

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

Delaware Valley Charter High School,	:	
Petitioner	:	
	:	
v.	:	CAB Docket No. 2016-06
	:	
School District of Philadelphia and	:	
School Reform Commission,	:	
Respondents	:	

OPINION

In accordance with the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, *as amended*, 24 P.S. §17-1701-A *et seq.* (hereinafter “CSL”), this matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter “CAB”) on the appeal by Delaware Valley Charter High School (hereinafter “Delaware Valley”) from a May 19, 2016 Resolution of the School Reform Commission (hereinafter “SRC”) of the School District of Philadelphia (hereinafter “School District”) which denied Delaware Valley’s Charter renewal request.¹

Delaware Valley was granted a five-year charter beginning on September 1, 2000 to operate a public charter school serving grades 9 through 12. The charter was renewed in 2004 and again in 2010. In the fall of 2014, the School District began its renewal evaluation process. The School District engaged SchoolWorks, LLC, an external educational consulting group, to participate in the charter renewal evaluation process. At the conclusion of the renewal evaluation

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

process, the Charter Schools Office (hereinafter “CSO”) prepared a Renewal Recommendation Report in which it recommended that Delaware Valley’s renewal request be denied. On May 11, 2105, the SRC adopted SRC-11 in which it initiated nonrenewal proceedings against Delaware Valley, *inter alia*, on the basis of Delaware Valley’s poor academic performance from the 2011-2012 school year through the 2014-2015 school year; poor fiscal mismanagement for fiscal years 2011, 2012, 2013 and 2014; failure to abide by various federal and state laws and regulations pertaining to English Language Learners (“ELLs”) and special education students; failure to have compliant and equitable student admission policies; and failure to complete various background checks for its employees for fiscal years 2012, 2013 and 2014 as required by the CSL.

Public hearings were held over thirteen (13) days from October 1, 2015 through December 7, 2015, and a 30-day public comment period was provided following the conclusion of the hearing. In January and February 2016, the parties submitted Proposed Findings of Fact, Conclusions of Law and Memorandum of Law in support of their respective positions and Responses to the other’s position. On May 6, 2016, the SRC’s Hearing Officer submitted an Adjudication to the SRC which included Findings of Fact and Conclusions of Law and which recommended that the SRC not renew the charter of Delaware Valley.² On May 19, 2016, the SRC adopted a resolution, SRC-20, denying Delaware Valley’s request for renewal of its charter and adopting the SRC’s Hearing Officer’s Report, Findings of Fact and Conclusions of Law in support of its decision.

² The SRC’s Hearing Officer found that several of the grounds asserted by the SRC as reasons for nonrenewal were insufficient, but found sufficient grounds for nonrenewal in four general areas: poor academic performance, fiscal mismanagement, lack of provision of special education services and lack of compliance with various laws requiring background checks.

On July 14, 2016, Delaware Valley filed with CAB an Appeal from Denial of its Charter Renewal Request. On July 25, 2016, the School District and the SRC (hereinafter collectively referred to as “Respondents”) filed an Answer to the Appeal. On August 9, 2016, CAB assigned a hearing officer to preside over all procedural matters in this appeal. After conducting a conference call with counsel for the parties, on September 13, 2016, the hearing officer issued an Order regarding the filing of motions to supplement the record. In October 2016, the Respondents filed a Motion to Supplement the Record (October 13, 2016) and an Emergency Motion to Supplement the Record (October 21, 2016). On October 26, 2016, Delaware Valley filed a letter stating that it did not object to the inclusion in the record of the items described in either of the Respondents’ Motions. On November 1, 2016, an Order was issued granting in part the Respondents’ Motions to Supplement the Record and setting briefing deadlines.³

The parties timely filed briefs in support of their respective positions on the merits of the appeal and a Joint Stipulation of Facts.⁴ They presented their arguments to CAB on April 11, 2017. For the reasons set forth below, CAB holds that there are sufficient legal grounds to justify nonrenewal of Delaware Valley’s Charter under the criteria set forth in the CSL at Section 1729-A, 24 P.S. §17-1729-A.

³ All of the exhibits submitted by Respondents were admitted to supplement the record, except for Exhibit “B” attached to the October 13, 2016 Motion. The admission of Exhibit “B” was denied, *inter alia*, because on the face of the Exhibit it could not be determined if the information was previously unavailable, whether portions of the exhibit were authenticated or what the pages of the exhibit actually purported to be. On November 11, 2016, Respondents filed Exceptions to the November 1, 2016 Order. In the Exceptions, Respondents argued that the hearing officer erred in not admitting Exhibit “B” because counsel for Delaware Valley did not oppose the submission and Respondents offered to provide witness testimony to explain the exhibit. Further, Respondents attached to the Exceptions an affidavit to establish that the information was previously unavailable. The Respondents asked CAB to supplement the record with Exhibit “B,” or alternatively, to remand the matter to the hearing officer to hold a hearing to determine if the proposed exhibit should be admitted into evidence.

⁴ Respondents did not address in oral argument or in their brief on the merits the issue raised in their Exceptions to the hearing officer’s November 1, 2016 Order, denying Respondents’ request to supplement the record with Exhibit “B.” However, it appears that Delaware Valley stipulated to the evidence purported to be contained in Exhibit “B” in the Joint Stipulations of Facts at ¶¶ 140, 141, 144, 145. Therefore, Respondents’ Exceptions will not be addressed further.

FINDINGS OF FACT

I. Background

1. Delaware Valley is a Pennsylvania nonprofit corporation and a public school with its principal place of business located at 5201 Old York Road, Suite A, Logan Plaza, Philadelphia, Pennsylvania, serving students in the 9th through 12th grades. Joint Stipulation ¶¶ 2, 7.⁵

2. Sometime prior to September 1, 2000, Delaware Valley was granted a charter to operate a public charter school for a period of five (5) years beginning on September 1, 2000. Joint Stipulation ¶ 3.

3. On November 15, 2004, Delaware Valley filed an application for renewal of its Charter, and on March 16, 2005, the SRC renewed the Charter (hereinafter the “2005 Charter”), subject to certain conditions set forth in Resolution SRC-9. Joint Stipulation ¶¶ 4, 5.

4. In 2010, the SRC renewed Delaware Valley’s Charter for a third five-year term; however, Delaware Valley’s Board of Trustees did not execute the 2010 Charter as a result of litigation involving funding and enrollment cap issues. *See Richard Allen Preparatory Charter School, et al. v. School District of Philadelphia*, 123 A.3d 1101 (Pa. Cmwlth. 2015) (concluding that the School District did not have the power to impose caps on enrollment on the charter schools, and that the School District lacked the authority to enforce enrollment caps unless mutually agreed to by the charter school in a written charter). Joint Stipulation ¶¶ 8, 9.

⁵ “Joint Stipulation” refers to the Joint Stipulation of Facts filed by the parties herein on January 9, 2017.

5. Because Delaware Valley’s Board of Trustees did not execute the 2010 Charter, the SRC’s Hearing Officer found that the terms and conditions of the 2005 Charter remained in effect. Joint Stipulation ¶ 10; *see* Certified Record, p. 12, ¶ 13.⁶

6. In the fall of 2014, the School District, through the CSO, began the renewal evaluation process for Delaware Valley, and the School District engaged SchoolWorks, LLC (hereinafter “SchoolWorks”), an external educational consulting group, to participate in the charter renewal evaluation process. Joint Stipulation ¶¶ 11, 12.

7. Delaware Valley subsequently submitted its renewal application.⁷ Joint Stipulation ¶ 13.

8. Sometime after the start of the renewal evaluation process, the CSO began its review and evaluation of Delaware Valley which included collecting and evaluating evidence from a variety of sources including, but not limited to, reviewing charter agreements and amendments, annual reports, renewal application narratives and attachments, renewal site visit documentation, student performance data, independent financial audits, enrollment audits, financial records and documentation collected from state and federal agencies. Joint Stipulation ¶¶ 14-19.

⁶ “Certified Record, p. ___” refers to the Certified Record filed with CAB by Respondents in this matter on CD identified as “newest version as of 8-5-16” in PDF format. The PDF pages are numbered sequentially on the CD. Reference to the Certified Record will be to the sequential page numbers as found on the CD. (To the extent that the parties refer to specific exhibits admitted into evidence in the record below, those references were as follows in the SRC’s Hearing Officer’s Report and on the School District’s Index of Exhibits included with the Certified Record: “SD Ex. No. ___” or “SD ___” refers to exhibits admitted into evidence by the School District; “DV Ex. No. ___” as designated by the SRC Hearing Officer; or “CS Ex. No. ___” as designated in the Index to the Certified Record, both refer to Exhibits admitted into evidence by Delaware Valley. Joint Exhibits are referenced as “Joint Ex. No. ___” or “Joint ___”. The SRC’s Hearing Officer Exhibits are identified as “HO Ex. No. ___” or “Hearing Officer ___”). Delaware Valley’s 2005 Charter is found in the Certified Record at pp. 241-251 (SD Ex. No. 4).

⁷ Delaware Valley’s renewal application is not dated. *See* Certified Record, pp. 253-269 (SD Ex. No. 5).

9. Following completion of the renewal evaluation process, the CSO prepared a Renewal Recommendation Report stating that, in its opinion, Delaware Valley did not meet the domain standards for academic success, organizational compliance, and financial stewardship; and, therefore, the CSO did not recommend Delaware Valley's charter for renewal.⁸ Joint Stipulation ¶ 20.

10. In April 2015, the CSO forwarded a copy of its Renewal Recommendation Report to Delaware Valley. Joint Stipulation ¶ 21.

11. On May 11, 2015, the SRC passed Resolution No. SRC-11 initiating nonrenewal proceedings against Delaware Valley and alleging sixteen grounds for nonrenewal, which Resolution was provided to Delaware Valley.⁹ Joint Stipulation ¶¶ 22, 24; Certified Record, pp. 227-230.

⁸ The CSO's Renewal Recommendation Report is found in the Certified Record at pp. 271-286 (SD Ex. No. 6).

⁹ The sixteen grounds were as follows:

1. Delaware Valley failed to make adequate yearly progress ("AYP") during the 2011-12 school year and was in "Warning" status as of the 2011-12 school year.
2. For the 2011-12, 2012-13, and 2013-14 school years, Delaware Valley's PSSA proficiency scores in Reading and Keystone proficiency scores in literature have been consistently lower than the State targets, the School District average, and the Charter School average.
3. For the 2011-12, 2012-13, and 2013-14 school years, Delaware Valley's PSSA proficiency scores in math and Keystone proficiency scores in Algebra I have not been consistently improving and have been consistently lower than the State targets, the School District average, and the Charter School average.
4. For the 2011-12, 2012-13, and 2013-14 school years, Delaware Valley's growth ratings for math and reading provide significant evidence that Delaware Valley did not meet the standards for Pennsylvania Academic Growth.
5. Delaware Valley's School Performance Profile Academic Score for the 2012-13 and 2013-14 school years are below the School District's average and the Charter School average for their respective years.
6. For the 2012-13 and 2013-14 school years, under the PDE's School Performance Profile, Delaware Valley received the federal accountability designation of "Priority."

12. Pursuant to Resolution SRC-11, a Hearing Officer was appointed and public hearings were held on thirteen days between October 1, 2015 and December 7, 2015, during which hearings the parties were represented by counsel, testimony was given by witnesses and exhibits were identified and admitted into evidence. Joint Stipulation ¶¶ 25-27.

13. In accordance with Section 17-1729-A(c) of the CSL a 30-day public comment period was provided following the conclusion of the hearing. Certified Record, p. 2.

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7. Delaware Valley's School Progress Report Overall Score issued by the School District was 18 out of 100 for the 2013-14 school year.
 8. Delaware Valley's School Progress Report Overall score of 18 out of 100 was the second lowest score of the 78 reports for charter schools for the 2013-14 school year.
 9. Delaware Valley failed to meet the 100% highly qualified teacher requirement during the 2012-13 and 2013-14 school years.
 10. Delaware Valley failed to meet its legal obligations to special needs students in that Delaware Valley billed for 32 students at the special education rate without the required documentation to support special education status for such students.
 11. Delaware Valley failed to meet its legal obligation to English Language Learners.
 12. Delaware Valley did not have compliant and equitable student admission policies.
 13. The Board of Trustees of Delaware Valley failed to operate in accordance with applicable law, Bylaws, and policies in that the Board members have served terms of more than three years without being re-elected or re-appointed.
 14. Delaware Valley's audited financial reports for FY2012, FY2013, and FY2014 indicate that Delaware Valley did not obtain required child abuse clearances, FBI clearance and criminal background checks.
 15. Delaware Valley failed to make certain required payments to the Public School Employees' Retirement System during the 2012-13 and 2013-14 school years.
 16. Delaware Valley failed to meet generally accepted standards of fiscal management and audit requirements.

Certified Record, pp. 227-230 (Joint Ex. No. 1).

14. On May 6, 2016, the SRC's Hearing Officer submitted a Report to the SRC which included Findings of Fact and Conclusions of Law and which recommended that the SRC not renew the charter of Delaware Valley.¹⁰ Certified Record, pp. 5-133.

15. On May 19, 2016, the SRC adopted a Resolution, SRC-20, denying Delaware Valley's request for renewal of its charter and adopting the SRC's Hearing Officer's Report, including its Findings of Fact and Conclusions of Law in support of its decision. Certified Record, pp. 2-3.

II. Delaware Valley's Academic Performance

16. Pursuant to the 2005 Charter, Delaware Valley agreed that it would "operate the Charter School in strict adherence to ... the terms of the Application ... the Statement of Assurances ... the Accountability Agreement ... and the Standard Terms and Conditions ..., all as submitted by the Charter Board and approved by the SRC and the District." Joint Stipulation ¶ 31; Certified Record, p. 243-SD Ex. No. 4, p. 3, ¶ 3.

17. Exhibit "C" of the 2005 Charter entitled "Statement of Assurances for Charter School Applicants for 2005-2006" states, *inter alia*, that Delaware Valley "understands that any material deviation from any of these terms and conditions is cause for revocation or nonrenewal of any charter that may be granted by the School Reform Commission . . . at any time during the term of the such charter." Joint Stipulation ¶ 32; Certified Record, p. 247-SD Ex. No. 4, Exhibit C, p. 1.

¹⁰ The SRC's Hearing Officer found that four (4) of the grounds listed as reasons for nonrenewal (Ground Nos. 9, 11, 12 and 13) set forth in footnote 9, *supra*, did not constitute sufficient grounds for nonrenewal or, with respect to Ground No. 13, was deemed withdrawn. (Certified Record, pp. 120, 122, 123, 124.) Respondents did not argue on appeal that the SRC Hearing Officer erred with regard to the dismissal of those four (4) grounds. Therefore, those four (4) grounds for nonrenewal are not before CAB and will not be discussed further in this Opinion. The SRC's Hearing Officer found that the remaining grounds asserted by the SRC were material violations of the charter and/or the CSL thus justifying nonrenewal. Those grounds are discussed below in the Discussion, Sections II – V, *infra*.

18. As a part of the Statement of Assurances, Delaware Valley agreed to administer “academic assessments and set forth as a minimum performance standard the performance targets associated with the academic components of the School District’s professional responsibility system, and the annual yearly progress as required by ‘No Child Left Behind.’” Joint Stipulation ¶ 33; Certified Record, p. 247-SD Ex. No. 4, Exhibit C, p. 1, ¶ 10.

19. “The Pennsylvania Accountability System applies to all public schools (including charter schools) and districts. It is based upon the Commonwealth’s content and achievement standards, valid and reliable measures of academic achievement, and other key indicators of school and district performance such as attendance and graduation rates.” *See* BEC, Charter Schools, 24 P.S. §17-1701-A; Joint Stipulation ¶ 34.

20. “The Pennsylvania Accountability System meets the requirements of the Federal NCLB and has the same end goal – having every child in the Commonwealth proficient or above in reading and mathematics by the year 2014.” *See* BEC, Charter Schools, 24 P.S. §17-1701-A; Joint Stipulation ¶ 35.

21. For the 2011-2012 Academic Year, schools were “evaluated on a minimum target level of improvement called Adequate Yearly Progress (hereinafter “AYP”).” Basic Education Circular (“BEC”), Charter Schools, 24 P.S. §17-1701-A (issued October 1, 2004); Joint Stipulation ¶ 36.

22. Delaware Valley did not meet AYP during the 2011-2012 Academic Year. Joint Stipulation ¶ 37.

23. Delaware Valley did meet AYP standards during four (4) of the prior nine (9) years. Joint Stipulation ¶ 38.

24. Due to its failure to make AYP during the 2011-2012 Academic Year, Delaware Valley was placed on “Warning Status.” Joint Stipulation ¶ 39.

25. The 2011-2012 Academic Year was the last year that AYP was measured. Joint Stipulation ¶ 43.

26. During the time frame that AYP was measured, Pennsylvania used the PSSA as the basis for determining whether a school entity made AYP in the reading and math categories. Joint Stipulation ¶ 45.

27. Pennsylvania and the State Board of Education designated performance level descriptors for purposes of determining AYP as Advanced, Proficient, Basic, and Below Basic. *See* 22 Pa. Code §4.51(b)(5); Joint Stipulation ¶ 46.

28. The Pennsylvania Department of Education (hereinafter “PDE”) issued School Report Cards for the 2011-12 Academic Year which were based upon proficiency scores from PSSA Exams taken in Grades 3-8 and Grade 11. Joint Stipulation ¶ 47.

29. Based on the School Report Card issued by PDE for the 2011-2012 Academic Year, Delaware Valley’s PSSA scores in Math and Reading were as follows:

	Below Basic	Basic	Proficient	Advanced
Mathematics	47%	25%	23%	4%
Reading	53%	25%	17%	4%

Joint Stipulation ¶ 48.

30. According to the School Report Card for Delaware Valley between the 2010-2011 and the 2011-2012 School Years, the percentage of Delaware Valley students who scored

“Advanced” in Reading on the PSSA decreased by 15%; while the percentage of students who scored “Below Basic” in Reading increased by 32%. Joint Stipulation ¶ 51.

31. Between the 2010-2011 and the 2011-12 School Years, the percentage of Delaware Valley students who scored “Advanced” in Mathematics on the PSSA dropped by 14%; and the percentage of students who scored “Below Basic” in Mathematics increased by 17%. Joint Stipulation ¶ 52.

32. According to the School Report Cards issued by PDE for the 2011-2012 Academic Year, the following charts represent the percentage of students deemed Proficient or Advanced as measured by the PSSA and/or Keystone exams, respectively, in the various subjects tested for the Academic Years 2011-2012 through 2015-2016¹¹:

2011-2012 ACADEMIC YEAR¹²

	Delaware Valley’s Scores	City Wide Scores	Schools Managed by the School District Scores	Students Attending Charter Schools within Philadelphia Scores
Percentage of Students Proficient or Advanced in Reading	21.7%	46.5% (K-12)	44% (K-12)	54.5% (K-12)
		42.4% (9-12)	42.3% (9-12)	43% (9-12)
Percentage of Students Proficient or Advanced in Mathematics	27.2%	51.2% (K-12)	48.4% (K-12)	59.9% (K-12)
		36.2% (9-12)	36.2% (9-12)	36% (9-12)

¹¹ For the Academic Years 2011-2012 through 2013-2014, the charts include two sets of scores for the comparison scores. The top number includes in the calculation all public K-12 schools in Philadelphia, while the bottom number includes only public schools in Philadelphia serving students in grades 9-12 which are the only grades served by Delaware Valley. Certified Record pp. 335, 336 (SD Ex. No. 12, pp.1, 2).

¹² As measured by the PSSA.

2012-2013 ACADEMIC YEAR¹³

	Delaware Valley's Scores	City Wide Scores	Schools Managed by the School District Scores	Students Attending Charter Schools within Philadelphia Scores
Percentage of Students Proficient or Advanced in Literature	37.4%	45.8% (K-12) 51.2% (9-12)	43.3% (K-12) 50.7% (9-12)	53.2% (K-12) 54% (9-12)
Percentage of Students Proficient or Advanced in Algebra I	19.1%	46.8% (K-12) 35.1% (9-12)	43.8% (K-12) 35% (9-12)	55.7% (K-12) 36.1% (9-12)

2013-2014 ACADEMIC YEAR

	Delaware Valley's Scores	City Wide Scores	Schools Managed by the School District Scores	Students Attending Charter Schools within Philadelphia Scores
Percentage of Students Proficient or Advanced in Literature	37.9%	46.2% (K-12) 52.7% (9-12)	44% (K-12) 52% (9-12)	51.7% (K-12) 55.9% (9-12)
Percentage of Students Proficient or Advanced in Algebra I	20%	46.2% (K-12) 37.5% (9-12)	43.4% (K-12) 37.2% (9-12)	53.4% (K-12) 42.5% (9-12)

2014-2015 ACADEMIC YEAR¹⁴

	Delaware Valley's Scores	City Wide Scores	Schools Managed by the School District Scores	Students Attending Charter Schools within Philadelphia Scores
Percentage of Students Proficient or Advanced in Literature	29.4%	55.6%	55.1%	56.4%
Percentage of Students Proficient or Advanced in Algebra I	25.1%	43.7%	44.3%	42.8%
Percentage of Students Proficient or Advanced in Biology	10.6%	32.2%	33.3%	30.3%

¹³ In 2012-2013, the PSSA was replaced with the Keystone exams for high school grades. Joint Stipulation ¶¶ 53-55.

¹⁴ The proficiency rates for the 2014-2015 academic year are the corrected scores set forth in SD Supplemental Ex. No. S-4. The scores to which Delaware Valley is compared in 2014-2015 and 2015-2016 are proficiency rates for students who took the Keystone Proficiency Exams in Algebra, Biology and Literature. SD Supplemental Ex. No. S-4, attached as Exhibit "D" to Respondents' Motion to Supplement the Record, filed 10/13/2016.

2015-2016 ACADEMIC YEAR

	Delaware Valley's Scores	City Wide Scores	Schools Managed by the School District Scores	Students Attending Charter Schools within Philadelphia Scores
Percentage of Students Proficient or Advanced in Literature	23.6%	60.7%	61%	60.1%
Percentage of Students Proficient or Advanced in Algebra I	19.3%	47.2%	48.2%	45.6%
Percentage of Students Proficient or Advanced in Biology	10.0%	38.3%	40.5%	36.2%

Joint Stipulation ¶¶ 49, 50, 56-63, 66-71. *See also* Certified Record, pp. 288-297, 324-333, 335-339 (SD Ex. Nos. 7, 11, 12 and SD Supplemental Ex. No. S-4).

33. When comparing Delaware Valley's scores against the scores of other Philadelphia public high schools, *i.e.*, schools serving grades 9-12, the differential in Delaware Valley's performance is less pronounced in Mathematics in some years; but it is greater in Reading/Language Arts in some years compared to the differential between Delaware Valley's performance and that of all Philadelphia public schools, *i.e.*, schools serving students K-12. The more appropriate comparison is with other public high schools (9-12); however, even with that comparison, Delaware Valley's performance was still below that of the averages for all of the public high school groups to which it was compared. Official Notice - *See* Charts in Finding of Fact No. 32, *supra*, 2011-2012 through 2013-2014.

34. The School Performance Profile (hereinafter "SPP") is a comprehensive overview of student academic performance in every public school, including charter schools. Joint Stipulation ¶ 83.

35. Beginning in the 2012-2013 school year, the SPP replaced AYP under the NCLB as the state measure of accountability for public schools in the Commonwealth. Joint Stipulation ¶ 84; Official Notice-www.education.pa.gov/Documents/K12/AssessmentandAccountability/SchoolPerformanceProfile.

36. The SPP score is calculated based on a 100-point scale using multiple metrics, including student achievement or proficiency as measured by state assessment data, *i.e.*, PSSA scores or Keystone exams; the amount of growth groups of students show from one year to the next as measured by the Pennsylvania Value Added Assessment System (hereinafter “PVASS”)¹⁵; attendance; graduation rates; and other academic indicators. Joint Stipulation ¶ 85; Official Notice – www.education.pa.gov/Documents/K-12/AssessmentandAccountability/SchoolPerformanceProfile.

37. The PVASS is a statistical analysis of the state assessment data, PSSA or Keystone exam scores which provides progress data to add to the achievement data, *i.e.*, how a particular group of students is progressing as they move through the educational system, and it utilizes the average growth index (hereinafter “AGI”) to assess growth at different levels, including a “student level,” a “classroom level,” and a “school level.”¹⁶ Joint Stipulation ¶¶ 73, 75, 76; Official Notice - <https://pvaas.sas.com>.

¹⁵ The PVASS is produced by a statistical company, “SAS,” and it is endorsed by PDE. It measures the school’s impact on the academic achievement level of groups of students from year to year. Joint Stipulation ¶ 74; Official Notice – www.education.pa.gov/Documents/K-12/AssessmentandAccountability/SchoolPerformanceProfile.

¹⁶ The AGI is a value-based index assessing the average growth across grade levels. Official Notice – www.education.pa.gov/Documents/K-12/AssessmentandAccountability/PVAAS/AdditionalResources. AGI reflects the growth students have made over time, with an AGI of zero indicating that students met the standard, an AGI greater than zero indicating that students exceeded the standard, and an AGI less than zero indicating that students did not meet the standard for Pennsylvania academic growth. Joint Stipulation ¶¶ 77-80. Delaware Valley’s AGI scores were negative throughout the relevant time period from 2012 through 2015, *i.e.*, -2.01, -6.36, -4.36 and -12.06 in Mathematics/Algebra I and -8.37, -12.56, -2.56 and -20.56 in Reading/Literature, respectively. Joint Stipulation ¶ 81.

38. Delaware Valley’s SPP building scores for the 2012-2013 through the 2014-2015 school years are compared to the average SPP building scores for other Philadelphia public schools (K-12) as follows:

	Delaware Valley’s Scores	City Wide Scores	Schools Managed by the School District Scores	Students Attending Charter Schools within Philadelphia Scores
2012-2013 Academic Year	42.6	59.9	57.9	66
2013-2014 Academic Year	46.7	59.1	57.3	63.6
2014-2015 Academic Year	40.8	Not Available	Not Available	Not Available

Joint Stipulation ¶¶ 86-90; Certified Record, pp. 338, 356, 1564 (SD Ex. No. 12, p. 4 Table 4, SD Ex. No. 74).

39. Delaware Valley received a Title I federal accountability designation of “Priority” for the 2012-2013 and 2013-2014 Academic Years because it fell in the bottom five percent tier in academic performance for all Title I Schools. Joint Stipulation ¶¶ 92, 93.

40. The School District created its own accountability tool for evaluating charter schools called the School Progress Report (hereinafter “SPR”) by which the School District measures a charter school’s performance in the following categories: Overall; Achievement; Progress; Climate; and College and Career. Joint Stipulation ¶ 95.

41. The School District first used SPR to measure the performance of charter schools within the School District during the 2013-2014 school year. Charter schools could choose to participate in the program on a voluntary basis, and only those schools electing to participate received a score and performance tier designation from the School District. Joint Stipulation ¶¶ 96, 99.

42. The SPR measures or evaluates various factors of a charter school’s performance including growth on standardized assessments (*i.e.*, PSSA, Keystone exams), access for English

Language Learners, reading assignments, growth using AGI metrics and progress towards graduation. Joint Stipulation ¶ 97, 98.

43. Using the SPR, the School District placed Delaware Valley in its lowest performance tier, “Intervene,” for the 2013-2014 school year and gave it the following SPR scores: Overall, 18%; Achievement, 3%; Progress, 14%. Joint Stipulation ¶¶ 100-102.

III. Delaware Valley’s Fiscal Management

44. At the beginning of the 2010-2011 Academic Year, Delaware Valley had a negative fund balance of \$431,933.00. Joint Stipulation ¶ 121; Certified Record, p. 585.

45. By the end of the 2010-2011 Academic Year, Delaware Valley had a negative fund balance of \$462,301.00. Joint Stipulation ¶ 122; Certified Record, p. 585.

46. For the fiscal year ending on June 30, 2012, Delaware Valley had a negative fund balance of \$401,661.00. Joint Stipulation ¶ 123; Certified Record, p. 626.

47. For the fiscal year ending on June 30, 2013, Delaware Valley had a negative fund balance of \$727,172.00. Joint Stipulation ¶ 124; Certified Record, p. 668.

48. For the fiscal year ending on June 30, 2014, Delaware Valley had a negative fund balance of \$690,774.00. Joint Stipulation ¶ 125; Certified Record, p. 708.

49. A current ratio is a comparison of current assets to current liabilities. Joint Stipulation ¶ 126.

50. For Fiscal Year 2011, Delaware Valley had \$.55 in assets to cover every dollar of liability; for Fiscal Year 2012, Delaware Valley had \$.61 in assets to cover every dollar of liability; for Fiscal Year 2013, Delaware Valley had \$.41 in assets to cover every dollar of

liability; and for Fiscal Year 2014, Delaware Valley had \$.46 in assets to cover every dollar of liability.¹⁷ Joint Stipulation ¶¶ 127-130; Certified Record, p. 856.

51. Delaware Valley's months of cash on hand was less than one for each year from Fiscal Year 2011 through 2014, and ranged from 6 to 10-½ days of cash on hand at the end of the fiscal year. Joint Stipulation ¶¶ 131-134; Certified Record, p. 856.

52. Delaware Valley failed to make certain required payments to the Public School Employees' Retirement System ("PSERS") during the 2012-2013, 2013-2014 and 2015-2016 school years, and as a result:

- a. During the 2012-2013 School Year, the School District paid Delaware Valley's delinquent PSERS payment in the amount of \$122,360.93 when PDE withheld said monies from the School District's Basic Education Subsidy.
- b. During the 2013-2014 School Year, PDE deducted the following monies from the School District's monthly Basic Education Subsidy in order to satisfy Delaware Valley's delinquent PSERS payments as follows:
 - (1) \$96,922.96 in September, 2013;
 - (2) \$27,642.13 in January, 2014;
 - (3) \$78,006.12 in March 2014;
 - (4) \$76,156.62 in June, 2014.
- c. In May 2016, the School District's Basic Education Subsidy was reduced by \$378,651.49 in order to satisfy Delaware Valley's outstanding PSERS liability. In April 2016, Delaware Valley requested that the School District defer passing through the \$378,651.49 delinquent PSERS payment due to Delaware Valley's financial status.
- d. In June 2016, \$216,482.90 was deducted from the School District's Basic Education Subsidy in order to satisfy Delaware Valley's outstanding delinquent PSERS liability in the amount of \$216,482.90. On May 31, 2016, Delaware Valley requested that the School District postpone passing through the entire June 2016 delinquent PSERS payment in the amount of \$216,482.90.

¹⁷ Joint Stipulation ¶ 127 incorrectly refers to Fiscal Year 2012. A review of SD Ex. No. 42 reveals that it should be 2011, not 2012. See Certified Record, p. 856.

- e. In October 2016, the School District's Basic Education Subsidy was reduced by \$18,057.04 due to Delaware Valley's outstanding PSERS liability. Delaware Valley's delinquent PSERS obligation in the amount of \$18,057.04 was based upon the nonpayment of its employees' contributions.

Joint Stipulation ¶¶ 138-145; Certified Record, pp. 741-747, 1317-1332, 1336-1347, 1349-1350, 1354-1362; SD Supplemental Ex. Nos. S-1, S-2, S-3, S-5.

53. Delaware Valley has failed to produce a Fiscal Year 2015 audited financial statement which was due on or before December 31, 2015. Joint Stipulation ¶ 146.

54. As of November 5, 2015, the Board of Trustees of Delaware Valley had not yet adopted a budget for Fiscal Year 2016. Joint Stipulation ¶ 146.

IV. Delaware Valley's Legal Obligations to Special Needs Students

55. The School District pays charter schools based on enrollment data (which includes whether a student is a regular or special education student) that it retrieves from a computer system known as the School Computer Network ("SCN"). Joint Stipulation ¶ 104.

56. The SCN enrollment data upon which the District relies is compiled and inputted by Delaware Valley. Joint Stipulation ¶ 105.

57. Charter schools receive higher payments for students identified as special education students. Joint Stipulation ¶ 106.

58. In addition to submitting enrollment data to the School District through the SCN, Delaware Valley submits enrollment data to PDE in the form of Reconciliation Reports so that it can be paid for students above the enrollment cap. Joint Stipulation ¶ 135.

59. Delaware Valley also inputs, maintains and controls enrollment data in and internal system known as the PowerSchool System. Joint Stipulation ¶ 136.

60. The three sets of enrollment data maintained by Delaware Valley (the SCN, the Reconciliation Reports and the PowerSchool data) were not identical. Joint Stipulation ¶ 137.

61. Delaware Valley's special education files were audited by a School District employee beginning in December of 2014 which audit included a review of the special education records related to all of the students identified by Delaware Valley as special education students. Joint Stipulation ¶¶ 107-110.

62. Thirty-two (32) of the files reviewed contained one or more of the following deficiencies: (a) outdated individualized education programs (hereinafter "IEP"); (b) IEPs and Notices of Recommended Educational Placement (hereinafter "NOREP") that did not have all of the required signatures; and (c) gaps in IEP coverage. Joint Stipulation ¶ 111; Certified Record, pp. 368-369.

63. If there was a gap in IEP coverage, which usually resulted from not being able to get a parent's signature in a timely fashion, Delaware Valley would continue to provide special education services to the student. Certified Record, pp. 6767-6771.

64. PDE's Bureau of Special Education (hereinafter "PDE/BSE") conducted its own special education audit of Delaware Valley in April 2015. Joint Stipulation ¶ 112.

65. After the audit was completed, PDE issued a corrective action plan dated August 3, 2015 wherein it concluded that: (a) fifty percent of the files reviewed failed to contain parental signatures or documentation of reasonable efforts to obtain consent by the parent; and (b) sixty percent of the files reviewed were missing a NOREP. Joint Stipulation ¶ 113.

V. Delaware Valley's Compliance with Various Federal and State Laws Regarding Employee Background Checks

66. According to Delaware Valley's Independent Audit report for fiscal year ending June 30, 2012, a review of twenty employee files indicated that one employee did not have a child abuse clearance and Pennsylvania criminal background check and two were missing FBI background checks. Joint Stipulation ¶ 117; Certified Record, p. 651.

67. According to Delaware Valley's Independent Audit report for fiscal year ending June 30, 2013, a review of twenty employee files indicated that two employees did not have child abuse clearances and Pennsylvania criminal background checks and two were missing FBI background checks. Joint Stipulation ¶ 1118; Certified Record, p. 694.

68. According to Delaware Valley's Independent Audit report for fiscal year ending June 30, 2014, a review of twenty-five employee files indicated that one employee did not have a Pennsylvania criminal background check and three were missing FBI background checks. Joint Stipulation ¶ 119; Certified Record, p. 735.

CONCLUSIONS OF LAW

1. CAB has jurisdiction of this matter. 24 P.S. §17-1729-A.
2. The CSL governs the charter application/approval process, the revocation/renewal of charters and the operation of charter schools in Pennsylvania. 24 P.S. §17-1701-A *et seq.*
3. Delaware Valley is a charter school operating pursuant to the CSL within the School District of Philadelphia. 24 P.S. §17-1701-A *et seq.*
4. The intent of the General Assembly in enacting the CSL was, *inter alia*, to establish and maintain schools that improve pupil learning, to increase learning opportunities for

all pupils, to encourage the use of different and innovative teaching methods and to hold charter schools accountable for meeting measurable academic standards. 24 P.S. §17-1701-A.

5. During the term of the charter or at the end of the term of a charter, the local board of school directors of a school district may choose to revoke or not to renew the charter of a charter school based on any of the following:

- (1) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 17-1720-A.
- (2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.
- (3) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (4) Violation of provisions of this article.
- (5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
- (6) The charter school has been convicted of fraud.

24 P.S. §17-1729-A(a).

6. The local board of school directors of a school district must give notice of nonrenewal/revocation of the charter to the governing board of the charter school, which notice must state the grounds for such action with reasonable specificity and must give reasonable

notice of the date on which a public hearing concerning the written nonrenewal/revocation will be held. 24 P.S. §17-1729-A(c).

7. The local board of school directors of a school district must conduct a hearing, present evidence in support of the grounds for nonrenewal/revocation stated in its notice and give the charter school reasonable opportunity to offer testimony before taking final action. 24 P.S. §17-1729-A(c).

8. The local board of school directors of a school district must take formal action regarding the nonrenewal/revocation of a charter school at a public meeting pursuant to the Act of July 3, 1986 (P.L. 388, No. 84), known as the “Sunshine Act,” after the public has had thirty (30) days to submit comments to the board. All proceedings of the local board pursuant to this subsection are subject to the Local Agency Law, 2 Pa.C.S. Ch.5 Subchapter B. 24 P.S. §17-1729-A(c).

9. The SRC complied with all the procedural requirements of the CSL set forth at Section 17-1729-A(c). 24 P.S. §17-1729-A(c); Findings of Fact ¶¶ 1-15.

10. In determining whether a school board’s nonrenewal/revocation of a charter is appropriate, CAB shall give due consideration to the findings of the local board of school directors and specifically articulate reasons for agreeing or disagreeing with the board. 24 P.S. §17-1729-A(d); *see also West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002).

11. In determining whether the nonrenewal/revocation of a charter was appropriate, CAB shall review the record made in the proceeding below and may supplement the record at its discretion with information that was previously unavailable. 24 P.S. §17-1729-A(d).

12. In addition to the record, CAB may consider the charter school plan, annual reports, student performance and employee and community support for the charter school. 24 P.S. §17-1729-A(d).

13. Because the statutory standards for CAB's review of charter nonrenewals are the same as those for the review of charter denials, CAB shall make a *de novo* review of the SRC's determination not to renew Delaware Valley's Charter. *Compare* 24 P.S. §17-1729-A(c) *with* 24 P.S. §17-1717-A(i)(6); *West Chester, supra*, 812 A.2d at 1180.

14. The School District has the burden of proof to present sufficient evidence to substantiate its reasons for nonrenewal/revocation. 24 P.S. §17-1729-A(c).

15. The degree of proof required to establish a case before an administrative tribunal is the same degree of proof used in most civil proceedings, *i.e.*, a preponderance of the evidence. *See Graystone Academy Charter School v. Coatesville Area School District*, CAB Docket No. 2012-01, at 38; *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

16. The School District did meet its burden of producing evidence that substantiates one or more of the grounds for nonrenewal set forth in Section 1729-A of the CSL. 24 P.S. §17-1729-A(c). Findings of Fact Nos. 16-68.

17. Charter schools are required to comply with the student performance standards set forth in Chapter 4 which are the regulations promulgated by the Department of Education to replace Chapter 5. 24 P.S. §17-1729-A(a)(2); *Sugar Valley Rural Charter School*, CAB Docket No. 2004-04, at 9.

18. Delaware Valley failed to meet the requirements for student performance as set forth in 22 Pa. Code, Ch. 4, and its subsequent regulations for the 2011-2012 through 2015-2016 school years. 24 P.S. §17-1729-A(a)(2); Findings of Fact Nos. 16-39.

19. The School District's SPR is not a proper measure of academic performance for determining a charter school's compliance with student performance standards under the CSL. 24 P.S. §17-1729-A(a)(2); Findings of Fact Nos. 40-43.

20. Delaware Valley failed to meet generally accepted standards of fiscal management or audit requirements for fiscal years 2011 through 2015. 24 P.S. §17-1729-A(a)(3); Findings of Fact Nos. 44-54.

21. Delaware Valley violated provisions of law from which it has not been exempted when it failed to obtain the required Child Abuse Clearances, FBI Clearances and/or Criminal Background Checks for all its employees during fiscal years ending 2012, 2013 and 2014. 24 P.S. §17-1729-A(a)(5); Findings of Fact Nos. 66-68.

22. Following an independent review of the record before CAB and after giving due consideration to the findings of the SRC, CAB finds that the nonrenewal of Delaware Valley's charter was proper and is supported by the record of evidence, and CAB specifically sets forth its reasons for agreeing or disagreeing with the SRC's findings in the Discussion, *infra*. 24 P.S. §17-1729-A.

23. CAB finds that there is insufficient evidence to establish, and thus disagrees with the SRC's finding, that Delaware Valley failed to meet its legal obligations to special needs students or failed to provide them with a free appropriate public education justifying nonrenewal of the charter on that ground. 24 P.S. §17-1729-A(a)(5); Findings of Fact Nos. 55-65.

DISCUSSION

I. Standard of Review

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

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

- (1) One or more material violations of any conditions, standards or procedures contained in the written charter.
- (2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter.
- (3) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (4) Violation of provisions of [the Charter School Law].

(5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.

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

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

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

To the extent Delaware Valley may be suggesting it, *see* Delaware Valley’s Brief In Support of Its Appeal, pp. 5-6, filed 1/9/2017, there is no basis for a “compelling” or “substantial” evidence standard to be applied in this case.¹⁸ The degree of proof required to establish a case before an administrative tribunal is the same degree of proof used in most civil proceedings, *i.e.*, a preponderance of the evidence. *See Graystone Academy Charter School v. Coatesville Area School District*, CAB Docket No. 2012-01, at 38 (August 2013); *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990); *Community of Academy of Philadelphia Charter School v. School District of Philadelphia and School Reform Commission*, CAB Docket No. 2013-12, at 40. Preponderance of the evidence generally means evidence “that demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the proponent’s case must weigh slightly more than the opposing evidence.” *Graystone*, CAB Docket No. 2012-01, at 38 (quoting *Se-Ling v. Margulies*, 70 A.2d 854, 856 (Pa. 1950)).

II. Delaware Valley Failed to Meet the Requirements for Student Performance Set Forth in 22 Pa. Code Ch. 4 in Violation of the CSL.

The CSL requires charter schools to participate in the requirements of Pennsylvania’s State System of Assessment, PSSA, found in Chapter 4¹⁹ of the Pa. Code, *see* 22 Pa. Code §§4.1-4.83; *see also* 24 P.S. §§ 17-1715-A(8); 17-1729-A(a)(2). The purpose of Chapter 4 is “to establish rigorous academic standards and assessments to facilitate the improvement of student

¹⁸ In *Renaissance Charter School*, CAB clarified that “compelling” in the *In Re: Fell Charter School*, CAB Docket No. 2007-04 decision referred to the type of violation, *i.e.*, significant, material or fundamental, which needed to be shown before the charter school’s charter could be terminated, not the type of evidence that needed to be produced. *See Renaissance Charter School*, CAB Docket No. 2008-07, p. 3, n.3. In other words, the violation must be “substantial or compelling” in order to justify nonrenewal or revocation of a charter.

¹⁹ Chapter 4 has replaced 22 Pa. Code Ch. 5. *See Sugar Valley Rural Charter School*, CAB Docket No, 2004-04, 9.

achievement and to provide parents and communities a measure by which school performance can be determined.” 22 Pa. Code §4.2; *see also* 24 P.S. §17-1702-A(6). Section 4.51 of Ch. 4 regulations require schools to demonstrate that their students are proficient or better on the PSSA tests every year, pursuant to the mandates of the No Child Left Behind (hereinafter “NCLB”) Act. 22 Pa. Code §4.51(a)(1). The General Assembly, consistent with its expression of intent, provided for a basis of nonrenewal of a charter in the event that a charter school failed to meet the requirements for student performance as set forth in Ch. 4 of the State Board of Education regulations. 24 P.S. § 17-1729-A(a)(2).

AYP During 2011-2012 School Year

The SRC found that Delaware Valley’s failure to make AYP during the 2011-12 Academic Year constituted a material violation of its Charter and/or violation of the CSL justifying nonrenewal of the charter. Delaware Valley argues that making AYP is a goal in its charter, not a performance standard, and that failure to make that goal and being placed in “Warning” status cannot be grounds to revoke its charter, particularly based on only one year, 2011-12, which was the last year that AYP was measured.²⁰ Delaware Valley Brief, p. 9-10. Delaware Valley argues that it is located in an economically disadvantaged area of Philadelphia and most of the School District’s schools there have failed to make AYP for many years, with some of them being in corrective action status for more than seven (7) years. Delaware Valley presented evidence about these schools to support its contention. If this were the only ground on which the SRC based its decision of nonrenewal, then it would be insufficient.²¹ However, the School

²⁰ Delaware Valley made AYP during four (4) of the prior nine (9) years between 2003 and 2012.

²¹ A charter school’s failure to make AYP during a single academic year does not justify nonrenewal of its charter. *See New Hope Academy Charter School v. School District of City of York*, 89 A.2d 731, 737 (Pa. Cmwlth. 2014)

District has presented sufficient additional evidence of poor academic performance which supports the SRC's decision.

PSSA and Keystone Proficiency Scores

It is undisputed that the core purpose of the CSL is to improve students' education. *See New Hope Academy Charter School v. School District of City of York*, 89 A.3d 731, 739 (Pa. Cmwlth. 2014). The Court in *New Hope* affirmed the nonrenewal/revocation of a charter when the charter school's academic proficiency or better scores were consistently lower than those of the school district's schools as a whole and when there was no clear pattern of improvement. *Id.* at 737. Here, the School District has presented evidence of Delaware Valley's PSSA and Keystone Proficiency Scores in Reading/Literature and in Math/Algebra I for the 2011-2012 through the 2015-2016 Academic Years. During these school years, Delaware Valley's scores were significantly lower than the average of the scores of both the public schools and the other charter schools within the School District. Moreover, Delaware Valley's scores do not show any pattern of significant improvement over the course of those years. For the years 2011-2012 through 2015-2016, Delaware Valley's percentage of students scoring proficient or better on exams in Reading/Literature were 21.7, 37.4, 37.9, 29.4 and 23.6, respectively, and in Mathematics/Algebra were 27.2, 19.1, 20, 25.1 and 19.3, respectively. *See* Finding of Fact No. 32, *supra*. In Reading, while there was a slight improvement in two of the earlier years, the score from 2015-2016 is essentially the same as the score for the 2011-2012 school year. In Math, the results were worse, showing a significant decline in scores from 27.2% in 2011-2012 to 19.3% in 2015-2016.

(explaining that nonrenewal should not be based on "the mere fact that [a charter school's] proficiency rates fell below AYP levels for a particular year.")

Delaware Valley admits that over the past several years it has not achieved the academic success that it had in the past, but it claims that the evidence it presented establishes that it has resolved the issues causing this; and that, given additional time, it will be able to achieve the continued academic success that, historically, it had. Delaware Valley's Brief, p. 7. CAB does not agree that Delaware Valley has presented evidence showing that it will improve given any more time. In fact, the evidence of record establishes that the school has continued to decline, not improve, since the hearings were held before the SRC in 2015.

Delaware Valley also argues that the SRC erred when it compared its proficiency scores to all public schools (K-12) within the School District as opposed to comparing it to those public schools serving grades 9-12, as it does. CAB agrees that the appropriate comparison in this case would be to those schools serving grades 9-12. To the extent those scores are included in the record, they are included in the comparison tables found in Finding of Fact number 32, *supra*. However, when comparing Delaware Valley's scores against the scores of other Philadelphia public high schools, *i.e.*, schools serving grades 9-12, the differential in Delaware Valley's performance is less pronounced in Mathematics in some years, but is significantly greater in Reading/Language Arts. Thus, Delaware Valley still underperforms compared with the public high schools in the School District.

Finally, Delaware Valley argues in its brief that the comparison of proficiency scores used by the School District, *i.e.*, state-wide, city-wide, is inappropriate and skewed against it. Delaware Valley contends that if the appropriate schools were used for comparison, *i.e.*, those serving high school age students from the same part or parts of the School District that Delaware Valley serves, *i.e.*, its catchment area, Delaware Valley's proficiency scores were consistently as

high or higher than the neighborhood schools.²² Delaware Valley argues that if its charter were revoked, its students would be returned to high schools in the School District whose educational performance is far worse than Delaware Valley's and the students' ability to attend the school of their choice would be denied. While there may be cases in which comparisons from neighboring schools or a charter school's catchment area is a more appropriate comparison, this is not that case. During argument before CAB, Delaware Valley acknowledged that the school does recruit city-wide and that only about one-third of the charter school's students are from the neighborhood surrounding the school. These facts undermine Delaware Valley's argument that it should only be compared to neighborhood schools.

As discussed above, the record in this case establishes that Delaware Valley has failed to meet requirements for student performance set forth 22 Pa. Code Ch. 4 as required by the CSL. CAB agrees with the findings of the SRC to the extent discussed above. The SRC's decision to not renew Delaware Valley's charter on these grounds was proper. *See* 24 P.S. §17-1729-A(a)(2).

The SPP Building Level Score

Delaware Valley argues that since the School Performance Profile ("SPP") is not provided for in the CSL, the SRC should not have relied on SPP for nonrenewing its charter.

However it argues alternatively, if SPP were to be considered, when compared to other high

²² A comparison of the scores from what Delaware Valley asserts are appropriate comparator schools shows that during the 2013-14 school year, Delaware Valley's PSSA score in Reading (37%) was higher than four of the five schools in its catchment area. (*See* Delaware Valley Exhibit No. 88, Certified Record, pp. 4636-4767.) During the 2012-13 school year, Delaware Valley's PSSA score in Reading (36%) was higher than four of the five schools in its catchment area. That year, ASPIRA Olney Charter School, the sole school in the catchment area to score higher than Delaware Valley, did so, but by just one percentage point (37%). The remaining schools were 27% or lower. During the 2011-2012 school year, Delaware Valley's PSSA score in Reading was higher than three of the five schools in its catchment area. In Math, Delaware Valley performed equal to or better than most schools in its catchment area during the 2011-12, 2012-13, and 2013-14 school years, with its score going up 4% between 2012-13 and 2013-14, while the Math scores of three of the schools went down. (*Id.*)

schools in its catchment area, Delaware Valley's SPP score does not provide a basis for the revocation of its charter. In fact, Delaware Valley argues that its SPP score is higher than that of most of the School District schools to which Delaware Valley's students would be forced to return if Delaware Valley has its charter revoked.²³

Prior to 2013, Section 4.51 of Ch. 4 regulations required schools to demonstrate that their students were proficient or better on the PSSA tests every year, pursuant to the mandates of the NCLB, utilizing AYP. 22 Pa. Code §4.51(a)(1). However, in 2013, PDE sought and received a waiver from the United States Department of Education from NCLB, and as a result, PDE abolished AYP as a school's accountability measure and created the SPP as a new metric for measuring academic achievement.

The SPP is a formula that takes a variety of data points into consideration in measuring a school's academic performance, including raw test scores on the PSSA and Keystone Exams, academic growth through PVAAS scores, graduation rates, attendance rates, College Board testing, college attendance after graduation, and student achievement in Advanced Placement ("AP") testing in Mathematics, Reading/Literature, Science/Biology, and Writing. Official Notice – <http://paschoolperformance.org>. All of these data elements are evaluated in order to create a "building level academic score" that is used to track achievement for state-level academic accountability.

The SPP has replaced AYP as the Commonwealth's accountability measure for public schools. Further, the SPP is to be utilized to inform the public of the academic performance

²³ Delaware Valley's SPP score was 42.6 in 2012-13, 46.7 in 2013-14, and 40.8 in 2014-15. However, during the 2014-15 school year, the SPP scores for six School District schools in its catchment area were between 31 and 39, all lower than Delaware Valley's. While this evidence may have been accorded more weight prior to argument before CAB, once Delaware Valley acknowledged that it recruits city-wide and only one-third of its students come from its neighborhood, it undermined its argument that a comparison with city-wide schools was improper.

measures of each school, to offer a resource for LEAs, to communicate and compare the school's performance to local schools or schools with similar demographics, to analyze performance indicators as related to achievement and to encourage best practices. *Ibid.* Accordingly, under this new metric, achievement results (PSSA/Keystone Exams) and growth results (PVAAS) must be used together to get a complete picture of student learning. *Ibid.*; *see also* Certified Record, pp. 1655, 1678.

The SPP metric was used for the first time in the 2012-13 school year, and since it is the Commonwealth's current accountability measure for public schools, it is a proper method by which to evaluate whether a charter school is meeting the requirements for student performance under the CSL. 24 P.S. §17-1729-A(a)(2). The evidence of record establishes that Delaware Valley's SPP Building Level Academic Scores for 2012-13 through 2014-15 were 42.6, 46.7 and 40.8, respectively. Thus, while Delaware Valley's score increased one year, it dropped below its original score in the third year²⁴ and were consistently below the School District's average SPP city-wide scores of 59.9 and 51.9; the average SPP for charter schools operating within the School District of 66 and 63.6; and the average SPP scores for schools managed by the School District of 57.9 and 57.3, respectively, for 2012-2013 and 2013-2014 school years.

However, the SPP score is not created in a vacuum. The SPP score is calculated based on a 100-point scale using multiple metrics, including student achievement or proficiency as measured by state assessment data; the amount of growth groups of students show from one year to the next as measured by the PVASS; attendance; graduation rates and other academic indicators. The proficiency state assessment data, *i.e.*, PSSA scores or Keystone exams, provides

²⁴ Despite Delaware Valley's claim that it has put in place reforms to turn around the school's academic performance, its SPP Building Level Academic Score for the 2015-2016 school year has again decreased and is 39.8. Official Notice – <http://paschoolperformance.org>.

a snapshot of the student's achievement. The PVASS is a statistical analysis of the state assessment data and provides progress data, *i.e.*, how a particular group of students is progressing as they move through the educational system. The PVAAS utilizes the AGI (Average Growth Index) to assess growth at different levels.

The SRC found that Delaware Valley's failure to meet the standard for Pennsylvania Academic Growth during the 2011-2012, 2012-2013, 2013-2014 Academic Years, constituted a material violation of the Charter and the CSL, separate and apart from the SPP score. During the 2011-2012, 2012-2013, and 2013-2014 school years, Delaware Valley's growth ratings for Math and Reading were all negative.²⁵ The AGI, as an indicator of growth, helps to establish that Delaware Valley did not meet the standards for Pennsylvania Academic Growth during the relevant years. This further supports the finding that Delaware Valley is not meeting the student performance requirements of the CSL. AGI is a component of the PVAAS analysis which is one component of the SPP score. Evaluating AGI may help to determine if the school is meeting its growth standards even if its SPP score or proficiency scores may not be as high as School District schools. However, AGI, in and of itself, is not a proper measure of academic performance upon which a material violation of the CSL can be found.²⁶

²⁵ Delaware Valley's AGI scores were negative throughout the relevant time period from 2012 through 2015, *i.e.*, -2.01, -6.36, -4.36 and -12.06 in Mathematics/Algebra I and -8.37, -12.56, -2.56 and -20.56 in Reading/Literature, respectively.

²⁶ The School District contends that Delaware Valley waived this issue by failing to object to the presentation of testimony on academic growth during the hearing, citing *Takes v. Metro. Edison Co.*, 695 A.2d 397, 400 (Pa. 1997). CAB disagrees. *Takes* stands for the proposition that in order to preserve alleged error for review in an appellate court, trial counsel must make a timely and specifically objection during trial. The purpose of the waiver doctrine is to allow the trial court to address errors first in order to preserve judicial resources. This purpose is not necessary here. CAB's review is *de novo*. Thus, any errors made regarding evidentiary rulings can be addressed by us during the *de novo* review. However, Delaware Valley is not objecting to the admission of evidence; it is objecting to the SRC hearing officer using that information to find that "Delaware Valley's failure to meet the standard for Pennsylvania Academic Growth" during those school years "constitutes a material violation of the Charter and/or the Charter School Law." Certified Record, p. 111 ¶ 81. As discussed above, without more, AGI alone may not be used as a basis for finding a material violation of the CSL.

The School District argues that CAB did use a charter school's AGI to support nonrenewal of the school's charter in *Imani Education Circle Charter School v. School District of Philadelphia*, CAB No. 2014-08, and should do so in this case as well. While discussing the charter school's PVAAS growth data as part of evaluating the charter school's SPP score, growth and AGI scores were reviewed. *See Imani*, CAB No. 2014-08, pp. 33-35. However, *Imani* does not stand for the proposition that a charter school's AGI score, standing alone, is a proper ground for nonrenewal under the CSL. The AGI measures student progress across the tested grade levels in a school; but it is part of the PVAAS, and the PVAAS along with the proficiency assessments are all part of the Commonwealth's current accountability system, the SPP.²⁷

The SRC found that Delaware Valley's failure to meet the School District's average SPP and the charter school average SPP for the 2012-2013 and the 2013-2014 Academic Years constituted a material violation the CSL. CAB agrees with the findings of the SRC to the extent discussed above. The SRC's decision not to renew Delaware Valley's charter on the ground that it failed to meet student performance standards under the CSL utilizing the SPP score and its underlying data was supported by the evidence and was proper.²⁸ *See* 24 P.S. §17-1729-A(a)(2).

²⁷ Delaware Valley received a Title I federal accountability designation of "Priority" for the 2012-2013 and 2013-2014 Academic Years because it fell in the bottom five percent tier in academic performance for all Title I Schools. The SRC found, without other discussion, that this designation constituted a material violation of the Charter and/or CSL. This designation is part of the federal accountability system and applies only to Title I schools. Official Notice – <http://paschoolperformance.org>. For the same reasons as discussed above, this designation, in and of itself, is insufficient as a separate ground for violation of the CSL. Rather, it should be a part of the complete analysis of the charter school's academic performance.

²⁸ During the argument of this case before CAB, both parties espoused the position that "our academics may be bad, but theirs is worse." With positions like that, it is the students who lose no matter the decision in this case. However, the School District has an overall higher academic performance as compared to the charter school in this case, and the charter school presented no evidence of improvement in the last years and rather appears to be in decline. In light of the fiscal and safety issues that will be discussed below, CAB agrees that nonrenewal of the charter in this case is supported by the record.

The School District's SPR Score

The School District has created its own accountability tool for evaluating charter schools called the SPR by which the School District measures a charter school's performance in the following categories: Overall; Achievement; Progress; Climate; and College and Career. The School District first used SPR to measure the performance of charter schools within the School District during the 2013-2014 school year. Charter schools could choose to participate in the SPR program on a voluntary basis, and only those schools that elected to participate received a score and performance tier designation from the School District. The SPR measures or evaluates various factors of a charter school including growth on standardized assessments (*i.e.*, PSSA, Keystone exams), access for English Language Learners, reading assignments, growth using AGI metrics and progress towards graduation. Using the SPR, the School District placed Delaware Valley in its lowest performance tier, "Intervene," for the 2013-2014 school year and gave it the following SPR scores: Overall, 18%; Achievement, 3%; Progress, 14%. The SRC found that Delaware Valley's overall SPR scores constituted a material violation of its Charter and/or the CSL.

Delaware Valley argues that the School District's newly-created School Progress Report ("SPR") score should not be used as a basis for denying its charter for several reasons.²⁹ First, the CSL is the sole statute and authority setting forth the grounds available for a school district to revoke a charter. Nothing in the CSL authorized the School District to establish its own criteria for charter renewal. Delaware Valley argues that by now attempting to utilize SPR to revoke Delaware Valley's charter, the School District is doing just that. Delaware Valley states that the

²⁹ See also Footnote 26, *supra*, regarding the School District's waiver argument related to the SPR score. This issue was not waived by Delaware Valley.

School District's SPR program is a voluntary, evaluative program which during the 2013-14 school year had only sixty-two (62) schools participating in it. It argues that participation in a voluntary program such as the District's SPR program should not be permitted to serve as grounds to revoke its charter. Delaware Valley argues that it would be particularly egregious if a charter school that voluntarily elects to participate in the SPR program in an effort to better its programming could have its charter revoked as a result of that voluntary participation. Delaware Valley argues that to allow the School District to justify the revocation of charters based on the voluntary SPR program would discourage participation in such programs and ultimately would hinder a charter school's efforts at self-evaluation and program improvement.

CAB agrees with Delaware Valley. The CSL does not authorize a local School District to create its own accountability system for charter renewal or revocation even if it utilizes some elements from PDE's accountability system such as Keystone exams, growth assessments and progress towards graduation, as suggested by the School District. Regardless of how the School District describes it, the SPR is an additional hurdle which the School District is imposing upon the charter school without proper authority. A charter school has the right to know by what standards it is being measured. The CSL sets forth these standards. A local school district may not impose additional accountability systems beyond what is authorized by the CSL and use those accountability systems as a reason for revocation or nonrenewal. The SPR is not a proper measure and may not be used as grounds for finding a material violation of the Charter and/or CSL.

III. Delaware Valley Failed to Meet Generally Accepted Standards of Fiscal Management or Audit Requirements in Violation of the CSL.

The School District is authorized not to renew a charter if the charter school fails to meet generally accepted standards of fiscal management or audit requirements. *See* 24 P.S. §17-1729-A(a)(3). Fiscal mismanagement has been defined as when a charter school engages in overspending, operating with budget deficits, failing to conduct timely audits, having a negative fund balance and/or failing to maintain accurate enrollment data. *See e.g., Renaissance Charter School*, CAB Docket No. 2008-07 (nonrenewal upheld where charter school failed to complete timely audits); *Ronald H. Brown Charter School*, CAB Docket No. 2005-08, *aff'd*, 928 A.2d 1145 (Pa. Cmwlth. 2007) (upholding revocation where charter school had multiple years of a negative fund balances and overspent its budget); *Thurgood Marshall Academy Charter School*, CAB Docket No. 2001-5 (fiscal mismanagement sufficient to support revocation where charter school overspent its budget by over \$140,000; failed to make employer contributions to PSERS; failed to timely pay creditors; placed itself in a budget deficit over \$50,000; and failed to ensure timely audits were performed); *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125 (Pa. Cmwlth 2014) (revocation of a charter affirmed when a charter school failed to maintain accurate enrollment data which resulted in overpayments being made by the School District to the Charter School). The Commonwealth Court has also defined fiscal mismanagement to include: (1) situations wherein a charter school failed to properly update its enrollment data for special education students with the result that the charter school received higher, special education payments approximating \$110,000.00, when it was not entitled to receive said monies; and (2) where a charter school failed to conduct an annual audit. *See Graystone Academy Charter School*, 99 A.3d at 140.

Delaware Valley failed to make certain required payments to the Public School Employees' Retirement System ("PSERS") during the 2012-13, 2013-14 and 2015-16 school years.³⁰ The amounts of missed payments were subsequently deducted from the School District's basic education subsidy. The CSL requires charter schools to make payments to PSERS. 24 P.S. §17-1724-A(c).

Delaware Valley has had unhealthy financial metrics throughout the term of its charter. It carried a negative fund balance ranging from \$400,000.00 to over \$700,000.00 each fiscal year from 2011 through 2014. Delaware Valley's current ratio was less than 1 for each year during FY 2011-2014. Delaware Valley's Months of cash on hand was less than 1 for each year during FY 2011-2014, ranging from 6 to 10 ½ days at the end of the FY. While Delaware Valley argues that it has corrected these financial issues, Delaware Valley did not supplement the record with its 2016-17 budget or any other information to support its contention. In fact, the Charter School has failed to have its 2015 audit completed. *See* Hearing Officer Order dated 11/01/2016.

In addition, Delaware Valley has billed the School District, submitting payment for a higher special education rate when the education records did not support the students being billed at the special education rate. The School District overpaid Delaware Valley approximately \$204,000.00 as a result of these gaps. The Charter School has failed to maintain accurate enrollment records resulting in its own expert witness not able to render an opinion as to how many days each student attended the school. The ramifications of the Charter School's errors and fiscal mismanagement are not *de minimis* -- the errors not only exceed six figures, but also involve public funds.

³⁰ Delaware Valley failed to make its mandatory payments to PSERS in the amount of \$122,360.93 during the 2012-2013 school year; \$278,728.00 during the 2013-2014 school year; \$378,657.49 in May 2016; and \$216,482.90 in June 2016 and \$18,057.04 in November 2016.

CAB has given due consideration to the findings of the SRC regarding Delaware Valley's fiscal mismanagement and finds that the record in this case establishes that Delaware Valley failed to adhere to generally accepted standards of fiscal management, which failures constituted a material violation of the CSL. The SRC's decision to not renew Delaware Valley's charter on these grounds was proper. *See* 24 P.S. §17-1729-A(a)(3).

IV. Obligations to Special Needs Students

The SRC found that Delaware Valley failed to meet its legal obligation to special needs students by failing to provide them with a free appropriate public education. After reviewing the record, CAB finds that there is insufficient evidence to support this finding. The audit of Delaware Valley's special education files did establish that in 32 files some required signatures were missing on IEPs and NOREPs, some IEPs were outdated and there were some gaps in IEP coverage. However, there is no evidence in the record that any of these students did not get the special education services they required as a result of these errors in the records. Delaware Valley's witness, Marguerite Pierre, testified that Delaware Valley's general practice was that if there was a gap in IEP coverage, which was usually the result of not being able to get a parent's signature in a timely fashion, Delaware Valley would continue to provide special education services to the student. Certified Record, pp. 6767-6771. There is no evidence to the contrary. Without evidence that special needs students did not receive the services to which they were entitled, there is insufficient evidence to support the SRC's finding in this regard. CAB disagrees with the SRC finding. Thus, for the reasons set forth above, the SRC's findings regarding Delaware Valley failing to meet its legal obligation to special needs students is rejected, and CAB finds that nonrenewal of the charter on these grounds was improper.

V. Delaware Valley Violated Other Provisions of Law from Which It Has Not Been Exempted by Failing to Obtain Required Federal and State Criminal and Child Abuse Background Checks for its Employees in Violation of the CSL.

The Charter School Law requires a charter school to have a criminal history record and clearance statement regarding child abuse for all individuals who have direct contact with students. 24 P.S. §17-1729(a)(5). Effective April 1, 2007, all new employees were also subject to FBI background checks. Joint Stipulation ¶ 116. The findings in Delaware Valley’s annual audits from Fiscal Year 2012, 2013 and 2014 established that some of its employees did not have the required background checks.³¹ Delaware Valley does not dispute these facts. However, it argues that it has already instituted a revised procedure for ensuring that all appropriate documentation is obtained and placed in the appropriate employee files, and because it has already taken steps to correct this identified issue, it may not be used as a basis for the nonrenewal of its charter. It further argues that there is no evidence that the safety of students was “severely jeopardized,” as the School District argues in its brief.

According to the SRC, Delaware Valley’s failure to ensure that all of its employees have the required federal and state criminal and child abuse background checks for every year of its Charter constitutes a material violation of the Charter and the CSL. CAB agrees given the circumstances in this case. While Delaware Valley states that it has taken corrective action on this matter, putting in place revised procedures so that missing clearances will not occur again, CAB agrees with the Respondents that there is no evidence in the record that the situation has been corrected. The only evidence of record is that the failure to obtain the required background

³¹ During Fiscal Year 2012, one (1) employee did not have a child abuse clearance and Pennsylvania criminal background check and two (2) were missing FBI background checks. During the Fiscal Year 2013, two (2) employees did not have child abuse clearances and Pennsylvania criminal background checks and two (2) were missing FBI background checks. During the Fiscal Year 2014, one (1) employee did not have a Pennsylvania criminal background check and three (3) were missing FBI background checks.

clearances and checks occurred three (3) years in a row, and that the same person who made these mistakes in the past is still in charge of the obtaining the clearances. There is no evidence that this failure has been corrected.

Further, while there is no evidence in record that any student was harmed as a result of the failure to obtain the required clearances, safety of students is paramount. Delaware Valley may be thankful that no student was harmed, but that does not mitigate Delaware Valley's failure, for three years in a row, to comply with the requirements of the CSL and other state and federal laws to insure that its employees have been properly vetted and their backgrounds checked. In fact, there is no evidence that Delaware Valley is in compliance even now since it has failed to produce its 2015 Financial Audit in which the issue would be addressed. CAB agrees with the SRC's finding that Delaware Valley violated the CSL when it failed to obtain the required clearances and background checks for its employees three years in a row.

CONCLUSION

After reviewing the record and supplemental information provided to CAB, considering the significant decline in academic performance over the last several school years, the many examples of fiscal mismanagement that have occurred throughout the charter term, the failure to assure all employees had proper clearances and background checks in order to assure student safety, and giving due consideration to the findings of the SRC, CAB finds that the record does support the SRC's nonrenewal of Delaware Valley's Charter for those reasons and on the three grounds as discussed above.³² Accordingly, the following Order will issue:

³² CAB has specifically articulated its reasons for disagreeing with the SRC's decision to use AGI, by itself, and the School District's SPR scores as measures for determining whether a charter school has complied with or violated the CSL or its charter and its rejection of the grounds for revocation regarding providing services to special needs students as discussed above.

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

Delaware Valley Charter High School,	:	
Petitioner	:	
	:	
v.	:	CAB Docket No. 2016-06
	:	
School District of Philadelphia and	:	
School Reform Commission,	:	
Respondents	:	

ORDER

AND NOW, this 8th day of June, 2017, based upon the foregoing and in accordance with the vote of this Board³³, it is hereby ordered that the appeal of Delaware Valley Charter High School is **DENIED**; and the nonrenewal decision of the School Reform Commission is **AFFIRMED**. This decision will become effective on June 30, 2017.



Pedro A. Rivera, Chair

³³ At the Board's meeting of May 16, 2017, the appeal was denied by a vote of six to zero with Board Members Cook, Miller, Munger, Peri, Rivera and Yanyanin voting.