

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

ENVIRONMENTAL CHARTER SCHOOL AT FRICK PARK,	:	
	:	
Petitioner,	:	Docket No. CAB 2016-01
	:	
v.	:	
	:	Appeal from the December 16, 2015
SCHOOL DISTRICT OF PITTSBURGH,	:	Decision of School District of
	:	Pittsburgh
Respondent.	:	

OPINION

BACKGROUND / PROCEDURAL HISTORY

This matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter “CAB”) pursuant to 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”), on appeal by the Environmental Charter School at Frick Park (hereinafter the “Charter School”) from the December 16, 2015 decision by the Board of Public Education of the School District of Pittsburgh (hereinafter the “District”) which denied the Charter School’s August 31, 2015 updated Charter Amendment Application to amend its February 27, 2008 Charter by permitting its expansion to include an additional K-8 school and a new facility intended to serve students in grades 9-12.

The Charter School submitted an initial Charter Amendment Application to the District on May 1, 2014 which sought to amend its Charter by permitting its expansion to include an additional K-8 school and a new facility for students in grades 9-12. The District voted to deny the initial Charter Amendment Application on July 23, 2014. The Charter School, thereafter, submitted an updated Charter Amendment Application to the District on August 31, 2015, as

well as additional information intended to address the deficiencies cited by the District as the basis for its denial of its initial application.

The District voted to deny the Charter School's updated Charter Amendment Application on December 16, 2015, and by letter dated December 22, 2015 the District informed the Charter School of its decision and provided the Charter School with a written explanation for its decision. The Charter School filed a Petition for Appeal on January 15, 2016 challenging the District's denial of the updated Application. The Charter School included in its Petition the allegation that the District violated Pennsylvania's Sunshine Act, 65 Pa.C.S.A. §701 *et. seq.*, by the manner in which it rendered its decision. On February 5, 2016, the District filed an Answer to the Petition of Appeal and a Motion to Dismiss the Charter School's allegations regarding its alleged violation of the Sunshine Act. The Charter School filed an Answer to the District's Motion to Dismiss on February 17, 2016.

CAB subsequently appointed a hearing officer for the appeal. A prehearing conference was held on July 27, 2016 at which the parties agreed to amicably resolve the Sunshine Act issue.¹ The parties additionally stipulated to resolve the appeal on briefs without an administrative hearing. Pursuant to a July 28, 2016 Order of the Hearing Officer, the District filed a Joint Stipulation of Facts and Certified Record on September 1, 2016. The Charter School filed its Brief in support of its appeal on September 15, 2016. The District filed its Brief in Opposition to the Charter School's appeal on or about October 17, 2016. The Charter School's Reply Brief was filed on November 2, 2016.

¹ By Order dated December 12, 2016, the Hearing Officer struck the Charter School's claims for relief under Pennsylvania's Sunshine Act, as well as the School District's Motion to Dismiss the Charter School's appeal on that ground in accordance with the parties' stipulation.

The record² was certified on August 30, 2016. Oral argument on the Charter School’s appeal was held before CAB on January 17, 2017. For the reasons set forth below, CAB holds that the District’s denial of the Charter School’s proposed amendment was not supported by the record and should be overturned.

FINDINGS OF FACT

1. The Charter School is a duly organized public school established and operating under a charter in the Commonwealth of Pennsylvania. (Official Notice-Department records³).

2. The District is the chartering district for the Charter School. (Official Notice-Department records).

3. The District granted the Charter School (then known as the “Environmental Charter School at Frick Park...An Imagine School) an initial charter on February 27, 2008. (Joint Stipulations of Fact, ¶ 1).

4. The mission of the Charter School, as set forth in its initial charter application, is as follows:

² By letter dated September 19, 2016, the District informed CAB that it had inadvertently filed an unsigned copy of a Memorandum of Understanding (“MOU”) between the District and the Pennsylvania Human Resources Commission identified at Paragraph 36 in the Certified Record. The District, therefore, included a signed copy of the MOU with its correspondence. The Charter School, thereafter, waived any objection to the District’s inclusion of the signed MOU into the record by correspondence dated October 25, 2016.

³ Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa.Code §31.1 *et. seq.*, at §35.173, which provides, in pertinent part, as follows:

§35.173. Official notice of facts.

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert. . . .

1 Pa.Code §35.173.

Official notice is also permitted under case law. *See, Falasco v. Commonwealth of Pennsylvania, District of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987).

to educate each student to high academic learning standards using a theme curriculum that will foster knowledge, love of and respect for the environment and the will to preserve it for future generations.

(C.R. 4).

5. Specific reference to Frick Park in the “Purpose and Needs” section of the Charter

School’s initial application included the following:

Students will have access to equitable and powerful place-based learning from the immediate Regent Square human community and the Frick Park natural community as well as the extension of cognitive skills to regional and global functions and issues...

Moving instruction out of the classroom into an outdoor learning laboratory, primarily through the use of the 400+ acres of Frick Park with a variety of habitats typical of Western Pennsylvania, will provide memorable experiences that will make learning “stick”.

(C.R. 4-5).

6. The initial Charter Agreement entered into between the District and the Charter School did not include a specific reference to Frick Park, but required the Charter School to operate “in accordance with the provisions set forth and agreed to in its charter application and exhibits dated November 15, 2007....” (C.R. 804-808).

7. The Charter School began operating during the 2008-2009 school year and served students in kindergarten through third grade (K-3) at its 829 Milton Street location. (Joint Stipulations of Fact, ¶ 2; Certified Record (“C.R.”), pp. 123, 804-808, 3286, 6249).

8. The Charter School additionally occupied the former Park Place School, accessible to Frick Park, during the 2012-2013 school year. The District approved the occupancy. (Joint Stipulations of Fact, ¶ 3; C.R. 6249).

9. The District renewed the Charter School’s charter for an additional five (5) year term at its public Legislative Meeting on April 24, 2013. (C.R. 810-813).

10. The Charter School expanded and began serving students in kindergarten through eighth grade (K-8) during the 2013-2014 school year. (Joint Stipulations of Fact, ¶ 5; C.R. 822-830, 6249).

11. On or about May 1, 2014, the Charter School submitted a Charter Amendment Application seeking an expansion to include an additional K-8 location and a new ninth through twelfth grade (9-12) school. (Joint Stipulations of Fact, ¶ 6; C.R. 833-1890).

12. The May 1, 2014 Application was, thereafter, reviewed by the District's Internal Charter Review Team, and at least some portions of the Application were reviewed by the District's legal counsel and the District's Sub-Committee. (Joint Stipulations of Fact, ¶ 7; C.R. 2108, 6249-6250).

13. The May 1, 2014 Charter Amendment Application was presented to the Board of School Directors at its July 16, 2014 meeting. (Joint Stipulations of Fact, ¶ 9; C.R. 2105-2120, 2167).

14. The District voted to deny the May 1, 2014 Charter Amendment Application at its July 23, 2014 meeting based upon several purported deficiencies found during its review. (Joint Stipulations of Fact, ¶ 11; C.R. 2314, 2349-2354, 2401-2406).

15. The Charter School submitted updated information to the District, along with an updated Charter Amendment Application on August 31, 2015 through which it sought to address the concerns expressed in the School Board's denial. (Joint Stipulations of Fact, ¶ 12; C.R. 2407-6109).

16. The District's Internal Charter Review Team District conducted another review of the Charter School's Charter Amendment Application, including a face-to-face meeting. (Joint Stipulations of Fact, ¶ 13; C.R. 6110, 6118-6133, 6249-6254).

17. The District and the Pennsylvania Human Relations Commission (“PHRC”) had entered into a Memorandum of Understanding (“MOU”) on October 29, 2015. (C.R. 6258-6271).⁴

18. The MOU expires on August 30, 2020 unless otherwise extended by mutual consent of the parties. (C.R. 6259).

19. The District and the PHRC entered into the MOU after the PHRC was not prepared to conclude that the District had achieved sufficient progress to justify terminating a Conciliation Agreement into which the parties had entered in 2006 for the purpose of amicably resolving a complaint against the District by the Advocates for African-American Students. (C.R. 6258).

20. The MOU provides, in part, that the PHRC shall monitor the District’s progress in achieving equity in achievement, discipline, special education and special program access throughout the term of the MOU. (C.R. 6268).

21. On December 8, 2015, the District’s Internal Review Team provided a presentation to the District’s Education Committee regarding the Charter School’s August 31, 2015 updated Charter Amendment Application. (Joint Stipulations of Fact, ¶ 14; C.R. 6111, 6114-6117, 6122-6127).

22. The updated Charter Amendment Application was discussed at the Board’s Agenda Review Meeting on December 9, 2015. (Joint Stipulations of Fact, ¶ 15; C.R. 6134-6166).

⁴ By letter dated September 19, 2016, the District informed CAB that it had inadvertently filed an unsigned copy of a Memorandum of Understanding (“MOU”) between the District and the Pennsylvania Human Resources Commission identified at Paragraph 36 of the Certified Record. The District, therefore, included a signed copy of the MOU with its correspondence. By correspondence dated October 25, 2016, the Charter School waived any objection to the District’s inclusion of the signed MOU into the record.

23. The District held a regular public hearing and a special public hearing on December 14, 2015. (Joint Stipulations of Fact, ¶ 16; C.R. 6167- 6191).

24. The Certified Record contains no testimony related to the Charter School at the District's December 14, 2015 public hearing. (C.R. 6167- 6191).

25. The District advised during the review process that it was not necessary for the Charter School to submit its actual curriculum crosswalk for grades 9-12. (Joint Stipulation of Facts, ¶ 17; C.R. 6193).

26. By email correspondence dated December 15, 2016, the District inquired into whether the Charter School was able to produce any evidence that it had begun work on its curriculum, "Crosswalks," for consideration at the District's December 16, 2015 Legislative Session Meeting. (Joint Stipulation of Facts, ¶ 18; C.R. 6192-6193).

27. The Charter School responded to the District's request for additional information on December 15, 2016 and offered to produce the requested information but asked that the District reschedule its vote until it had an opportunity to provide the requested information to the District. (Joint Stipulations of Fact, ¶ 19; C.R. 6193).

28. On December 16, 2015 the Board of School Directors voted once again to deny the Charter School's updated Charter Amendment Application at its Legislative Session Meeting. (Joint Stipulations of Fact, ¶ 22; C.R. 6230, 6248-6254).

29. By letter dated December 22, 2015, the District informed the Charter School of its decision based upon the following grounds: (a) the proposed amendment is contrary to one or more of the conditions, standards or procedures contained in the written Charter; (b) the amendment would violate the CSL in that the additional locations and expansion would be contrary to current obligations set forth in the District's agreement with the PHRC to eliminate

racial segregation and inequities in the District in violation of 24 P.S. §17-1730-A; (c) the Charter School has not complied with its obligations to provide a school and a program that is accessible and available to English Language Learners and all children with disabilities in violation of Title VI of the Civil Rights Act of 1964 (Title VI), the Equal Educational Opportunities Act of 1974 (EEOA) and the Individual with Disabilities Act (IDEA); (d) the Charter School has failed to make application materials, family notices and other information available to students and families in the languages they understand, including failing to provide adequate notice and ensuring that its compliance officers, if appointed, are publicly identified or easily located; (e) the Charter School's request for a new school for grades 9-12 did not include a comprehensive curriculum aligned to state standards and did not include sufficient policies and procedures to address the different needs of students in grades 9-12; (f) the Charter School's request to expand its K-8 school to a second location which is not contiguous to Frick Park is not aligned with the current Charter and focus on Frick Park; (g) the Charter School is not effectively closing the achievement gap; (h) the African-American student enrollment of the Charter School is not representative of the District's African-American population; and i) enrollment of the Charter School's ELL students and students with disabilities is not representative of the composition of the District's ELL students and students with disabilities. (C.R. 6248-6254).

CONCLUSIONS OF LAW

1. CAB has jurisdiction over this matter. 24 P.S. § 17-1729-A.; *Discovery Charter School v. School District of Philadelphia*, 111 A.3d 248 (Pa. Cmwlth. 2015); *Northside Urban Pathways Charter School v. State Charter School Appeal District*, 56 A.3d 80 (Pa. Cmwlth. 2012).

2. The CSL governs the charter application/approval process, the revocation/renewal of charters, the amendment of charters and the operation of charter schools in Pennsylvania. 24 P.S. § 17-1701-A *et. seq.*; *id.*.

3. The intent of the General Assembly in enacting the CSL 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; *New Hope Academy Charter School v. School District of the City of York*, 89 A.3d 731 (Pa. Cmwlt. 2014); *McKeesport Area School District v. Propel Charter School McKeesport*, 888 A.2d 912 (Pa. Cmwlt. 2005).

4. The criteria to be applied by the District for denying a charter school amendment are those that are applicable to a decision to revoke or to not renew a charter under Section 17-1729-A of the CSL. *Discovery Charter School v. School District of Philadelphia*, 111 A.3d 248 (Pa. Cmwlt. 2015); *Northside Urban Pathways Charter School v. State Charter School Appeal District*, 56 A.3d 80 (Pa. Cmwlt. 2012).

5. The District may choose not to grant the Charter School Amendment Application based upon the existence of any of the following criteria:

a. One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A.;

b. 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;

- c. Failure to meet generally accepted standards of fiscal management or audit requirements;
- d. Violation of provisions of this article;
- e. Violation of any provision of law from which the Charter School has not been exempted, including Federal laws and regulations governing children with disabilities;
- f. The Charter School has been convicted of fraud.

24 P.S. § 17-1729-A(a).

6. In determining whether the District's denial of the Charter School's request to amend its Charter was appropriate, CAB shall give due consideration to the findings of the District and will specifically articulate reasons for agreeing or disagreeing with the District. 24 P.S. § 17-1729-A(d); *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002).

7. Because the statutory standards for CAB's review of charter amendment decisions are the same as those for the review of charter nonrenewals and denials, CAB shall make a *de novo* review of the District's determination not to permit the requested amendment to the Charter School's Charter. 24 P.S. § 17-1717-A(i)(6); *Id.*

8. The record fails to establish that the Charter School would materially violate the terms of its written Charter by expanding its Charter to include an additional K-8 school and a new facility intended to service students in grades 9-12. 24 P.S. §17-1729-A(a).

9. The record fails to establish that the Charter School would materially violate section 1730-A or 1729-A(a)(5) of the CSL, Title VI of the Civil Rights Act of 1964 (Title VI), the Equal Educational Opportunities Act of 1974 (EEOA) and the Individual with Disabilities

Act (IDEA) by expanding its Charter to include an additional K-8 school and a new facility intended to service students in grades 9-12. 24 P.S. §17-1730-A; 24 P.S. §17-1729-A(a)(5).

10. The record fails to establish that granting the Charter School's amendment application would result in a violation of the provisions of the Charter School Law.

11. Following an independent review of the record and after due consideration to the findings of the District, CAB finds that the District's denial of the Charter School's amendment request was not supported by the record. 24 P.S. § 17-1729-A.

DISCUSSION

I. Scope and Standard of Review

In the event a charter school states in its charter application that it will be located at a particular location, that provision becomes part of the school's charter. If the school changes its location during the term of the charter without amending its charter, it is subject to closure under 17-1729-A(a)(1) of the CSL. *Northside Urban Pathways Charter School*, 56 A.3d at 86-87 (Pa. Cmwlth. 2012). Should a charter school seek to operate at another location during the pendency of its charter, it may request to amend its charter so as to permit its operations at the other location. *Id.* CAB's appellate review of a District's denial of an application to amend a charter is to occur in the same manner as its review of a decision to revoke or not renew a charter under 24 P.S. §§ 17-1729-A of the CSL. *Discovery Charter School v. School District of Philadelphia*, 111 A.2d 248, 252-253 (Pa. Cmwlth. 2015)(citing *Northside Urban Pathways Charter School*, 56 A.3d 80, 85-87 (Pa. Cmwlth. 2012)).

A District is obligated to issue a charter if the applicant satisfies the criteria in the CSL, and, once issued, the charter school has a protected property interest in its charter. *Foreman v.*

Chester-Upland District, 941 A.2d 108 (Pa. Cmwlth. 2008). Any adverse governmental decision with respect to the denial of an amendment to a charter must be subject to review. *Northside Urban Pathways Charter School v. State Charter School Appeal District*, 56 A.3d 80, 84 (Pa. Cmwlth. 2012).

CAB applies a *de novo* scope of review when entertaining appeals from a District's denial of a charter school amendment. See, e.g., *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172 (Pa. Cmwlth. 2002). The CSL requires CAB to give "appropriate consideration" to the findings of a District, while making an independent determination as to the merits of a charter school application. *Id.* at 1180. Accordingly, CAB is required to independently review the findings of the District as they related to the District's denial of the Charter School's amendment request, and give due consideration to those findings before articulating its reasons for agreeing or disagreeing with District's determination. 24 P.S. § 17-1729-A(d).

II. Burden of Proof

The degree of proof required to establish a case before an administrative tribunal is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact that 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. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). In the present matter, the District voted to deny the Charter School's request to amend its Charter to add another K-8 school at a different location and a new facility intended to serve students in grades 9-12. In reaching its decision, the District purportedly

analyzed the Charter School's Amendment Application under the criteria applicable to the nonrenewal and termination of a charter under the CSL at 24 P.S. §17-1729-A(a). However, the District also evaluated the Amendment Application under the criteria applicable to the establishment of a new charter under the CSL at 24 P.S. §17-1729-A(e)(2) based upon its belief that the new K-8 school has a different program focus, and that the secondary school contained sufficiently significant changes to warrant such an analysis.

III. Analysis

The Certified Record before CAB is comprised of approximately 6,353 pages of documents which pertain to the Charter School from its inception through the District's denial of the present updated Charter Amendment Application. As a threshold matter, the District contends that the Charter School's attempt to operate an additional K-8 school and a new facility for students in grades 9-12 through the amendment process is improper. In particular, the District argues that the proposed changes to the Charter School's existing Charter so fundamentally alter the nature and purpose of the original Charter as to constitute a *de facto* request for a new charter. Accordingly, the District asserts that the Charter School should be required to pursue its operation of the proposed schools under the criteria used to evaluate an application for a new charter under the CSL, rather than the criteria applicable to the nonrenewal or termination of a charter, as apply in cases seeking to amend an existing charter. See, *Discovery Charter School v. School District of Philadelphia*, 111 A.3d 248 (Pa. Cmwlth. 2015); *Northside Urban Pathways Charter School v. State Charter School Appeal District*, 56 A.3d 80 (Pa. Cmwlth. 2012).

Because one of the criteria used to evaluate the nonrenewal or termination of a charter under Section 1729-A(a) of the CSL is whether proposed charter amendments materially violate

one or more of the conditions, standards or procedures contained in an existing charter, and because the District's denial of the proposed charter amendments is also based upon that ground, it is appropriate to first evaluate whether the Charter School's request constitutes a material violation of its existing Charter. The District contends that granting the Charter School's request to open two schools which are not contiguous to Frick Park would materially violate the Charter School's existing Charter in that the original Charter was designed to provide a unique and innovative environmental curriculum that was integrally tied to the exploration and utilization of Frick Park. The District cites to the Charter School's initial Charter Application as evidence that the existing Charter requires contiguous access to Frick Park in order to fulfill its mission and purpose. Specifically, the Charter provides the following, in pertinent part:

Students will have access to equitable and powerful place-based learning from the immediate Regent Square human community and the Frick Park natural community as well as the extension of cognitive skills to regional and global functions and issues...

Moving instruction out of the classroom into an outdoor learning laboratory, primarily through the use of the 400+ acres of Frick Park with a variety of habitats typical of Western Pennsylvania, will provide memorable experiences that will make learning "stick".

Although the initial Charter Agreement makes no direct reference to Frick Park, it required the Charter School to operate "in accordance with the provisions set forth and agreed to in its charter application and exhibits dated November 15, 2007...". The District also cites to the Charter School's name, Environmental Charter School at Frick Park, as evidence that the Charter School's immediate access to Frick Park is an essential condition of its Charter.

By contrast, the Charter School argues that its desire to open the additional schools is not inconsistent with the core mission and philosophy set forth in its current Charter, and that its educational program is not dependent on the single green space consisting of Frick Park. The

language of the initial Charter appears to support the Charter School's contention. Although the initial Charter refers to moving instruction out of the classroom into an outdoor learning laboratory and even went so far as to identify Frick Park by name as the School's primary outdoor learning location, it by no means identified Frick Park as being the only outdoor location it can utilize. (C.R. 4-5). Further, the Purpose and Needs section of the initial Charter Application identified the Charter School as providing "an individualized approach to meet the learning challenges of our students by utilizing **common features of the immediate and regional natural and human environments.**" (C.R. 4) (emphasis added). The initial Application additionally provided: "The intent of the school will be to help young people develop a deep understanding, appreciation, love and respect for natural and human communities and cultivate the will to conserve and preserve those for future generations." (C.R. 5).

The record shows that the Charter School's Charter Amendment Application specifically addresses its anticipated K-8 students having access to park space and an urban environment directly across from the proposed site of the school. (C.R. 3288). The record fails to support the conclusion that the proposed park space cannot promote the environmental education envisioned by the Charter School's core philosophy as articulated in its revised application materials. (C.R. 2407-3414). Even assuming the initial Charter specifically required the Charter School's students to conduct their field work exclusively in Frick Park, the record is devoid of any evidence that students at the new facilities would be prevented from having access to Frick Park. Further, the inclusion of "Frick Park" in the Charter School's name is not as determinative of whether the Charter School can operate in accordance with its Charter as are the features of its anticipated programs.

It is well settled that “a charter school may amend the material details contained within its original charter, including changing a charter school’s location or adding a second location of a charter school.” *Lehigh Valley Dual Language Charter School v. Bethlehem Area District*, 97 A.3d 401, 406 (Pa. Cmwlth. 2014) (citing *Montessori Regional Charter School v. Millcreek Township District*, 55 A.3d 196 (Pa. Cmwlth. 2012) and *Northside Urban Pathways Charter School v. State Charter School Appeal Board*, 56 A.3d 80 (Pa. Cmwlth. 2012)). Contrary to the District’s proffered approach that the Charter School apply for a new charter in order to expand its existing Charter, the Commonwealth Court has found that a single school cannot have two charters that expire on different dates. Rather, such an approach would require a charter school to set up a second corporation, obtain new funding, and form a new administration which, in turn, would make the CSL unwieldy. *Northside Urban Pathways Charter School*, 56 A.3d at 87. 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, e.g., 24 P.S. § 17-1702-A.

The rationale applied by the Commonwealth Court in *Lehigh Valley Dual Language Charter School* when addressing the proposed expansion of a charter to permit an additional location is equally applicable to this case. The record shows that the expansion of the Charter School to locations other than those under its existing Charter will not result in the Charter School sufficiently deviating from the terms of its Charter so as to cause CAB to alter the criteria under which the proposed amendments are to be considered. For the same reason, CAB does not

find that amending the Charter to permit the additional locations, in and of itself, would constitute a material violation of any of the conditions, standards or procedures contained in the written Charter signed pursuant to Section 1720-A of the CSL.

Having found that the Charter School's use of the amendment process is acceptable under the CSL, and that adding the two buildings by amendment would not constitute a material violation of the Charter School's existing Charter, we now turn our attention to the remaining grounds offered by the District as the basis for its denial of the Charter School's Amendment Application. To that end, it is clear that 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 CSL. 24 P.S. § 17-1702-A(6). The charter school application 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).

Decisions by the Pennsylvania Commonwealth Court have consistently found that CAB's review of the Charter School's request for an amendment is to be conducted "in the same manner it would review a decision revoking or not renewing a charter." *Discovery Charter School v. School District of Philadelphia*, 111 A.3d 248 (Pa. Cmwlth. 2015); *Northside Urban Pathways Charter School v. State Charter School Appeal District*, 56 A.3d 80 (Pa. Cmwlth. 2012).

Consistent with the legislative purpose of the CSL, Section 1729-A(a) of the Act sets forth the causes for nonrenewal or termination of a charter by a District. Those causes include:

- (1) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 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).

Notwithstanding the Pennsylvania Commonwealth Court’s findings in *Discovery Charter School* and *Northside Urban Pathways Charter School* that charter amendments must be evaluated in the context of section 1729-A(a) of the CSL, the Commonwealth Court in *Montessori Regional Charter School v. Millcreek Township District*, 55 A.3d 196 (Pa. Cmwlth. 2012) specifically stated that Districts may not treat an amendment application in the same manner as an application for a new charter by forcing the school to “jump through many unnecessary hoops” because it would effectively foreclose the use of an amendment as a vehicle to expand a charter school’s physical operation. *Id.* at 201. See, also, *Lehigh Valley Dual Language Charter School v. Bethlehem Area District*, 97 A.3d 401, 405 (Pa. Cmwlth. 2014).

Against this backdrop, CAB's inquiry necessarily turns upon a determination of whether the Certified Record supports the District's denial of the Charter School's requested amendment. A principal portion of the record developed in this case, as it pertains to the amendment at issue, begins with the Charter School's May 1, 2014 initial request for a charter amendment which sought to expand its Charter to include an additional K-8 location and a new grade 9-12 school. Other material portions of the record consist of the documents pertaining to the Charter School's updated Charter Amendment Application and the additional supporting documentation submitted to the School Board on or about August 31, 2015. (C.R. 2407-6109). Although voluminous in nature, the record is notable for its absence of testimony or other substantive information presented at the District's public hearings and/or meetings from the date of the Charter School's submission of its Charter Amendment Application on May 1, 2014 to the District's final decision to deny the updated Charter Amendment Application on December 16, 2015. (C.R. 833-6273).

In particular, the record contains transcripts from a Legislative Meeting held on May 28, 2014, an Agenda Review Meeting on July 16, 2014, a Legislative Meeting on July 23, 2014, an Education Committee Meeting on December 8, 2015, an Agenda Review Meeting on December 9, 2015, a Special Public Hearing held on December 14, 2015, and a Legislative Meeting held on December 16, 2016. Of the foregoing, the May 28, 2014 meeting, the December 14, 2015 Hearing and the December 16, 2015 meeting did not address the Charter School application in any manner. As for the remaining meetings, the record shows that the School Board received minimal, if any, substantive factual testimony regarding the Charter School's application beyond the application materials themselves. The transcript from the July 16, 2014 Agenda Review Meeting, for example, contains limited discussions (more particularly set forth below) regarding the Charter School's May 1, 2014 amendment application which was presented to the members

of the board of school directors by the District's Review Team. (C.R. 2108, 2114-2115). The meeting transcript from the July 23, 2014 Legislative Meeting similarly contains only a brief explanation of the District's denial of the Charter School's May 1, 2014 Charter Amendment Application on the ground that the Application failed to provide sufficient information.

The Certified Record establishes that the District considered the Charter School's Amendment Application again on December 8, 2015 and December 9, 2015, subsequent to the Charter School having provided additional information to the District. Once again, the record fails to provide any substantive factual testimony or information regarding the Charter School's updated application beyond the confines of the application materials regarding the Charter School's proposed curriculum. Instead, the transcript from the December 8, 2015 Education Committee meeting consisted only of answers to School Board member questions, including those pertaining to the District's racial and socioeconomic diversity. In response, it was established at the meeting that the Charter School had submitted "an extensive equity plan to address that because that is a concern that we raise with this school every year...". It was also disclosed that the Charter School was working with an outside consultant and was attempting to increase the diversity of its staff. (C.R. 6123-6124).

When questioned about whether the K-8 demographics would extend into the proposed grades 9-12, Dr. Augustine⁵ responded that the demographics were "a concern," but that she could not speak to how much the demographics would actually change if the Charter School's current eighth graders progressed into the proposed high school. However, she did state that the African-American population enrolled in the Charter School's kindergarten had increased each year for the past three years. (C.R. 6125). A concern was also articulated by the District about

⁵ Dr. Augustine is the District's Director of Assessment, who made the Internal Review Team presentation to the board of school director's at the December 8, 2015 meeting. (C.R. 6122).

whether the District's population could sustain the anticipated enrollment of the amended Charter. (C.R. 6127). However, the record fails to provide substantive testimony or evidence on that issue.

Although the Charter School's "equity plan" was referenced at the meeting, the substance of the plan was not provided at the meeting but, instead, was promised to be provided to the Board members at a later date. (C.R. 6124-6125). Questions pertaining to special needs students and English Language Learners were also asked, and information pertaining to those issues was similarly promised to the Board members. (C.R. 6126). However, the record of the District's deliberations fails to contain substantive information on those topics beyond the Charter School's application documents. A separate document in the Certified Record pertaining to the December 8, 2015 Education Committee Meeting contained only summary information addressing the School's location, enrollment numbers and projected enrollment figures for the proposed K-8 and 9-12 schools. (C.R. 6111-6116).

The December 9, 2015 Agenda Review Meeting similarly fails to provide any substantive factual information pertaining to the District's deliberations. Instead, the discussion regarding the charter amendment only tangentially addressed the proposed curriculum of the grade 9-12 program. (C.R. 6143). The record's only other reference to the District's deliberations on the Charter School's updated Charter Amendment Application consists of the resolution passed by the District on December 16, 2015 which denied the Application. (C.R. 6230). The District notified the Charter School of its decision, and the basis therefore, by letter dated December 22, 2015.

Despite the dearth of information regarding the District's deliberative process within the Certified Record, the District asserts that approving the updated Charter Amendment Application

would violate the CSL at 24 P.S. §17-1730-A, Title VI of the Civil Rights Act of 1964 (Title VI), the Equal Educational Opportunities Act of 1974 (EEOA) and the Individual with Disabilities Act (IDEA). The District also contends that the Charter School’s additional locations and expansion would result in the District defaulting on its current obligations to eliminate racial segregation and inequities in the District as set forth in the District’s Memorandum of Understanding (“MOU”) with the PHRC.

By way of evidence, the District contends that the enrollment data in the application materials demonstrates that the Charter School does not enroll students with disabilities or English Language Learners at rates consistent with the demographics of the community or District. (C.R. 4293-4295). The District also asserts that the Charter School’s website shows that it has failed to make application materials, family notices and other information available to students and families in the languages they understand, that the Charter School fails to provide appropriate nondiscrimination notice and fails to identify a Section 504 and Title IX compliance officer or make his or her identification easily obtainable. See, District Brief, p. 12. The District also cites to the terms of a MOU to which it is currently a party in support of its contention that the Charter School’s amendment would result in the District violating the CSL at 24 P.S. §17-1730-A. (C.R. 6258-6271).

24 P.S. §17-1730-A provides as follows:

§17-1730-A. Desegregation orders

The local board of school directors of a school district which is operating under a desegregation plan approved by the Pennsylvania Human Relations Commission or a desegregation order by a Federal or State court shall not approve a charter school application if such charter school would place the school district in noncompliance with its desegregation order.

24 P.S. §17-1730-A

The District's conclusion that its approval of the charter amendment would be in violation of 24 P.S. §17-1730-A is necessarily based exclusively upon the demographic data set forth in the Charter School's Application due to the absence of any other factual evidence of record. See, e.g., Penn Hills Charter School of Entrepreneurship, CAB No. 2015-02. The MOU upon which the District also relies in support of its position is not a desegregation order on its face. Instead, by its terms, the MOU is the product of an agreement between the PHRC and the District to avoid a protracted dispute resolution process to address whether the District had achieved sufficient progress to justify the termination of a separate, earlier Conciliation Agreement into which the parties and a third-party complainant had entered in 2006.

The earlier Conciliation Agreement, in turn, authorized the PHRC to monitor the District's compliance with the settlement terms and determine whether the District had made sufficient progress to terminate the Conciliation Agreement. (C.R. 6258). The October 29, 2015 MOU resulted from the PHRC's determination that the District had not yet made sufficient progress to terminate the Conciliation Agreement. The terms and condition of the Conciliation Agreement are not part of the record. The MOU obligated the District to undertake certain steps, including the PHRC's continued monitoring of the District, in order "to continue the District's commitment to the Equity Advisory Panel and their shared goal of equity in education" through 2020. (C.R. 6129, 6259). Despite extensive discussion about the history and purpose of the MOU at the District's December 8, 2015 Education Committee Meeting, details of the MOU's terms were not discussed. The record is similarly devoid of any discussion regarding the manner by which the MOU is implemented or how it could potentially relate to the Charter School. (C.R. 6127-6133).

The term “desegregation plan” is not defined by the CSL. Although the MOU in this case clearly sets forth a methodology by which the District is to pursue the goal of “providing an equal educational opportunity irrespective of race, and consistent with the recognized existing racially identifiable academic achievement gap,” it does not necessarily set out to accomplish that goal specifically through desegregation as much as it attempts to facilitate the District’s Equity Plan. Assuming the MOU can be construed to be a desegregation plan under the CSL, however, the MOU applies to the District in its entirety. In that regard, the record fails to support the conclusion that the demographic statistics set forth in the Charter School’s application documents, in and of themselves, are a reliable forecast of future demographics, or that they show that the charter amendment would result in the District’s noncompliance with the “plan” by precluding the District from undertaking its obligations under the MOU. On the contrary, no testimony or evidence of record was offered to support such a conclusion and, indeed, the record from the December 8, 2015 Education Committee Meeting indicates that the District was unable to determine how the demographics of the Charter School would actually change if the School’s current eighth graders progressed into the high school. (C.R. 6125). Moreover, the record similarly indicates that the Charter School’s African-American population in kindergarten has increased, and that the Charter School is actively engaged in efforts to increase its enrollment of African-American students. (C.R. 3290-3291, 6125). For the foregoing reasons, CAB finds that the record fails to provide sufficient evidence that the District’s approval of the Charter School’s amendments would result in the District violating the CSL at 24 P.S. §17-1730-A so as to justify its denial of the Charter School’s amendment application on that ground.

The District's denial of the Charter School's updated Charter Amendment Application on the ground that its approval would violate the CSL at 24 P.S. §17-1729-A(a)(5) through violations of Title VI of the Civil Rights Act of 1964 (Title VI), the Equal Educational Opportunities Act of 1974 (EEOA) and the Individual with Disabilities Act (IDEA) is equally unsupported by the Certified Record. The District's claims are based upon assertions that the Charter School has failed to make application materials, family notices and other information available to students and families of limited English proficient students or English Language Learners ("ELLs") in the languages they understand, that the Charter School does not provide adequate nondiscrimination notice and that it fails to identify a Section 504 and Title IX compliance officer or make his or her identification easily obtainable.⁶ Despite its contentions, transcripts from the public meetings before the District and other documents within the Certified Record fail to support the District's conclusions as they relate to the Charter School's alleged shortcomings in its application materials and notices or its compliance officers.⁷

In re: Vitalistic Therapeutic Center Charter School, CAB Docket No. 2000-15, 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

⁶ The Charter School's purported website upon which School District relies in support of its argument under 24 P.S. §17-1729-A(a)(5) is not part of the Certified Record and, therefore, may not be considered to be competent evidence in this matter. Additionally, the School District's decision under 24 P.S. §17-1729-A(a)(5) is not supported by any portion of the Certified Record and, therefore is not sustainable. See, *Penn Hills*, CAB No. 2015-02, *supra*.

⁷ The School District additionally cited to related grounds as the basis for its denial in its December 22, 2015 correspondence based upon its "review of additional factors relevant to providing students with expanded choices for public education consistent with state and federal laws." Such grounds included the contention that that its denial of the charter amendment was proper because the Charter School has not effectively closed the achievement gap between its students and the District's students, and that the African-American student enrollment is not representative of the District's public schools. As acknowledged in the District's correspondence, the foregoing factors are applicable to an evaluation of a new charter application, and/or are not germane to the assessment of the charter amendment request currently before the Board. The School District did not address the foregoing grounds in its Brief submitted to CAB.

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. Having already granted the Charter School a renewal of its charter in 2013, the District has already considered the sufficiency of the Charter School's compliance with legislation governing special needs students when it concluded that the School "[d]oes continue to follow the provisions of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities." (C.R. 810). In that regard, the present amendment documents, including the Charter School's policies, memorialize the same aspects of the Charter School's anticipated compliance with its present amendment application regarding students with special needs, disabilities and English Language Learners. (C.R. 866-872, 3246-3284, 4800-4801, 5026-5128, 5222-5234, 5026-5195). Accordingly, CAB finds the Charter School's planned amendments sufficiently satisfy the criteria of the CSL at 24 P.S. §17-1729-A(a)(5).

The District's remaining ground for denying the proposed charter amendment is the Charter School's purported failure to include a comprehensive curriculum aligned to state standards for its grade 9-12 program.⁸ In particular, the District found as follows:

The presented "sample" of curriculum did not provide a crosswalk nor does it align to PA State or PA Common Core Standards. Additionally, the curriculum submitted, which was downloaded from a 2009 framework from New Jersey, is no longer available on the internet to access any of the multiple hyperlinked documents that were meant for supplemental materials. The unavailability of documents demonstrating correlation to PA State, Science and Common Core Standards is a deficiency. Although the review team indicated at the post-submission interview that a crosswalk was not required, the information submitted with or without a crosswalk was insufficient at the time of submission.

⁸ The same ground was cited, in part, as the basis for the School District's denial of the Charter School's May 1, 2014 charter amendment request. (C.R. 2403). The School District did not address this ground in its Brief to CAB. However, CAB is obligated to consider this ground as part of its *de novo* review of the School District's determination.

The school proposes a competency based educational program where student progress would be reported based on competencies achieved rather than on traditional grades or percentages. The material submitted did not include information regarding how the competencies would be adapted to include students with individualized education programs.

(C.R. 6249-6254).

Once again, transcripts within the Certified Record provide little, if any, substantive information regarding the District's evaluation of the Charter School's grade 9-12 curriculum. Similarly, the internet information which purportedly formed a partial basis for the District's decision is not part of the record. The transcript from the District's July 16, 2014 Agenda Review Meeting contains limited discussions regarding the Charter School's original May 1, 2014 Amendment Application which was presented to the members of the Pittsburgh Board of Public Education by the District's Review Team. (C.R. 2108, 2114-2115). The record shows that even prior to the Charter School providing additional information in support of its August 31, 2015 updated application, the Review Team found that "the proposed amendments are sufficient with minor exceptions in the financial and students with exceptionalities plans, and those exceptions were minor, so minor that the correction by the school would make those areas completely sufficient as well." (C.R. 2108). Subsequent discussions following the Review Team's presentation were limited to questions and comments from School Board members and corresponding responses from Review Team members addressing their perceived need for additional information and details regarding the nature of the proposed program for grades 9-12, the rigor of its proposed curriculum and the availability and safety of the buildings being proposed. (C.R. 2113-2117, 2119). Similarly, the July 16, 2014 Agenda Review portion of the meeting simply contains slides setting forth projected enrollment figures for the proposed schools, demographic percentages and various bullet points. The slides also conclude with the language: "Proposed amendments are sufficient with minor exceptions." (C.R. 2165-2167).

The meeting transcript from the July 23, 2014 Legislative Meeting, in turn, contains only a brief explanation of the District's denial of the Charter School's May 1, 2014 Charter Amendment Application on the ground that the application failed "to provide sufficient information to support the following: Addition of another K-8 building, addition of Grades 9-12," and that it did not contain a sufficient level of specificity regarding the grade 9-12 curriculum. (C.R. 2349-2353). The December 9, 2015 Agenda Review Meeting similarly failed to provide any substantive factual information pertaining to the District's deliberations, including the specific criticisms addressed in the District's December 22, 2015 correspondence. Instead, the discussion regarding the Charter amendment predominantly focused on concerns about the rigor of the proposed curriculum of the grade 9-12 program. (C.R. 6143).

This Board has previously found that 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. *Career Connections Charter Middle School*, CAB Docket No. 2006-3; *In re: Pocono Mountain Mathematics and Technology Charter School*, CAB Docket No. 2004-5. In the absence of testimony or other documentary evidence within the record providing the substantive grounds for the District's decision, CAB must look to the information pertaining to the proposed grade 9-12 curriculum set forth directly in the Charter School's application materials. To that end, the record includes grades 9-12 program materials which describe the Charter School's educational program, including the program's design, measurable goals and objectives, teaching strategies and learning methods, accountability, policies, evaluation methods, and charts showing how course objectives and outcomes align with academic standards. (C.R. 3420-3421, 3424-3563, 3632-3653, 3719-3723, 4291-5301, 6274-6353). As correctly noted by the Charter School, this Board has previously found education plans and

curriculum descriptions to be acceptable which were not exhaustive in nature, albeit in the context of charter school applications. See, e.g., Provident Charter School for Children with Dyslexia, CAB Docket No. 2014-06; Delaware Valley High Charter School, CAB Docket No. 2000-5. See also Career Connections Charter Middle School, supra; Pocono Mountain Mathematics and Technology Charter School, supra. In light of the District's prior acceptance of similar curriculum for grades K-8, the Review Committee's prior pronouncements regarding the sufficiency of the proposed amendment, prior decisions of this Board when evaluating the sufficiency of curriculum descriptions in charter school applications, and in the absence of any analysis or factual underpinnings in the record to substantiate the District's decision, CAB finds that the Charter School has sufficiently set forth a description of its proposed grades 9-12 curriculum to overturn the decision of the District in denying the Charter School's updated charter amendment request.

CONCLUSION

Upon giving due consideration to the findings of the District, the evidentiary record, and the requirements of Charter School Law, CAB finds that the District's denial of the Charter School's request for the amendment of its Charter to permit an additional K-8 school and a new facility intended to service students in grades 9-12 was not proper. Accordingly, CAB enters the following Order:

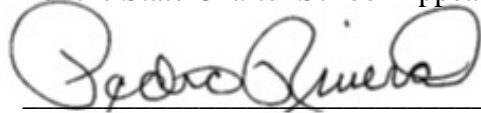
**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD**

ENVIRONMENTAL CHARTER SCHOOL AT FRICK PARK,	:	
	:	
Petitioner,	:	Docket No. CAB 2016-01
	:	
v.	:	
	:	Appeal from the December 16, 2015
SCHOOL DISTRICT OF PITTSBURGH,	:	Decision of School District of
	:	Pittsburgh
Respondent.	:	

ORDER

AND NOW, this 28th day of March, 2017, based upon the foregoing and the vote of this Board,⁹ the appeal of the Environmental Charter School at Frick Park is **GRANTED**.

For the State Charter School Appeal Board



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Date Mailed: March 28, 2017

⁹ At the State Charter School Appeal Board meeting on February 21, 2017, members voted 5 to 1 to grant the appeal of Environmental Charter School at Frick Park with Members Cook, Miller, Munger, Peri and Rivera voting to grant and Member Yanyanin voting to deny the appeal.