated Record 1, Tab 18; Stipulated Record 3, Revised Application, Exh. VI.)

29. AEACS produced parent surveys from parents who were specifically asked whether they would like to enroll their children in grades 6 through 8 of the Charter School. (Stipulated Record 1, Initial Application, Tab 18; Stipulated Record 3, Revised Application, Exh. VI; and Stipulated Record 5.)

30. The parent surveys submitted by AEACS indicate an interest by approximately 98 parents to enroll approximately 112 students into the Charter School. (*Id.*)

31. AEACS produced approximately twenty-six (26) letters of support by prominent members of the community in favor of the Charter School. (Stipulated Record 1, Initial Application, Tab 18; Stipulated Record 5.)

32. Authors of the letters submitted by AEACS included the Mayor of Allentown, Edward Pawlowski, State Senator of the 16th District, Pat Brown, multiple members of the faculty of surrounding colleges, including Lehigh University, Penn State Lehigh Valley, Cedar Crest College, and Lehigh Carbon Community College. Many of the authors of the letters committed themselves to assisting at the Charter School in a teaching capacity or through administrative support. (*Id.*)

33. AEACS held three open houses within the community at which approximately 40 individuals attended. (Stipulated Record 1, Initial Application, Tab 18; N.T. 99.)

34. Four individuals spoke favorably on behalf of the Charter School at the December 18, 2012 hearing. (N.T. 141-146.)

35. AEACS has not yet entered into formal partnership agreements with business entities or institutions of higher learning with which it intends to collaborate as part of its PLTW program. (N.T. 43-44.)

36. AEACS did not offer any letters of support from teachers. (Stipulated Record 1, Stipulated Record 3, Revised Application.)

37. The “Scope and Sequence Chart(s)” for grades 6 through 8 within the AEACS Initial Application are limited to Social Studies, Science, Aesthetics, Health and Physical Education. (Stipulated Record, Tabs 9-12.)

38. The “Scope and Sequence Chart(s)” for grades 6 through 8 within the AEACS Initial Application do not set forth a comprehensive curriculum or planned instruction for the covered subjects but, instead, contain only general descriptions of the goals and objectives of the subjects addressed and their corresponding “standards of alignment.” (*Id.*)

39. The “curriculum” for grades 6 through 8 set forth in the AEACS Initial Application is limited to Mathematics and English/Language Arts. (Stipulated Record 1, Tab 14.)

40. The “curriculum” set forth in the AEACS Initial Application for grades 6 through 8 does not set forth a comprehensive curriculum or planned instruction for the covered subjects but, instead, contains only general descriptions of the goals and objectives of the subjects addressed and their corresponding “standards alignment.” (*Id.*)

41. The Revised Application contains an “Overview of Educational Program, Curriculum Goals, Objectives, and Content.” (Stipulated Record 3, Revised Application, Exh. II, pp. 6-38.)

42. The “Overview of Educational Program, Curriculum Goals, Objectives, and Content” in the Revised Application is limited to grades 6 through 8. (Stipulated Record 3, Revised Application, Exh. II, pp. 6-38.)

43. The “Overview of Educational Program, Curriculum Goals, Objectives, and Content” set forth in the Revised Application does not set forth planned instruction. (Stipulated Record 3, Revised Application, Exh. II, pp. 6-38.)

44. The “Overview of Educational Program, Curriculum Goals, Objectives, and Content” in the Revised Application does not include comprehensive courses of study. (Stipulated Record 3, Revised Application, Exh. II, pp. 6-38.)

45. AEACS provided a supplemental description of programming for grades 6 through 8, limited to the subjects of English, Mathematics and Science. (Stipulated Record 2, Curriculum Anchors, Exh III.)

46. The AEACS Revised Application includes a document titled "Scope and Sequence Information Grade 6-12." (Stipulated Record 3, Revised Application, Exh. III.)

47. The document titled "Scope and Sequence Information Grade 6-12" set forth within the AEACS Revised Application contains course titles and course descriptions for Math grades 6 through 8, and English/Language Arts for grades 6 through 12. (Stipulated Record 3, Revised Application, Exh. III.)

48. The document titled "Scope and Sequence Information Grade 6-12" set forth within the AEACS Revised Application does not include programming or a curriculum for Social Studies, Environmental and Ecology, Family and Consumer Science, Arts or Physical Education. (Stipulated Record 3, Revised Application, Exh. III.)

49. The School District offers an Information Technology Academy at its high schools, an engineering partnership with Penn State, and an engineering program at its Lehigh County Technical Institute with PLTW being its primary instructional program. (Stipulated Record 9; N.T. 123.)

50. The AEACS budget for "Year 1" allocates \$45,000.00 for textbooks, \$12,000.00 for Project Lead the Way, \$10,000.00 for Educational Software, and \$3,000.00 for Project Lead the Way Software in an aggregate amount of \$70,000.00. (Stipulated Record 3, Revised Application, Exh. VIII, p.4.)

51. The corresponding AEACS budget sheet for "Year 1" projects an aggregate budget of \$55,000.00 for textbooks, for Project Lead the Way, for Educational Software, and for Project Lead the Way Software. (Stipulated Record 3, Revised Application, Exh. VIII, p.4.)

52. The AEACS budget for "Year 2" allocates \$38,400.00 in total expenses. (Stipulated Record 3, Revised Application, Exh. VIII, p.4.)

53. The corresponding AEACS budget sheet for “Year 2” allocates \$22,800.00 for expenses. (Stipulated Record 3, Revised Application, Exh. VIII, p.4.)

54. The AEACS budget for “Year 3” allocates \$41,030.00 in total expenses. (Stipulated Record 3, Revised Application, Exh. VIII, p.4.)

55. The corresponding AEACS budget sheet for “Year 3” allocates \$23,940.00 for expenses. (Stipulated Record 3, Revised Application, Exh. VIII, p.4.)

56. The AEACS budget for “Year 4” allocates \$43,030.00 in total expenses. (Stipulated Record 3, Revised Application, Exh. VIII, p.4.)

57. The corresponding AEACS budget sheet for “Year 4” allocates \$25,137.00 for expenses. (Stipulated Record 3, Revised Application, Exh. VIII, p.4.)

58. The AEACS budget for “Year 5” allocates \$46,179.00 in total expenses. (Stipulated Record 3, Revised Application, Exh. VIII, p.4.)

59. The corresponding AEACS budget sheet for “Year 5” allocates \$26,394.00 for expenses. (Stipulated Record 3, Revised Application, Exh. VIII, p.4.)

60. The internal inconsistencies between AEACS’s projected expenditures and its corresponding budget sheets reflect a budget deficit of \$85,508.00 in the areas of books and instructional aids during the first five (5) years of its operation. (Stipulated Record 3, Revised Application, Exh. VIII, p.4.)

V. CONCLUSIONS OF LAW

1. The Charter School Law, Act of June 19, 1997, P.L. 225, 24 P.S. § 17-1701-A, *et seq.* governs the application and approval process for charter schools in Pennsylvania.

2. Section 1717-A(e)(2) of the CSL sets forth the factors to be used when evaluating the proposed Charter School Revised Application:

- (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d);
- (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter;
- (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A;
- (iv) The extent to which the charter school may serve as a model for other public schools.

3. The CAB has jurisdiction over this appeal pursuant to 24 P.S. §§ 17-1717-A(f), 17-1721-A, and 17-1746-A(a)(1).

4. The CAB applies a *de novo* standard of review when considering decisions denying charter school applications. *West Chester Area School District v. Collegium Charter School*, 571 Pa.503, 812 A.2d 1172, 1180 (2002).

5. AEACS, through the record established at the hearing and through its Initial Application, Supplemental Materials and Revised Application, did not demonstrate its capability, in terms of support and planning, of providing comprehensive learning experiences to students as required by 24 P.S. § 1717-A(e)(2)(ii).

6. AEACS, through the record established at the hearing and through its Initial Application, Supplemental Materials and Revised Application, did not demonstrate an ability to serve as a model for other public schools due to its failure to demonstrate its ability to provide a comprehensive learning experience to its students.

7. AEACS, through the record established at the hearing and through its Initial Application, Supplemental Materials and Revised Application, did not demonstrate an adequate financial plan as required by 24 P.S. §§ 1717-A(e)(2)(iii) and 17-1719-A(9).

8. AEACS, through the record established at the hearing and through its Initial Application, Supplemental Materials and Revised Application, demonstrated sustainable support for the charter school plan as required by 24 P.S. § 1717-A(e)(2)(i).

9. AEACS, through the record established at the hearing and through its Revised Application, has conformed with the legislative intent required by 24 P.S. §§ 1717-A(e)(2)(iii) to the extent outlined in 24 P.S. §§ 17-1702-A(3) and 17-1702-A(5).

VI. DISCUSSION

A. Introduction

The District denied AEACS's Revised Application for being deficient on the following grounds: (1) it "failed to meet the criteria for demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students as required by section 17-1717-A(e)(2)(i) of the Charter School Law"; (2) it "failed to evidence, in terms of support and planning, that it will provide comprehensive learning experiences to students as required by section 17-1717-A(e)(2)(ii) of the Charter School Law and that it will improve pupil learning and increase the learning opportunities for all pupils in compliance with the legislative intent set forth in Section 17-1792-A of the Charter School Law"; and (3) it "failed to include information required by Section 1719-A as required by Section 17-1717-A(e)(2)(iii) of the Charter School Law." Specifically, the District concluded that AEACS failed to demonstrate sustainable support from teachers, parents, community members and students as evidenced by the absence of letters of support from teachers, testimony by teachers, or teacher applications. The District also cited the lack of official partnerships between community businesses and AEACS; the lack of attendance at three AEACS open houses; an insufficient number of pre-enrollment forms, data, parent surveys, and letters of support; and the lack of public comment as the basis for its denial.

When determining that AEACS failed to demonstrate that it will provide comprehensive learning experiences to students and improve pupil learning and learning opportunities, the District found that AEACS's curriculum and Instruction did not align with State academic standards. The District also found that AEACS's proposed program was not innovative, and that AEACS did not demonstrate that it would encourage the use of different and innovative teaching methods. Finally, the District found that AEACS Revised Application failed to include an adequate financial plan/budget and failed to provide a report of the criminal history record of individuals who will have direct contact with students including an official clearance statement regarding child injuries or abuse, as required by Section 1719-A and Section 17-1717-A(e)(2)(iii) of the CSL.

B. Standard of Review

Section 1717-A(e)(2) of the CSL provides that a charter school application is to be evaluated based on the following criteria:

- (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d);
- (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter;
- (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A;
- (iv) The extent to which the charter school may serve as a model for other public schools.

24 P.S. § 17-1717-A(e)(2).

The CAB applies a *de novo* standard of review when considering decisions denying charter school applications. *West Chester Area School District v. Collegium Charter School*, 571

Pa.503, 812 A.2d 1172, 1180 (2002). In an appeal before CAB, the decision made by the local board of school directors shall be reviewed by the CAB on the record as certified by the local board of school directors. CAB shall give due consideration to the findings of the local board and specifically articulate its reasons for agreeing or disagreeing with those findings. 24 P.S. § 17-1717-A(i)(6). The CAB has articulated its authority to give “due consideration” to a school board’s decision under the CSL by stating: “since it has to agree or disagree with the findings of the Directors, [it] can of necessity, determine the weight of the evidence behind each finding and draw its own conclusions.” *In re: Hills Academy Charter School*, CAB 1999-12. Further, the Pennsylvania Commonwealth Court has held that in the case of a denial of a charter school application “[t]he General Assembly has unquestionably granted the CAB the authority to substitute its own findings and independent judgment for that of the local board.” *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 461 (Pa. Cmwlth. 2000). Therefore, while giving due consideration to the District’s decision in this case, the CAB independently reviewed the record in accordance with the requirements of the CSL.

C. Comprehensive Curriculum

The CSL requires a charter school applicant to demonstrate an ability to provide the “comprehensive learning experience” it proposes. 24 P.S. § 17-1717-A(e)(2)(ii). The CSL further requires an application to include information regarding the “mission and education goals of the charter school, the curriculum to be offered and the method of assessing whether students are meeting educational goals.” 24 P.S. § 17-1719-A(5). In order to provide a comprehensive learning experience to students, a charter applicant must demonstrate adequate support and planning in the charter application. *In re: Environmental Charter School*, CAB Docket No. 1999-14.

The failure of a charter school applicant to provide a sufficient curriculum plan has been found to be a basis for the denial of an application because it is evidence that the proposed charter school could not be a model for other public schools. *In re: Environmental Charter School*, CAB Docket No. 1999-14. An applicant is required to describe the proposed charter curriculum with substance, not merely in terms of goals and guidelines. *In re: Shenango Valley Regional Charter School*, CAB Docket No. 1999-11; *Howard Gardner Multiple Intelligence Charter School*, CAB Docket No. 2011-4. Although a curriculum must be described in substance, it is not necessary for a charter school to completely describe the contents of its curriculum in detail. *In re: Pocono Mountain Mathematics and Technology Charter School*, CAB Docket No. 2004-5.

In this case, the District asserts that AEACS failed to submit a sufficient curriculum under the CSL. By contrast, AEACS asserts that it has produced sufficient curriculum information to the District. Specifically, AEACS has submitted “Scope and Sequence” charts for grades 6 through 8 in its Initial Application. AEACS’s Initial Application also included a “curriculum” section limited to Mathematics and English/Language Arts. Through its Supplemental Materials, AEACS submitted programming for English, Mathematics, and Science for grades 6 through 8, in addition to programming for grade 11 Science and Reading through what it describes as “Assessment Anchors and Eligible Content” and “Alternate Assessment Anchors and Alternate Eligible Content.” *See*, Record 2, Exh. III. The AEACS Revised Application included “Scope and Sequence Information” for grades 6 through 8 Math and for grades 6 through 12 English/Language Arts. In those materials, AEACS sets forth tables of what it describes as “PA Performance Descriptor/Eligible Content,” corresponding PA “Core Standard(s),” and descriptions of each line item. *See*, Record 3, Exh. III.

Although AEACS ultimately intends to provide instruction to grades K through 12, it presently intends to only instruct grades 6 through 8 during its first year. The CAB has previously found that a charter school applicant need only submit a complete curriculum for those grades that it intends to enroll during its first year, and the CAB so finds in this case. *In re: Fell Charter School*, CAB Docket No. 2001-9. See also, *Carbondale Area School District v Fell Charter School*, 829 A.2d 400, 409 (Pa. Cmwlth. 2003).

Section 17-1732-A of the CSL identifies the provisions of the Department of Education Regulations to which charter schools are subject, and includes 22 Pa. Code § 4.4 as one of the specifically enumerated provisions. *See*, 24 P.S. § 17-1732-A, n. 8. Section 4.4(a) of the Department of Education Regulations, in turn, provides: “(a) It is the policy of the Board that the local curriculum be designed by school entities to achieve the academic standards under § 4.12 (relating to academic standards) and any additional academic standards as determined by the school entity.” The Pennsylvania Department of Education defines a “curriculum” as “A series of planned instruction aligned with the academic standards in each subject area that is coordinated and articulated and implemented in a manner designed to result in the achievement at the proficient level by all students.” 22 Pa. Code § 4.3. In turn, the Department of Education Regulations define “planned instruction” as “Instruction offered by a school entity based upon a written plan to enable students to achieve the academic standards under § 4.12 (relating to academic standards) and any additional academic standards as determined by the school entity.” *Id.*

Section 4.22 of the Department of Education Regulations which apply to the academic standards described at 22 Pa. Code § 4.4(a) sets forth the middle level planned instruction

aligned with children who are approximately 11 to 14 years of age (grades 6 through 8) by providing the following:

(c) Planned instruction aligned with academic standards in the following areas shall be provided to every student in the middle level program....

- (1) Language arts, integrating reading, writing, listening, speaking, literature and grammar.
- (2) Mathematics, including mathematical reasoning, algebra and problem-solving.
- (3) Science and technology, which involves active learning experiences and which may include laboratory experiments and instruction in agriculture and agricultural science.
- (4) Social studies (civics and government, economics, geography and history, including the history and cultures of the United States, the Commonwealth, and the world).
- (5) Environment and ecology, including social, political and economic aspects of ecology, and instruction in agriculture and agricultural science.
- (6) Information skills, including access to traditional and electronic information sources, computer use and research.
- (7) Health, safety and physical education, including instruction in concepts and skills which affect personal, family and community health and safety, nutrition, physical fitness, movement concepts, motor skill development, safety in physical activity settings, and the prevention of alcohol, chemical and tobacco use.
- (8) The arts, including art, music, dance and theatre.
- (9) Career education, including exposure to various career options and the educational preparation necessary to achieve those options.
- (10) Technology education, emphasizing practical application of academic skills and problem-solving experiences facilitated by technology.

- (11) Family and consumer science, including principles of consumer behavior and basic knowledge of child health and child care skills.

22 Pa. Code § 4.22(c).

At its most fundamental level, the AEACS proposed curriculum fails to satisfy the curriculum requirements of the CSL by lacking the planned instruction required by Department of Education Regulations for grades 6 through 8. In particular, AEACS's Scope and Sequence Charts and other information for Social Studies, Science, Arts and Health and Physical Education for grades 6 through 8 fail to provide any detailed scope or sequence guides for those areas, planned instruction, or how the subjects will comply with the Commonwealth's academic standards. *See, e.g.*, Record 1 (Initial Application Tabs 9-12.) The same inadequacies exist with respect to the "curriculum" described at Record 1, Initial Application, Tab 14, in the areas of Mathematics and English/Language Arts. Instead, the information contained within those sections is limited to a general description of the goals and objectives of particular subject areas at each grade level.

AEACS failed to address the shortcomings of its Initial Application through the submission of its Supplemental Materials which, in turn, are limited to English, Mathematics, and Science at grade levels 6 through 8. The Scope and Sequence Information set forth within the Revised Application is similarly limited to Mathematics and English/Language Arts. Even assuming, *arguendo*, the materials set forth in the Supplemental Materials and Revised Application for grade levels 6 through 8 provide sufficient substantive information for STEM subject areas and how its planned instruction in those areas aligns with Pennsylvania's Core Standards, the charter school's failure to provide any proposed curriculum for planned instruction in the other areas required by the Department of Education Regulations renders

AEACS unable to demonstrate the Charter School's ability to provide a *comprehensive* learning experience to its students under the CSL. Moreover, to the extent AEACS intends to use Project Lead the Way as the "backbone" of its program, Project Lead the Way is not an entire curriculum but only a component of a curriculum, and therefore cannot serve as a substitute for the substantive information lacking in the Charter School's Revised Application. *See, e.g., Duquesne Charter School Founding Group, Docket CAB 2013-01.*

Several areas of AEACS's proposed curriculum in the areas of Mathematics and English also fail to align with the Pennsylvania Core Standards as articulated in the District's June 27, 2013 Resolution. When addressing Standard 1.1.6 B,C, E for Sixth Grade English, the AEACS Scope and Sequence Chart requires students to "Identify and interpret figurative language..." even though figurative language is not part of that standard. *See, Record 1, Initial Application, Tab 14.* The AEACS Scope and Sequence Chart also fails to refer to reading rate or fluency rates addressed by Standard 1.1.6.E. *Id.* The AEACS Scope and Sequence similarly fails to address the Pennsylvania Academic Standard requirement at 1.2.6.A. requiring students to evaluate an author's purpose and point of view. *See, Record 1 (Initial Application), Tab 14.* None of these deficiencies was resolved through AEACS's Supplemental Materials or Revised Application.

AEACS's Scope and Sequence for Mathematics also contains deficiencies which fail to bring them in line with the Pennsylvania Core Standards in the manner set forth in the June 27, 2013 Resolution. In particular, the identified Content and Skills for Standard 2.2.6.B requiring students to add, subtract, multiply, and divide whole numbers, decimals, fractions and mixed numbers is absent from the Initial Application. *See, Record 1 (Initial Application), Tab 14.* AEACS's Scope and Sequence for Mathematics fails to include the concepts embodied by the

Pennsylvania Core Standards set forth in Standards 2.3.6.A through 2.3.6.D. AEACS's Scope and Sequence for Mathematics also lacks Pennsylvania Core Standards 2.6 (Statistics and Data Analysis), 2.7 (Probability and Predictions), and 2.8.6 (Algebra and Functions). *See*, Record 1, Initial Application, Tab 14. In the matter *In Re: Washington Classical Charter School*, Docket CAB 2012-05, the CAB found that a charter school applicant cannot demonstrate that it will provide a comprehensive learning experience to students absent a curriculum that aligns with Pennsylvania standards. *Id.* at 12. Because the AEACS curriculum fails to properly align itself in accordance with Pennsylvania Core Standards in the manner set forth in the District's June 27, 2013 Resolution, AEACS fails to satisfy the requirements for a comprehensive curriculum set forth by the CSL at 24 P.S. § 17-1717-A(e)(2)(ii) and 24 P.S. § 17-1719-A(5).

D. Demonstrated Sustainable Support

Section 1717-A(e)(2)(i) of the CSL provides that an application is to be evaluated based upon the "demonstrated, sustainable support for the charter school by teachers, parents, other community members and students, including comments received at the public hearing held under subsection (d)." 24 P.S. § 17-1717-A(e)(2)(i). "Sustainable support" has been defined by the CAB as "support sufficient to sustain and maintain a charter school as an ongoing entity." *Bear Creek Community Charter School*, CAB Docket No. 2003-3. "Sustainable support" consists of a reasonable amount of support in the aggregate, not by individual categories. *Brackbill v. Ron Brown Charter School*, 777 A.2d 131, 138 (Pa. Cmwlth. 2001); *Phoenix Academy Charter School*, CAB Docket No. 1999-10; *Hill Academy Charter School*, CAB Docket No. 1999-12. See also, *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195, 200 (Pa. Cmwlth. 2004) (emphasis of the Charter School Law is on the applicant showing that the charter school enjoys reasonably sufficient support from the community, not

showing some minimum level of support from each of the more discrete groups listed). Moreover, the CAB has found that the CSL did not intend for the list set forth at 24 P.S. § 17-1717-A(e)(2)(i) to be “mutually exclusive or exhaustive.” *Penn Hills Charter School*, CAB Docket No. 2001-7. A failure to demonstrate strong support in any one category is not necessarily fatal to an application. *Id.*

In this case, AEACS submitted petitions supporting the Charter School containing more than 600 names, *See*, Record 1, Initial Application, Tab 18.¹ It is clear on the face of the documents that those who signed the Petitions specifically expressed their support for AEACS to the extent that the Petitions are titled “Petition to support the application for **Allentown Engineering Academy Charter School**” and state, in pertinent part, “I am signing the petition to support the application of the **Allentown Engineering Academy Charter School** to establish a charter school in the **Allentown School District**.” *Id.* CAB finds no evidence that the petitions were obtained under false pretenses or were procured fraudulently.

The AEACS additionally included within its Revised Application approximately 13 Online Pre-Enrollment requests representing the pre-enrollment of approximately 14 students as well as additional pre-enrollment forms for approximately 120 students. *See*, Stipulated Record 1, Initial Application, Tab 18; Stipulated Record 3, Revised Application, Exh. II, p. 78; and Exh. VI. Each of the pre-enrollment forms identified the names and addresses of the parents and the prospective students and pertained to the pre-enrollment of the students in grades 6 through 8. *See*, Stipulated Record 1, Tab 18; Stipulated Record 3, Revised Application, Exh. VI. AEACS also provided surveys from parents who were specifically asked whether they would like to enroll their children in grades 6 through 8 of the Charter School. *See*, Stipulated Record 1, Initial

¹ The District cites 587 signatures on the Petitions submitted by AEACS. The CAB finds the difference to be *de minimis* for the purpose of determining the sufficiency of community support under the CSL.

Application, Tab 18; Stipulated Record 3, Revised Application, Exh. VI; and Stipulated Record 5. The surveys indicate interest by approximately 98 parents to enroll approximately 112 students into the Charter School.

AEACS also produced approximately twenty-six (26) letters of support by prominent members of the community in favor of the Charter School. *See*, Stipulated Record 1, Initial Application, Tab 18; Stipulated Record 5. Authors of the letters included the Mayor of Allentown, Edward Pawlowski, State Senator of the 16th District, Pat Brown, multiple members of the faculty of surrounding colleges, including Lehigh University, Penn State Lehigh Valley, Cedar Crest College, and Lehigh Carbon Community College. Moreover, many of the authors of the letters committed themselves to assisting at the Charter School in a teaching capacity or through administrative support. *Id.*

AEACS also held three open houses within the community at which approximately 40 individuals attended. *See*, Stipulated Record 1, Initial Application, Tab 18; N.T. 99. Additionally, four individuals spoke favorably on behalf of the Charter School at the December 18, 2012 hearing. (N.T. 141-146).

Although AEACS is not able to demonstrate that it has entered into formal contractual agreements with local businesses and educational institutions, such a purported shortcoming is not unexpected at this stage in the application process and cannot provide legitimate grounds for negating the strong level of support demonstrated by those entities through the letters of support, petitions, and pre-enrollment forms provided by AEACS. Similarly, AEACS's failure to present any evidence of teacher support in favor of its application is not fatal to its application in the aggregate. For these reasons, CAB finds that the volume and quality of community support presented by AEACS is sufficiently large to overcome any perceived deficiencies in

demonstrated support in other areas so as to demonstrate sufficient sustainable support for AEACS in the aggregate. *See, e.g., In re: Leadership Learning Partners Charter School*, Docket CAB 2000-8.

E. Financial Plan

The CSL requires that a proposed charter school submit as part of its application a financial plan and provisions which will be made for auditing the school. 24 P.S. § 17-1719-A(9). A financial plan need only show that the charter school has considered fundamental budgeting issues and has the necessary funds to operate. *In re: Roberto Clemente Elementary Charter School*, CAB Docket No. 2012-10.

In *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195 (Pa. Cmwlth. 2004), the school district found that the financial plan proposed by the charter school was inadequate because there was no money dedicated for physical education, because teacher salaries were too low, and because the charter applicant budgeted an inadequate amount for computers and art supplies. On appeal, the Commonwealth Court concluded that the CSL does not require such specifics in a budget as long as the school board or CAB, on appeal, can determine that the applicant is capable of providing a comprehensive learning experience for students. *Id.* at 202.

In this case, the District has identified several areas in AEACS's proposed budget which it feels demonstrate that the Charter School lacks a sufficient financial plan under 24 P.S. § 17-1717A(e)(2)(iii). In particular, the District found that the AEACS's budget is deficient on its face in that it shows a projected budgetary shortfall of approximately \$85,500.00 in critical areas of its educational program during its first five years of operation. During the first year of operation, the AEACS budget shows an approximate budgetary shortfall in the amount of

\$15,000.00 in the areas of textbooks, Project Lead the Way written materials and software, and other educational software. *See*, Record 3, Revised Application, Exh. VIII, p. 4. Similar shortfalls of \$15,600.00; \$17,090.00; \$17,893.00; \$19,785.00 are projected by the AEACS budget in the areas of books and instructional aids for years 2 through 5, respectively. The Charter School does not refute these findings.

The District also cites purported budgetary insufficiencies in the areas of technology services, legal services, and costs associated with potential sick days, personal days and extended absences by faculty based upon its prior experiences. In particular, the District cites the Charter School's annual decrease in budgeted amounts for technology services from \$18,000.00 during its first year of operation to \$13,113.00 during its fifth year of operation despite a projected doubling of its student population and faculty during the same period. *See*, Record 3, Revised Application, Exh. VIII, pp. 1, 4-6. The District also noted the failure of the AEACS's budget to allocate funds for mandatory before-school, after-school and weekend school programs potentially needed to satisfy mandatory attendance requirements. To that end, the AEACS Business Manager conceded that a \$40,000.00 budgetary shortfall may occur in the event students and parents are not successful in fundraising efforts and that student activity expenses may have been under-budgeted. (N.T. 65, 87).

The CAB has consistently held that where a charter school application presents a budget that contains itemized projections of income and expenses for the first five years of operation and a school district does not specify how the financial plan is insufficient, the financial plan satisfies the requirements of the CSL. *In re: Propel Charter School*, Docket CAB 2004-1, pp. 17-18. However, the converse is also true. That is, where a school district identifies specific, critical areas of a proposed budget which are deficient on their face, with no delineation by the

Charter School as to how the budget shortfalls will be off-set, as in this case, the budget fails to demonstrate that the Charter School has a sufficient financial plan to operate.² Thus, CAB concurs with the District and finds that AEACS's budget does not satisfy the financial planning requirements of the CSL.

F. Increased Learning Opportunities and Providing Expanding Educational Choices

Section 17-1702-A of the CSL provides that the intent of the General Assembly in enacting the CSL was:

to provide opportunities for teachers, parents, pupils and community members to establish and maintain schools that operate independently from the existing school district structure as a method to accomplish all of the following:

- (1) Improve pupil learning.
- (2) Increase learning opportunities for all pupils.**
- (3) Encourage the use of different and innovative teaching methods.
- (4) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- (5) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.**
- (6) Hold the schools established under this act accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

² To the extent that the District faults AEACS for not having included the criminal history record of its faculty and staff as required by 24 P.S. §§ 17-1719-A(15) and 17-1719-A(16), CAB finds that AEACS's Revised Application is sufficient in that it is unreasonable and unrealistic to expect a charter application to contain the specific names and clearances for faculty and staff at this stage in the application process. *See, e.g., In re: Infinity Charter School*, CAB Docket No. 2002-4; *In re: Vitalistic Therapeutic Center Charter School*, CAB Docket No. 1999-6.

24 P.S. § 17-1702-A (emphasis added).

The CSL does not set a limit on the number of options or programs that may be available at a proposed charter school. Instead, the CSL requires only that the charter school application sets forth the opportunity for parents and pupils to have “expanded choices” by the creation of the charter school that is the subject of the application. *In re: Propel Charter School McKeesport*, CAB Docket No. 2004-1. Moreover, the CSL “does not require that the charter school go over and above the programs of the school district in order to be an appropriate alternative.” *McKeesport Area School District v. Propel Charter School McKeesport*, 888 A.2d 912, 918 (Pa. Cmwlth. 2005).

The CAB has previously recognized that every aspect of a charter school is not required to be different from the school district. *City College Prep*, CAB Docket No. 2006-1. Instead, “[t]he purpose of the statute is to encourage the use of innovative methods, not to exclude charter applicants whose proposed methods may not be as innovative or as different as the school district believes they should be.” *Sugar Valley Rural Charter School*, CAB Docket No. 1999-4).

In *Montour School District v. Propel Charter School-Montour*, 889 A.2d 682, 688 (Pa. Cmwlth. 2006), the Pennsylvania Commonwealth Court held that similarities alone are insufficient to support a finding of noncompliance with the CSL when there is substantial evidence of uniqueness. In that case, the Court noted that the legislative intent behind the CSL is “to establish and maintain schools that operate independently from the existing school district structure as a method to accomplish...[and e]ncourage the use of different and innovative teaching methods.” *Id.* at 687. The Court went on to conclude that the appellant in that case offered an educational experience that was unique and different from that in the district’s public schools and, therefore, was in keeping with the intent of the CSL. *Id.* at 688.

In this case, the District denied AEACS's Revised Application, in part, because the Charter School purportedly failed to provide expanded choices in the types of educational opportunities as a result of offering substantially similar content to that already being offered by the Allentown School District. By contrast, AEACS asserts that its integration of Project Lead the Way as its primary instructional program, initially with grades 6 through 8, distinguishes it from the District, and therefore it offers its students expanded educational opportunities. *See*, Stipulated Record 2, Supplemental Materials, Exh. II; N.T. 33-34, 123.

Although the District contends that it too utilizes Project Lead the Way as its primary instructional program at Lehigh County Technical Institute, it does not offer the Project Lead the Way Program in grades 6 through 8 as proposed by AEACS. Moreover, there is no evidence that the District utilizes Project Lead the Way as its primary instructional program at its High School Information Technology Academy or through its engineering and health professional partnership with Penn State. *See*, Stipulated Record 9; N.T. 123. Conversely, the AEACS's Initial Application, Revised Application, and hearing testimony show that the portions of the grades 6 through 8 curriculum offered by the Charter School will focus on STEM subjects using the Project Lead the Way model not offered by the District at those grade levels. Moreover, unlike the District's curriculum, the AEACS's Project Lead the Way model will be implemented for every student throughout its engineering based curriculum from the date of the Charter School's inception. AEACS's program distinguishes itself from the District's curriculum by offering Project Lead the Way programs during the academic year and through after-school programs and supplemental summer programs which are different from programs offered by the District.³ Based on the foregoing differences, the CAB believes that AEACS sufficiently

³ The District argues that AEACS's financial plan fails to adequately budget for these programs. However, the differences in curriculum discussed herein only address the nature of AEACS's anticipated programs and not the

demonstrated that it will provide increased learning opportunities for its students and encourage the use of different and innovative teaching methods for its students in compliance with the CSL at 24 P.S. §§ 17-1702-A(3) and (5).

The CAB similarly finds that AEACS's Revised Application sufficiently addresses special needs students under the CSL. In *re: Vitalistic Therapeutic Center Charter School*, CAB Docket No. 2000-15, the CAB found that there is no requirement for a charter school to set forth a specific plan to educate students with disabilities in its application. See also *In re: Howard Gardner Multiple Intelligence Charter School*, CAB Docket No. 2011-4. However, charter schools must comply with Federal laws and regulations governing children with disabilities, and a charter school's charter may be revoked or nonrenewed if the charter school violates any provision of Federal laws or regulations governing children with disabilities.

In this case, AEACS has satisfied the requirements of the CSL by addressing in its Revised Application, Supplemental Materials, and at the hearing before the District on December 18, 2012, how it will educate students with special needs. Specifically, AEACS's Revised Application and Supplemental Materials describe the Charter School's intention to develop Individualized Education Plans; to hire Special Education Support staff who will work with special needs students individually and in group settings; and that it will regularly review the students' progress. The Charter School's submissions similarly apprise the CAB of its intentions to comply with applicable federal and state special education requirements, including the Individuals with Disabilities Education Improvement Act of 2004, the Code of Federal Regulations, and Chapter 711 of Title 22 of the Pennsylvania Code regarding "Charter School and Cyber Charter School Services and Programs for Children with Disabilities. *See*, Stipulated

adequacy of AEACS's budget with respect to those programs. For the reasons previously set forth, the CAB believes AEACS has not established a sufficient financial plan under the CSL.

Record 1, Initial Application, App. "F"; Stipulated Record 2, Supplemental Materials, Exh. I; Stipulated Record 3, Revised Application, Exh. I. Should AEACS be unable to provide certain services to its special needs students, it has also indicated its intention to outsource the necessary services through its affiliated Intermediate Unit or through the District. For these reasons, the CAB believes AEACS has satisfied the requirements for addressing the education of special needs students under the CSL.

VII. CONCLUSION

For the foregoing reasons, the CAB concludes that AEACS has not demonstrated the capability to provide a comprehensive learning experience to its students in accordance with 24 P.S. §§ 17-1717-A(e)(2)(ii) and 17-1719-A(5), and has not demonstrated an adequate financial plan required by 24 P.S. §§ 17-1717-A(e)(2)(ii1) and 17-1719-A(9). However, the CAB finds that the AEACS has demonstrated the sustainable support by parents, other community members and students required by 24 P.S. §§ 17-1717-A(e)(2)(i), and that it has satisfied the legislative intent outlined in 24 P.S. §§ 17-1702-A(3) and 17-1702-A(5) by encouraging the use of different and innovative teaching methods and by providing parents and pupils with expanded choices in the types of educational opportunities than those that are available within the District. Therefore, the CAB issues the following Order:

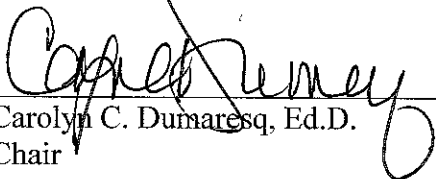
**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD**

ALLENTOWN ENGINEERING ACADEMY CHARTER SCHOOL	:	
APPELLANT	:	Docket No. CAB 2014-01
	:	
V.	:	
	:	Appeal from the June 27, 2013
ALLENTOWN SCHOOL DISTRICT	:	Decision of the Allentown
APPELLEE	:	School District

ORDER

AND NOW, this 30th day of October, 2014, based upon the foregoing and the vote of the Charter School Appeal Board,⁴ it is hereby **ORDERED** that the appeal of the Allentown Engineering Academy Charter School is **DENIED**; and based upon the record jointly submitted by the Parties, the decision of the Allentown School District to deny the charter application is **AFFIRMED**.

For the State Charter School Appeal Board,



Carolyn C. Dumaresq, Ed.D.
Chair

Date Mailed: October 30, 2014

⁴ At CAB's October 28, 2014 meeting Board Members Bracey, Dumaresq, Henry, Miller, Munger, Peri and Yanyanin voted unanimously to deny the appeal and thus to affirm the School District's decision.