

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

**KHEPERA CHARTER SCHOOL**

**v.**

**THE SCHOOL DISTRICT OF  
PHILADELPHIA**

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**CAB Docket No. 2018-01**

**OPINION**

In accordance with the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, 24 P.S. § 17-1701-A *et seq.* (CSL), this matter comes before the Pennsylvania State Charter School Appeal Board (CAB) on appeal by Khepera Charter School (Khepera or Charter School) from the revocation of its Charter by the School District of Philadelphia (School District).

**PROCEDURAL HISTORY**

On June 15, 2017, the School Reform Commission of the School District of Philadelphia (SRC) resolved to conduct a public hearing regarding a recommendation by the staff of the School District to revoke Khepera's Charter. The Charter School received its initial Charter in 2004. The Charter was renewed in 2009 and in 2014 until June 30, 2019, with certain conditions. (*See* CAB HO-3 at A-2 through A-4).

A Hearing Officer was appointed by the Chair of the SRC to preside at the revocation hearings which were held on August 10, 11 and 18, and September 8, 11 and 12, 2017. Public comments were solicited from September 15 through October 16, 2017, but no comments were submitted in support of the Charter School. Both parties submitted Proposed Findings of Fact

and Conclusions of Law to the Hearing Officer. On December 1, 2017, the Hearing Officer recommended that Khepera's Charter be revoked, primarily on the following bases: Khepera's proficiency scores and SPP scores failed to meet student performance requirements; Khepera engaged in certain violations of the Ethics Act; Khepera failed to meet accepted standards of fiscal management and audit requirements; and revocation of Khepera's 2014 Charter for poor academic performance would further the intent of the Public School Code and the CSL. On December 14, 2017, the SRC voted to accept the Hearing Officer's recommendation to revoke Khepera's Charter and adopted the Hearing Examiner's Proposed Adjudication. On December 15, 2017, the School District informed Khepera of its decision to revoke the school's Charter.

Khepera filed an appeal to CAB of the revocation of its Charter on February 20, 2018. On February 27, 2018, the School District filed a Motion for Expedited Relief, requesting an expedited hearing schedule. On March 8, 2018, CAB appointed a Hearing Officer for the appeal, and on March 13, 2018, Khepera filed a Response to the School District's Motion for Expedited Relief. On March 22, 2018, the CAB Hearing Officer issued an Order denying the motion for expedited relief and scheduled a pre-hearing telephone conference with the parties for April 23, 2018.

On April 16, 2018, the School District filed a Motion to Supplement the Record which was subsequently discussed by the parties during the April 23 telephone conference. On May 1, 2018, Khepera filed a Motion in Opposition to the School District's Motion to Supplement the Record and included arguments in defense of its right to a hearing on appeal. On May 8, 2018, the School District formally withdrew its Motion to Supplement the Record. On May 10, 2018, the School District responded to Khepera's arguments regarding a hearing on appeal. By Order of May 17, 2018, the Hearing Officer granted the School District's request to withdraw its

motion to supplement and set various briefing deadlines. Timely initial briefs were filed, but no reply brief was received from Khepera. Argument was held before CAB on September 25, 2018.

## **FINDINGS OF FACT**

### **Background**

1. The School District of Philadelphia is a home rule school district of the first class organized and existing under the Pennsylvania Public School Code and the Philadelphia Home Rule Charter.

2. The School District was declared a distressed school district under Section 691(c) of the Distressed School Law, 24 P.S. § 6-691(c), and was governed by the School Reform Commission from December 21, 2001 until June 30, 2018.

3. In the 2017-18 school year, there were 84 operating charter schools in the School District. (8/10/17 N.T. 17).<sup>1</sup>

4. The Charter Schools Office (CSO) is an office of the School District that supports the SRC in executing its authorizing function which includes reviewing new charter applications, evaluating charter schools, and conducting renewal reviews. (8/10/17 N.T. 15).

5. Khepera is a charter school with citywide admissions from more than 100 different catchment areas in Philadelphia and has similar demographics to the School District as a whole. (8/10/17 N.T. 155; SDP 06).

6. The School District granted a Charter to Khepera in 2004. (8/10/17 N.T. 17).

7. Khepera moved from its previous location in Mt. Airy to its present location in

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<sup>1</sup> The hearing transcripts did not include volume numbers or continuous page numbering, so they will be cited here as "[date] N.T. [page(s)]."

North Philadelphia during the 2014-15 school year. (9/12/17 N.T. 100-101; 119-121).

8. The School District renewed Khepera's Charter in 2009 with a renewal term of September 1, 2009 through August 31, 2014. In 2013, Khepera applied to the School District for another five-year renewal of its Charter. (8/10/17 N.T. 18, 19).

9. During its review of Khepera's operations, the CSO found several areas of concern with Khepera's operations, particularly in the area of organizational compliance. (8/10/17 N.T. 21.) Those areas of concern and other deficiencies found by the CSO are noted in the 2013-14 CSO's Renewal Recommendation Report. (SDP 03; 8/10/17 N.T. 18-21).

10. The CSO recommended renewal of Khepera's Charter with conditions aimed at addressing Khepera's deficiencies. (SDP03).

11. On June 18, 2014, Khepera's Board President and Secretary signed the new charter (2014 Charter) for a term beginning July 1, 2014 through June 30, 2019. (SDP 02 at 8, 29; 8/10/17 N.T. 18, 27).

12. By letter dated June 29, 2017, the Chair of the SRC appointed a Hearing Officer for revocation proceedings. (HO 02).

13. Revocation hearings were held before the Hearing Officer on August 10, 11 and 18, and September 8, 11 and 12, 2017. (*See* Transcripts).

14. The SRC solicited public comments from September 15 through October 16, 2017 (HO 28). One comment was received earlier (HO 29)<sup>2</sup>, on the day the hearing began, and no comments were received during the official comment period.

15. The only comment received was from a teacher at Khepera who stated as follows: "Khepera board is refusing to pay teaching staff what they owe them for July and

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<sup>2</sup> This comment was transmitted to the Hearing Officer below on October 30, 2017 (following the close of the comment period) and was forwarded to counsel for the parties on November 1, 2017. (HO 29-30).

August salaries!!! It is time to hold them accountable. We were paid 6 weeks late our June pay. They have caused us all some form of hardship!!!" (HO 29).

16. The SRC did not receive any public comments opposing revocation of Khepera's Charter. (HO 30).

17. On November 2, 2017, the School District submitted its proposed findings of fact and conclusions of law, a supporting memorandum of law, and two new exhibits. (HO 31-34).

18. On November 3, 2017, Khepera submitted its proposed findings and conclusions and declined to file a supporting memorandum of law. (HO 35-36).

#### **Financial Issues**

19. Khepera admitted that it failed to pay its employees for wages earned during the 2016-17 school year in a timely way. (HO 35, p. 3, ¶ 19).

20. Because payroll could not be met, Khepera was forced to end the 2016-2017 school year a few days early. (9/8/17 N.T. 79-80, 103).

21. Khepera admitted that it failed to pay educational service providers in a timely way. (HO 35, p. 3, ¶ 20).

22. 926 Sedgley Avenue LLC (Sedgley) is the owner of the property located at 926 Sedgley Avenue, Philadelphia, PA 19132 where Khepera occupies the second and third floors. During the 2016-17 school year (year 3 of the lease), Khepera's base rent was \$46,000 per month. (SDP 66 at 5; 8/11/17 N.T. 5-6, 9-11).

23. In addition to the base rent, Khepera was required to pay certain other amounts for property insurance, common area maintenance, utilities, and real estate taxes. (8/11/17 N.T. 10, 14-15).

24. Khepera's rent is due on the first of each month with a 10-day grace period. (8/11/17 N.T. 11).

25. In May 2017, Khepera failed to pay its rent within the grace period, so Sedgley sent a warning notice to Khepera. When Khepera still failed to pay rent, Sedgley filed a confession of judgment action against Khepera on May 25, 2017 for \$87,346.18 which included outstanding rent, outstanding expenses, a late fee of \$5,000, and attorneys' fees as permitted under the lease terms. (SDP 59; 8/11/17 N.T. 11-16).

26. Khepera did not make payments to Khepera's landlord in a timely manner such that the landlord instituted three confession of judgment actions totaling more than a quarter of a million dollars against Khepera beginning in May 2017. (8/11/17 N.T. 27; SDP 59; SDP 60; SDP 61; 8/11/17 N.T. 11-20).

27. As of the date of the last hearing below, the full amount of the judgments had not yet been paid and the landlord was seeking eviction. (8/11/17 N.T. 26-28; 36).

28. On May 5, 2017, the CSO sent a letter to Khepera regarding (among other things) complaints that the CSO received from current and former Khepera employees that Khepera was understating the salaries reported to the Public School Employees' Retirement System (PSERS) for the purposes of calculating how much is taken from the employee's check for the employee contribution and how much the school contributes for the employer contribution. (SDP 36; 8/10/17 N.T. 191-193).

29. On May 18, 2017, the CSO sent Khepera a formal notice of deficiency for failure to make PSERS payments and to report employee information. (SDP 38; 8/10/17 N.T. 199- 201).

30. When a charter school fails to make a timely payment to PSERS, the Pennsylvania Department of Education (PDE) withholds the delinquent amount from the School District's subsidy and expects the School District to deduct the withheld amount from its next monthly payment to the charter school. (8/18/17 N.T. 49-51).

31. The School District has had to withhold money from Khepera's monthly payments on numerous occasions during the 2015-16 and 2016-17 school years as a result of withholdings from the School District's subsidy for Khepera's failure to make timely contributions to PSERS. (8/11/17 N.T. 51-52).

32. The following amounts were withheld from the School District's subsidy and then deducted from payments to Khepera as a result of Khepera's failure to pay PSERS during the 2015-16 and 2016-17 school years:

April 29, 2016	\$148,647.34
June 30, 2016	\$30,703.23
August 25, 2016	\$243,545.42
October 27, 2016	\$14,670.00
December 29, 2016	\$113,429.63
February 23, 2017	\$32,668.16
April 27, 2017	\$140,744.74
June 1, 2017	\$519,105.43
	\$1,243,513.95

(SDP 15, 16, 18; 8/11/17 N.T. 53-57, 62).

33. Khepera also remained delinquent on payments to PSERS during the summer of 2017 which resulted in PSERS proposing to withhold an additional \$74,000 from the School District's August 31, 2017 subsidy. (SDP 14; 8/11/17 N.T. 62-64; 8/18/17 N.T. 131-132).

34. Khepera admits that it "failed to make required employer contributions for the current and prior school years and failed to remit withheld employee contributions for the current and prior school years" to PSERS. (HO 35 at 3, ¶14).

35. Khepera failed not only to pay PSERS for member and employer contributions in a timely fashion, but it also failed to file work reports with PSERS providing the information necessary for PSERS members to have benefits properly calculated and payments remitted. (8/18/17 N.T. 31-36).

36. Khepera's 2014 Charter requires that Khepera "offer a health benefits package the same as the local school district's package as required in Section 1724-A of the Charter School Law." (SDP 02, p. 41 Exh. C, ¶ 21).

37. The CSO received numerous calls from former and current Khepera employees stating that Khepera had allowed the health insurance coverage for its employees to lapse for the month of December 2016. Those employees who needed health care services during that lapse in coverage were being billed directly by their healthcare providers. (8/10/17 N.T. 191-192).

38. Khepera admitted in a May 12, 2017 letter that "there was no health insurance coverage for December 2016, and when a few Khepera employees attempted to use their benefits under the expired policy, they were declined coverage and were billed directly by health providers." (SDP 37 at 3).

39. Khepera allowed its employee health care coverage to lapse in December 2016 and May 2017 and offered no evidence that health care insurance had been reinstated thereafter. (9/11/17 N.T. 60, 65-66).

40. Khepera's special education coordinator left Khepera's employment sometime during the 2016-17 school year and had not been replaced as of the hearing session on September 11, 2017. (9/11/17 N.T. 88-89).

41. Charter schools must provide extended school year (ESY) services to students



who have IEPs that include such services. ESY services extend into the summer beyond the end of the school year. (9/8/17 N.T. 149-151).

42. The School District provides transportation to students enrolled in charter schools whose IEPs require ESY services. During the summer of 2016, the School District provided ESY transportation to 22 Khepera students. (9/8/17 N.T. 152-153).

43. During the 2016-17 school year, Khepera never asked the School District to provide ESY transportation for any of its students and claimed that it could not provide ESY because the CSO had withheld its money. (9/8/17 N.T. 154, 158).

44. Khepera closed the school three days before the scheduled end of the 2016-17 school year because the administration was not sure "if teachers were going to continue to work without being paid." (9/8/17 N.T. 79-80, 103).

45. Khepera admitted that it was not providing ESY services. (SDP 87 at 1; 9/8/17 N.T. 157-158).

46. Between July 18 and 21, 2017, the CSO reached out to families of the 22 students who were provided ESY transportation during the previous summer. Four of those students were no longer enrolled at Khepera, and eight could not be reached. The parents or guardians of eight out of the remaining ten students confirmed that their children remained eligible for ESY services that Khepera was not providing and said that they had not received any information from Khepera about ESY classes that summer. (9/8/17 N.T. 159-161, 170).

47. On July 24, 2017, the CSO issued a notice of deficiency to Khepera based upon Khepera's failure to provide ESY services to students as required by their IEPs. The notice asked Khepera to provide the CSO with documentation to substantiate that ESY was, in fact, being

provided as specified in the IEPs, and stated that if Khepera did not provide such documentation, the CSO would recommend adding ESY as an additional ground for revocation of Khepera's Charter. (SDP 85; 9/8/17 N.T. 161-163).

48. As of the hearing session on September 8, 2017, Khepera had not responded to the July 24, 2017 notice of deficiency and had not provided any information about the provision of ESY services in the summer of 2017. (9/8/17 N.T. 163-164).

49. Not a single IEP meeting was convened or a single NOREP signed to change any IEP's ESY requirements for the summer of 2017. (9/8/17 N.T. 100-101, 116).

50. As public schools, charter schools such as Khepera are required to provide certain health services and screenings to its students and to report such provision to the Commonwealth. (8/10/17 N.T. 205-206).

51. Charter schools such as Khepera may ask the Commonwealth to reimburse them for providing these health services. To do so, the charter school reports the services rendered to students for the prior school year, using the school health annual request for reimbursement system (SHARRS). (8/10/17 N.T. 206-207).

52. The initial deadline for SHARRS reporting by all public schools including Khepera is September 30 of the school year following the reporting period. (8/10/17 N.T. 208).

53. Khepera was notified by email on October 3, 2016 that it had failed to meet the September 30 deadline. In addition, Department of Health employees made follow-up phone calls to Khepera on November 29, December 6, and December 14, 2016. On December 22, 2016, Khepera received an email notice that it had not submitted its SHARRS

report and that this report was overdue. (SDP 24 at 1-2; 8/10/17 N.T. 209).

54. Khepera did not submit the SHARRS report by December 31, 2016. Instead, Khepera's CFO responded to the December 22, 2016 email on January 3, 2017, seeking to update and submit the SHARRS report at a later date. (SDP 57; 8/10/17 N.T. 210-211).

55. Khepera lost any disbursement due for the 2015-2016 school year. (SDP 24 at 2; 8/10/17 N.T. 209-211).

56. PDE's Division of Federal Programs has responsibility over federal grants to school districts and charter schools in their capacity as local education agencies. (9/8/17 N.T. 6).

57. Charter schools have eligibility to receive federal grants under Title I, Title IIA, Title III, and Title IV. Title I is the largest of those grant programs. In order for a charter school to receive federal grant funds under any of these Title programs, a charter school must submit a consolidated application to PDE. Federal funds have a start date of July 1 each year; so the grant application submission process opens in June and "most districts and charters like to apply early on so they're ready for payroll and the programs to start come the fall." (9/8/17 N.T. 7-9).

58. Once a consolidated application is submitted to PDE, the application goes through a review process which takes approximately two months. Thereafter, payments are made to the charter school without the need for any additional documentation. Payments are made on a monthly basis and are broken down based upon the entire award set forth in the application. (9/8/17 N.T. 11-12).

59. Title I funds can be used to support reading and math programs set forth in the schoolwide plan including teacher salaries. (9/8/17 N.T. 13-14).

60. Khepera is eligible for Title I funds on a schoolwide basis based on its

students' poverty status. As such, Title I services can benefit all students enrolled in Khepera. (9/8/17 N.T. 17).

61. PDE performs compliance monitoring either on a cyclical basis or based on risk factors such as the submission of late quarterly reports, delinquent financial reports, monitoring findings or the late submission of a consolidated application. (9/8/17 N.T. 10-11, 14).

62. Each year's allocated grant funds are available for 15 months from July 1 through September 30. Carryover of up to 15% of the total grant award is permitted for an additional 12 months beyond the fiscal year. Any additional carryover is permitted only if a waiver is approved. If a waiver is not applied for, the school is not eligible to carryover more than 15% of the total allocation. (9/8/17 N.T. 15, 27-29).

63. Khepera submitted consolidated applications to PDE for the 2014-15 and 2015-16 school years. As a result, Khepera was awarded Title I and Title IIA funds totaling \$314,684 for 2014-15 and \$276,574 for 2015-16. (SDP 88 and 89<sup>3</sup>; 9/8/17 N.T. 19-23).

64. Khepera could have submitted a consolidated grant application for the 2016-17 school year as early as July 1, 2016, but it did not submit such an application at any time before or during the 2016-17 school year. (9/8/17 N.T. 24-25).

65. Khepera's failure to submit a timely application for 2016-17 was materially detrimental to its financial condition.

66. In January 2017, PDE notified Khepera that it was going to perform a

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<sup>3</sup> Khepera's Counsel objected to these exhibits as irrelevant because the asserted grounds for revocation did not include an alleged failure to comply with federal grant requirements for 2014-15 and 2015-16. (9/8/17 N.T. 67-74). Khepera's objection was conditionally overruled pending further argument in the parties' post-hearing submissions to the Hearing Officer below. (9/8/17 N.T. 74-75). The Hearing Officer later affirmed the conditional ruling because Khepera did not make any argument regarding the objection in its post-hearing submission (HO 35), and because the substantial awards to Khepera for 2014-15 and 2015-16 tend to make it more probable that Khepera's failure to submit a timely application for 2016-17 was materially detrimental to its financial condition.

mandatory review of its 2016-17 federal programs (Titles I, II and III). (SDP 90).

67. On June 2, 2017, PDE conducted a Federal Programs Consolidated Review for Khepera for the school year 2016-17 based on the identification of Khepera as "high risk." (SDP 90; 9/8/17 N.T. 34-36).

68. PDE found that Khepera had "not met" the federal program requirements in multiple areas, including but not limited to, hiring and retention of noncertified teachers and paraprofessionals, the lack of completion of the consolidated application, the provision of professional development, the development of the school's approved budget and records of expenditures, the lack of a records retention policy, the school's lack of knowledge about eligibility for the Community Eligibility Provision, and the lack of evidence of the provision of parental assistance in understanding the Commonwealth's academic achievement standards and assessments. (SDP 91 at 3, 10, 12, 17, 22, 23, 40, 47; 9/8/17 N.T. 37-45).

69. The PDE monitor found that "[t]here is no schoolwide plan currently developed for the school." (SDP 91 at 43).

70. The PDE monitor noted in the Consolidated Review: "The LEA is not meeting requirements in many areas under this section. It seems too [sic] me that the LEA did not have a person completely in charge of coordinating Federal Programs to ensure compliance in all aspects." (SDP 91 at 25).

71. As a result of the Consolidated Review, Khepera was required to submit a Corrective Action Plan by September 7, 2017. As of the September 8, 2017 hearing session, Khepera had not submitted the Corrective Action Plan and had not requested an extension of the September 7, 2017 deadline. (SDP 91 at 49; 9/8/17 N.T. 43, 61-62).

72. PDE was not going to process Khepera's 2016-17 consolidated application or act on any carryover waiver request until Khepera submits the outstanding compliance documents, including the Corrective Action Plan. (9/8/17 N.T. 26-27, 29-31, 52).

73. Khepera's preliminary Title I allocation for the 2016-17 school year was \$313,937 which would have been the amount initially awarded if Khepera had applied for these Title funds in or around July 1, 2016. (SDP 84; 9/8/17 N.T. 32-33).

74. As of September 8, 2017, Khepera had not received any Title I funds for the 2016-17 school year because the consolidated application had not yet been approved. (9/8/17 N.T. 32).

75. Khepera would have been able to submit a consolidated application for the 2017-18 school year on July 1, 2017 but had not done so as of September 8, 2017. (9/8/17 N.T. 31).

76. Khepera's preliminary allocation of \$382,952 in Title I funds for 2017-18 would have been received following submission of a consolidated application. (SDP 84 at 2; 9/8/17 N.T. 34).

77. On October 6, 2015, the CSO notified Khepera that its independent financial audit for fiscal year 2013-14 had not been submitted by the statutory deadline. (SDP 28 at 4).

78. Khepera's independent financial audit for FY 2013-14 was eventually completed by its independent auditor, Mitchell & Titus (M&T), but not until December 29, 2016 which was approximately 30 months after the audit process began. (SDP 20 at 4; 9/12/17 N.T. 6).

79. According to M&T, the FY 2013-14 audit delays were the result of: (1) a

change in Khepera's outside consultants for accounting support; (2) Khepera's inability to find requested documentation; and (3) delays in getting requested information from Khepera's outside accountants. (9/12/17 N.T. 9, 16-17).

80. Throughout 2015 and 2016, the CSO communicated with Khepera on numerous occasions by way of notices of deficiencies and emails regarding Khepera's failure to provide financial audits. (SDP 28-35; 8/10/17 N.T. 202; SDP 48; 8/10/17 N.T. 203).

81. On January 3, 2017, the CSO sent Khepera a notice of deficiency based upon Khepera's failure to submit a financial audit for FY 2015-16. (SDP 46 at 4-6).

82. As of the hearing session on August 10, 2017, Khepera still had not produced the missing audits for FY 2014-15 and FY 2015-16. (8/10/17 N.T. 205).

83. Khepera admitted that "[t]he FY14 Annual Financial Audit, due December 31, 2014, was completed and submitted to the CSO two (2) years late in December 2016" and that it "did not submit to the CSO Annual Financial Audits for FY15 and FY16." (HO 35 at 2-3, ¶12).

84. General Healthcare Resources (GHR) is a staffing firm that provided one-to-one professionals, otherwise known as Therapeutic Staff Support or TSS and special education teachers to Khepera beginning in the 2013-14 school year until June 2017. (9/8/17 N.T. 125-126, 130-131).

85. GHR billed Khepera on a weekly basis for services rendered in the prior week, and payment was expected to be made within 30 days. The last payment Khepera made to GHR was on April 13, 2017. As of the September 8, 2017 hearing, Khepera had not paid amounts due to

GHR for December 2016 to the end of the 2016-17 school year. (9/8/17 N.T. 131-132, 134-135, 140-142).

86. On August 3, 2017, GHR filed a lawsuit against Khepera in the Court of Common Pleas of Philadelphia County in the amount of \$86,683.50 for services rendered plus legal fees and ten percent late fees. (SDP 86; 9/8/17 N.T. 143-145, SDP 86 at 5 ¶¶14, 17).

87. GHR will not provide services to Khepera for the 2017-2018 school year. (9/8/17 N.T. 145).

88. Khepera ceased using the services of a payroll company in February 2017 and began to issue paper payroll checks to its employees. Beginning in June 2017 and continuing into the summer, Khepera began to miss biweekly payments to employees, including teachers, who were paid on a 12-month basis. (9/8/17 N.T. 80-82).

89. Staff received payment on June 1 or 2, but Khepera failed to pay staff on June 16 or June 30. (9/8/17 N.T. 82, 84).

90. Khepera admits that it "failed to timely pay employees for wages earned during the 2016-2017 school year." (HO 35 at 3, ¶19).

### **Academic Performance**

91. Since the 2012-13 school year, the applicable state assessment for students in grades 3 through 8 was the PSSA for regular education students and the PASA for certain special education students, if any. (8/11/17 N.T. 71).

92. PDE also provides academic data through the Required Federal Reporting Measures report (RFRM), and both the School Performance Profile (SPP) and RFRM report are produced annually. (8/11/17 N.T. 74-75).



93. Prior to the 2014-15 school year, PDE adopted a new set of academic standards, the PA Core standards, which were then tested by the PSSA assessment beginning in the 2014-15 school year. (8/11/17 N.T. 75-76).

94. For that school year, schools that did not serve students in grades 9-12 did not receive an SPP score from PDE due to the change in academic standards described above. (8/11/17 N.T. 76).

95. While not included in the SPP score, Khepera's test results on the PSSA and PASA for the 2014-15 school year were still reported in the RFRM for the 2014-15 school year. (SDP 04; 8/11/17 N.T. 76-77).

96. As reported in Khepera's 2014-15 RFRM, only 9.5% of Khepera's students in grades 3-8 scored at the proficient or advanced level in math, and 65.6% scored below basic. Of Khepera's students with an Individualized Education Program (IEP), 0% scored proficient or advanced in math, and 100% scored below basic. Of 253 students, 245 were tested. (SDP 04 at p.3; 8/11/17 N.T. 79).

97. Khepera's 2014-15 RFRM also reported that only 29.2% of Khepera's students in grades 3-8 scored proficient or advanced in English Language Arts (ELA), and 27.1% scored below basic. Of Khepera's students with an IEP, 0% scored proficient or advanced in ELA, and 62.5% scored below basic. (SDP 4 at 4; 8/11/17 N.T. 80).

98. Khepera's 2014-15 RFRM also reported that only 28.6% of Khepera's students in grades 4 and 8 scored proficient or advanced in Science, and 48.8% scored below basic. No separate results were reported for Khepera's students with an IEP because results are only reported if "the total number of students in a group is greater than 10." (SDP

04 at 5; 8/11/17 N.T. 80-81).

99. As reported by Khepera's 2015-16 RFRM, only 4.5% of Khepera's students in grades 3-8 scored proficient or advanced in math (5% fewer than the prior year), and 74.6% scored below basic (9% more than the prior year). For students with IEPs, 0% scored proficient or advanced (the same as the prior year), and 88.9% scored below basic (11.1% fewer than the previous year). (SDP 05 at 4; SDP 04 at 3; 8/11/17 N.T. 84).

100. Khepera's 2015-16 RFRM also reported that only 21.8% of Khepera's students in grades 3-8 scored proficient or advanced in ELA (7.4% fewer than the prior year), and 31.3% scored below basic (4.2% more than prior year). Of Khepera's students with an IEP, 4.3% scored proficient or advanced (4.3% more than the prior year), and 67.4% scored below basic (4.9% more than the prior year). (SDP 05 at 3; SDP 04 at 4; 8/11/17 N.T. 83-84).

101. Khepera's 2015-16 RFRM also reported that only 29.8% of Khepera's students in grades 4 and 8 scored proficient or advanced in Science (1.2% more than the prior year), and 45.7% scored below basic (3.1% fewer than the previous year). Of Khepera's students with an IEP, 0% scored proficient or advanced (no percent was available for the prior year), and 82.4% scored below basic (no percent was available for the prior year). (SDP 05 at 5; 8/11/17 N.T. 85).

102. For the 2015-16 school year, PDE issued an SPP report for Khepera. (SDP 06; 8/11/17 N.T. 86).

103. Khepera provided PDE with the demographic information reported in the SPP. (8/11/17 N.T. 87).

104. The SPP provides each school analyzed with a building level academic score. PDE considers a score of 70 to be acceptable. Khepera scored 46.1. (8/11/17 N.T. 89-90).

105. PDE also calculates each school's Average Growth Index (AGI) which determines whether the school's students are meeting PDE's expectation for growth. (8/11/17 N.T. 97).

106. For the 2014-15 school year, Khepera's AGI scores were negative for each subject area, showing that Khepera's students did not meet PDE's expectation for growth. (SDP 07; 8/11/17 N.T. 98-99).

107. For the 2015-16 school year, PDE provided the same AGI scoring and also included a breakdown by grade. In that school year, Khepera scored, in the aggregate, -1.16 in ELA which was moderate evidence that the growth standard was not met. In math, Khepera scored -0.27, which was evidence that students met the growth standard. In science, Khepera scored -2.54 for grade four which was significant evidence that the growth standard was not met, and in grade either, students scored -1.6 which was moderate evidence that the growth standard was not met. (SDP 08; 8/11/17 N.T. 100).

108. For the 2016-17 school year<sup>5</sup>, Khepera scored, in the aggregate, -3.63 in ELA which was significant evidence that the growth standard was not met. In math, Khepera scored -4.27 which was also significant evidence that the growth standard was not met. (HO 40-41).

109. In its 2014 Charter, Khepera agreed that it would also participate in the School District's own accountability system for academic performance. (SDP 02 at 17, 40; 8/11/17 N.T. 101; 9/12/17 N.T. 156).

110. The School District's accountability system for academic performance is known as

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<sup>5</sup> PDE released Khepera's 2017 AGI data for ELA and Math after the hearing below had been concluded and after the parties submitted their proposed findings of fact and conclusions of law. Khepera did not object or otherwise request an opportunity to be heard regarding the propriety of taking judicial notice of PDE data released after the hearing. The Hearing Officer below took judicial notice of the 2017 AGI data, citing Pa. R. Evid. 201. (CAB HO-3 at 18, n. 23).

the School Progress Report (SPR). (8/10/17 N.T. 34; 9/12/17 N.T. 156).

111. The SPR looks at how schools performed in achievement, on the growth measure and the school climate based on attendance, suspension and retention. That data is compiled to produce a score which is then compared to schools with a similar report within the city as well as schools that are demographically similar. (8/11/17 N.T. 100-102).

112. For K-8 schools, the SPR contains three domains: achievement, progress, and climate. (SDP 39; 8/11/17 N.T. 106-109).

113. By 2014-15, at least ninety-five percent of the operating charter schools in Philadelphia have agreed to participate in the SPR. Khepera's overall peer rank was 29<sup>th</sup> of 29 schools. (8/11/17 N.T. 102, 106).

114. The climate domain measures school attendance, annual retention, suspensions and survey results from both parents and students as part of parent/guardian engagement. Khepera's peer rank in climate was 28<sup>th</sup> of 29 schools. (SDP 39 at 1; 8/11/17 N.T. 108-110).

115. The CSO has compared Khepera's academic performance to other public schools within the School District in a series of charts. The "Charter" columns include data for the students in grades 3-8 at charter schools in Philadelphia. The "District" columns include data for the students in grades 3-8 at traditional schools in Philadelphia. The "Peer" columns include data for the students in Philadelphia at K-8 schools that are demographically similar to Khepera (the schools in Khepera's SPR peer group). (SDP 09; 8/11/17 N.T. 113-115).

116. The percentage of students in grades 3-8 at Khepera who scored proficient or advanced in math on the PSSA consistently underperformed the percentage of students in grades

3-8 at School District schools, charter schools and Khepera's peer group schools in both 2014-15 and 2015-16:

Year	Khepera	Charter	Difference	District	Difference	Peer	Difference
2014-15	9.39%	17.55%	-8.16	16.90%	-7.51	14.05%	-4.66
2015-16	4.51%	18.86%	-14.35	18.93%	-14.42	14.02%	-9.51

(SDP 09, Table 1).

117. The percentage of students in grades 3-8 at Khepera who scored proficient or advanced in ELA on the PSSA consistently underperformed the percentage of students in grades 3-8 at School District schools, charter schools and Khepera's peer group schools, in both 2014-15 and 2015-16:

Year	Khepera	Charter	Difference	District	Difference	Peer	Difference
2014-15	28.57%	40.09%	-11.52	32.44%	-3.87	39.90%	-11.33
2015-16	21.81%	39.58%	-17.77	33.14%	-11.33	37.50%	-15.69

(SDP 09, Table 2).

118. The percentage of students in grades 4 and 8 at Khepera who scored proficient or advanced in science on the PSSA (the only 3-8 grades when the test was administered) consistently underperformed the percentage of students in grades 4 and 8 at School District schools, charter schools and Khepera's peer group schools, in both 2014-15 and 2015-16:

Year	Khepera	Charter	Difference	District	Difference	Peer	Difference
2014-15	28.57%	44.89%	-16.32	37.19%	-8.62	46.74%	-18.17
2015-16	29.79%	43.10%	-13.31	37.76%	-7.97	43.71%	-13.92

(SDP 09, Table 3; 8/11/17 N.T. 117).

119. In addition, Khepera's 2015-16 SPP score of 46.1 fell below the School District schools' average of 52.5, the citywide average of 53.6 and the charter school average of 56.7. (SDP 09, Table 5; 8/11/17 N.T. 118-119).

120. After the hearing was concluded, PDE also published Khepera's 2016-17

PSSA results and SPP.<sup>6</sup>

121. The percentages of Khepera's students who scored proficient or advanced on the PSSA in the 2016-17 school year were 2.0% in math, 15.8% in ELA, and 13.6% in science. The percentages of Khepera's students who scored below basic were 85.3% in math, 36.5% in ELA, and 52.3% in science. (HO 33).

122. As reported in Khepera's 2016-17 SPP:

a. Khepera's SPP building level academic score was 36.3 which again was in the lowest tier. (HO 34 at 3).

b. The percentages of Khepera's students in grades 3-8 scoring proficient or advanced were 2.38% in Mathematics, 15.71% in ELA and 13.64% in Science, all of which were again in the lowest tier. (HO 34 at 3).

c. For grade 3 ELA, only 21.43% of Khepera's students performed at the proficient or advanced level which was again in the lowest tier. (HO 34 at 3).

d. Khepera made no progress toward closing any student's achievement gap, scoring 0.00 in each metric for all students and for historically underperforming students. (HO 34 at 3).

e. Khepera's students also did not meet the PVAAS growth standard in math, ELA or science, scoring 50.00 (the lowest tier) in math and ELA, and 61.00 (the second lowest tier) in science. (HO 34 at 3).

123. As reported in the 2014-15 RFRM, the 2015-16 SPP and the 2016-17 SPP,

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<sup>6</sup> The School District requested judicial notice of the information contained in these documents on November 2, 2017 in its proposed findings of fact and conclusions of law. (HO 31 at 31, n.3). Khepera has not objected to or otherwise requested an opportunity to be heard regarding the propriety of taking judicial notice of such post-hearing data. The Hearing Officer below took judicial notice of these PSSA results and SPP.

Khepera's students' aggregate performance in math, ELA and science has not consistently or significantly improved since the renewal of its Charter but instead has substantially declined. (SDP 4, SDP 6, HO 34).

124. Khepera did not present any testimony or evidence about changes or adjustments that were being made to instruction, educational programming, curriculum or other student support systems to address its students' declining academic performance.

125. The CSO produces an Annual Charter Evaluation (ACE) for each of the School District's charter schools. (8/11/17 N.T. 119).

126. The ACE includes the school's total enrollment, any applicable enrollment cap, attendance rate(s), retention rate(s) and mobility rate(s). (SDP 12 at 3).

127. The attendance rate data reported in the ACE is the percentage of students who attended 95% or more of their enrolled school days based on the school's calendar for that school year. (SDP 12 at 3; 8/11/17 N.T. 120).

128. In the 2014-15 school year, only 51% of Khepera students attended 95% or more of their school days. (SDP 12 at 3; 8/11/17 N.T. 121).

129. The retention rates reported in the ACE are the percentage of students who were enrolled on October 1st and either completed their terminal grade (eighth grade in Khepera's case) in June of that same school year or remained enrolled on October 1<sup>st</sup> of the following school year. (SDP 12 at 3; 8/11/17 N.T. 122).

130. Khepera's retention rate for the 2014-15 school year was 64%. (SDP 12 at 3; 8/11/17 N.T. 123).

131. For the 2015-16 school year, the School District again prepared an ACE for

Khepera. In addition to providing specific attendance and enrollment data, the 2016 ACE provides a comparison to other schools and also breaks down the data by grade level and student group. (SDP 13; 8/11/17 N.T. 124).

132. During the 2015-16 school year, only 33% of Khepera's students attended 95% or more of their school days. This attendance rate is significantly below the attendance rates of students at: (a) Khepera's peer schools (charter and District schools with similar demographics) at which 64% attended 95% or more of their school days; (b) charter schools at which 60% attended 95% or more of their school days; and (c) District schools at which 45% attended 95% or more of their school days. (SDP 13 at 7; 8/11/17 N.T. 127-128).

133. Khepera's grade level attendance was lower than the comparison groups in every category except the District schools' eighth grade attendance (49% for Khepera as compared to 47% for District Schools in 8<sup>th</sup> grade). (SDP 13 at 7).

134. The 2016 ACE also contains information regarding student mobility (students entering and exiting the school) which provides greater detail than figures such as total enrollment. (SDP 13 at 15; 8/11/17 N.T. 130-131).

135. Khepera admits that in the 2015-16 school year "the rate of student withdrawals (11% from October 2015 through June 2016) from Khepera significantly exceeded that of the School District and charter schools in Philadelphia that have citywide admissions (citywide rate was 4% from October 2015 through June 2016)." (SDP 13 at 15; HO 35 at 1, ¶2).

### **Highly Qualified and Certified Teachers**

136. The RFRM reports contain information related to teacher quality and present the percentage of core subject classes taught by "highly qualified teachers." (SDP 4 at 22; 8/11/17



N.T. 82-83).

137. PDE defines a highly qualified teacher as one who: "(1) holds full certification, (2) has at least a bachelor's degree, (3) has completed a content area major, (4) has passed a content area test, and (5) has completed teacher education coursework. (SDP 04 at 22).

138. In the 2014-15 school year, 37.3% of core academic subjects at Khepera were not taught by highly qualified teachers. (SDP 4 at 22; 8/11/17 N.T. 82-83).

139. In the 2015-16 school year, 7.4% of core academic subjects at Khepera were not taught by highly qualified teachers. (SDP 5 at 22; 8/11/17 N.T. 85-86).

140. Charter schools, including Khepera, are required to submit Annual Reports to the School District. Annual Reports are to be filed by August 1 with the report providing information on the prior school year. (8/10/17 N.T. 45-46).

141. According to Khepera's 2014-15 Annual Report, Khepera employed 44 individuals in professional positions (not counting the CEO) only 32 of whom were appropriately certified. (SDP 10 at 4; 8/10/17 N.T. 52-53).

142. For the 2014-15 school year, only 72.7% of Khepera's professional staff was certified, but the CSL requires that at least 75% be certified. 24 P.S. § 17-1724-A(a). Khepera's assistant principal was not certified. Of the 25 classroom teachers employed by Khepera, only 16 were certified. (SDP 10 at 4; 8/10/17 N.T. 53-54).

143. A significant portion of the 2015-16 Annual Report (SDP 11) contained incomplete tables and empty narratives. Information regarding the professional staff, including certification information, was not provided by Khepera. (SDP 11 at 3; 8/10/17 N.T. 58-60).

144. In the 2015-16 Annual Report, Khepera failed to submit the Preliminary Statements of Revenues, Expenditures and Fund Balances, the most recent financial audit, the federal program consolidated review, any special education cyclical monitoring report and any information regarding facilities or memoranda of understanding. (SDP 11 at 5-8 and 13; 8/10/17 N.T. 61-62).

145. As of the hearings below, there had been no additions or changes to Khepera's submission of its 2015-16 Annual Report since the deadline of August 1, 2016. (8/10/17 N.T. 62).

146. Khepera did submit a timely Annual Report for the 2016-17 school year. The 2016-17 Program Review by PDE's Division of Federal Program was attached to Khepera's 2016-17 Annual Report showing a number of requirements which were "not met." (SDP 51 at 21-48; 8/10/17 N.T. 63).

147. Khepera's 2016-17 Annual Report states that it had 30 professional employees, 28 of whom required certifications, but only 14 of those were appropriately certified. (SDP 51 at 3; 8/10/17 N.T. 67-68).

148. Attached to the Annual Report for the 2016-17 school year is a PDE-414 form which was required to be completed for "all professional staff members" serving at Khepera. The PDE-414 form attached to Khepera's 2016-17 Annual Report identifies 29 individuals as "professional staff members," 16 of whom are listed as not being certified at all which equates to a certification percentage of only 45%. Three teachers appear to be teaching outside their area of certification. (SDP 51 at 109-110; 8/10/17 N.T. 69-75).

149. Regardless of which of Khepera's conflicting representations is accurate (the chart

within the Annual Report or the PDE-414), Khepera has admitted in both that it did not meet the 75% certification requirement for the 2016-17 school year. (Compare SDP 51 at 3 with SDP 51 at 109-110).

150. The 2016 ACE found noncompliance issues with the English as a Second Language (ESL) policy (less than one page) which Khepera submitted. (SDP 13 at 9; SDP 25; 8/10/17 N.T. 108-109).

151. The 2015 ACE found Khepera's code of student conduct to be noncompliant because it failed to inform students of their due process rights when facing an expulsion or long-term suspension and did not provide for any informal or formal hearings. (SDP 12 at 7; 8/10/17 N.T. 91, 95).

152. The 2016 ACE found that Khepera's 2016-17 Student Handbook was again deficient in the area of code of conduct compliance. (SDP 13 at 8; 8/10/17 N.T. 99-100, 105).

### **Bylaw Issues**

153. As a condition of renewal, Khepera's Board agreed to comply with the Board's bylaws. (SDP 02 at 5).

154. Maintaining a bylaw-compliant number of Board members was a condition for renewal of Khepera's previous charter, and Khepera explicitly agreed to do so in its 2014 Charter. (SDP 2 at 5; 8/10/17 N.T. 163-164).

155. On October 6, 2015, the CSO sent a letter to Khepera identifying bylaw noncompliance issues, including the following:

The Bylaws state that the term of office shall be for three years and, at the conclusion of two consecutive terms served by an individual Board member, that Board member is ineligible to serve as a Board member for at least one year. To

the CSO's knowledge, at least one Board member has served on the Board of Trustees since the school's inception--a period of 11 years.

(SDP 28 at 4; 8/10/17 N.T. 156-158).

156. On November 30, 2015, Khepera's Counsel admitted that one Board member had served on the Board for longer than two consecutive three-year terms. He had not resigned as of March 31, 2016, and Khepera stated its intention to keep him as a Board Member. (SDP 30 at 6-7; SDP 32 at 3).

157. Khepera's Counsel also admitted in the November 2015 response that it had a six-member Board which "is still below our constitutional mandate of no fewer than seven Board members . . . ." (SDP 30 at 7).

158. In March 2016, Khepera had six Board Members. (SDP 32 at 3; SDP 30 at 6-7).

159. On September 11, 2017, Khepera's Board was composed of only five members. (9/11/17 N.T. 84-85).

### **Sunshine Act**

160. In the 2015 and 2016 ACEs submitted to Khepera, the CSO notified Khepera that it was in violation of the requirements of the Sunshine Act, 65 Pa.C.S. §701 *et seq.* (SDP 12 at 8; SDP 13 at 10; 8/10/17 N.T. 95).

161. Compliance with the Sunshine Act, in addition to being a requirement under Pennsylvania Law, was also a condition of renewal to which Khepera agreed in its 2014 Charter. (SDP 2 at 5).

162. The CSO's October 6, 2015 letter asserted that Khepera failed to publish the minutes of its Board meetings and failed to publish notice of an executive session and that session's subject matter as required by the Sunshine Act. (SDP 28 at 1-2).

163. Khepera's Board did not publish a public notice for meetings held on June 9, 2015 and September 17, 2015 and did not announce an executive session held in July 2015. (8/10/17 N.T. 166-168,180-181).

**Statement of Financial Interests**

164. Khepera committed in its 2014 Charter that it would submit timely "Statement of Financial Interests" as required. The CSO is responsible for reviewing these forms submitted by charter school officials and Board members annually by May 1 for the previous calendar year. (8/10/17 N.T. 81-82; SDP 2 at 6).

165. From 2014 through 2016, Khepera has not submitted any Statement of Financial Interests forms to the CSO. (8/10/17 N.T. 82-83).

166. Khepera admits that it "did not offer any evidence to show that it submitted Statements of Financial Interest for 2015, which were due to the CSO on August 31, 2016" and that it "has not submitted to the CSO any Statements of Financial Interest for 2016 which were to be completed and filed with the State Ethics Commission by May 1, 2017." (HO 35 at 2).

167. The CSO sent letters to Khepera on October 6 and 19, 2015 raising concerns that Khepera Board members were engaging in conduct that violated the Pennsylvania Public Official and Employee Ethics Act (Ethics Act) and the Pennsylvania Nonprofit Act (Nonprofit Act). (SDP 28 at 2; SDP 29 at 2).

168. Among other things, the CSO had received information indicating that a former Khepera board member was hired by Khepera for a teaching assistant position without following the standard hiring procedures. (SDP 29 at 2; 8/10/17 N.T. 171-172).

169. Khepera's procedures for the hiring of one teaching assistant, a former Board

member, did not include advertising the position, interviewing applicants, or making a formal job offer to this former Board Member. (8/10/17 N.T. 175-176).

170. Another issue raised by the CSO regarding Khepera's compliance with the Ethics Act was an issue with a former Khepera Board member who continued to possess Khepera equipment after he left, including a laptop and a cellphone purchased with Khepera funds. (SDP 31 at 2; 8/10/17 N.T. 176-177).

171. After resigning on June 30, 2015, this Board member had not relinquished the Khepera-purchased cellphone as of November 30, 2015. (SDP 30 at 14; 8/10/17 N.T. 177-178).

#### **CONCLUSIONS OF LAW**

1. The appeal of the revocation of Khepera's Charter is properly before CAB pursuant to the CSL. 24 P.S. §§17-1717-A(i)(1); 17-1729-A(d).
2. The General Assembly's intent when it enacted the Charter School Law was to, *inter alia*: (1) improve pupil learning; (2) increase learning opportunities for all pupils; (3) encourage the use of different and innovative teaching methods; and (4) hold the schools established under this act accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems. 24 P.S. § 17-1702-A. *See also In Re: Renaissance Charter School*, CAB No. 2008-07, at 5.
3. Pursuant to section 1729-A(a) of the CSL, 24 P.S. § 17-1729-A(a), a school district may revoke a charter school's charter based on any of the following:
  - 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 or 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.

4. The school board must give notice of 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 revocation will be held. 24 P.S. § 17-1729-A(c).

5. The school board must conduct a hearing, present evidence in support of the grounds for 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).

6. The school board must take formal action regarding the 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 school board. All proceedings of the school 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).

7. The School District and SRC complied with the procedural requirements of the CSL set forth in section 1729-A(c) by providing notice, conducting a hearing, presenting evidence in support of the grounds for revocation, and providing for public comment prior to the SRC adopting its decision.

8. When entertaining appeals from a district board's decision, CAB shall give due consideration to the findings of the local board of school directors while making an independent determination as to the merits and shall specifically articulate reasons for agreeing or disagreeing with the local school board. 24 P.S. § 17-1729-A(d); *West Chester Area Sch. Dist. v. Collegium Charter School*, 812 A.2d 1172, 1180 (Pa. 2002).

9. Because the statutory standards for review of charter terminations are the same as those involved in the review of charter denials, CAB shall make a *de novo* review of the School District's revocation of Khepera's charter. Compare 24 P.S. § 17-1717-A(i)(6) with 24 P.S. § 17-1729-A(d); see also *Collegium*, 812 A.2d at 1180.

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

11. The CSL places the burden on the local board of school directors to present sufficient evidence to support its reason(s) for revocation or nonrenewal of a charter, *i.e.*, evidence of a significant, material or fundamental violation. 24 P.S. § 17-1729-A(c).

12. The School District has produced sufficient evidence to demonstrate that Khepera failed to meet generally accepted standards of fiscal management and audit requirements. 24 P.S. § 17-1729-A(a)(3).

13. The School District has produced sufficient evidence to demonstrate that Khepera has failed to meet the requirements for student performance, as set forth in the CSL and Khepera's Charter. 24 P.S. § 17-1729-A(a)(2).



14. The School District has produced sufficient evidence to demonstrate that Khepera has failed to meet the requirements as set forth in Khepera's Charter and has violated provisions of the law. 24 P.S. § 17-1729-A(a)(1, 4, 5).

15. Following an independent review of the record before CAB and after giving due consideration to the findings of the School District, CAB concludes that the record strongly supports the revocation of Khepera's Charter. 24 P.S. § 17-1729-A.

### DISCUSSION

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 would improve pupil learning, increase learning opportunities for all students, and offer diverse and innovative educational techniques while operating independently of the traditional public school system. *See* 24 P.S. § 17-1702-A. In addition, the General Assembly intended to hold charter schools accountable for meeting measurable academic standards, in order to assure that these schools were accomplishing the goals of the CSL. 24 P.S. § 17-1702-A(6). 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(a) of the CSL sets forth the causes for nonrenewal or revocation of a charter by a school district, which 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.

24 P.S. § 17-1729-A(a). In order to revoke 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) of the CSL. 24 P.S. § 17-1717-A(i)(6); *Collegium*, 812 A.2d at 1180. The CSL requires that CAB 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. *See* 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).

## **I. Procedural Issues**

### **A. Period for Comment**

Khepera argues that the School District violated the CSL by failing to hold the public comment period during the time frame announced by the Hearing Officer in the proceedings below. At the end of the last day of hearings, September 12, 2017, the Hearing Officer informed

the parties about the post-hearing briefing schedule and that there would be notice to the public and at least a 30-day period for comments. (9/12/17 N.T. 219-222). In doing so, he used the word “[c]oncurrently” to describe when the public comment collection would occur. (9/12/17 N.T. 222). Khepera interpreted the word “concurrently” to mean that public comment would not begin until after transcripts were received, after briefs were submitted, and during the 30-day period of time when the Hearing Officer would be preparing his report.

Rather than holding the period for public comments concurrent to the 30-day period for preparing the Report of Recommendation, the School District started the period for public comments three days following the close of the hearings. On September 28, 2017, the parties received the final day’s transcripts via email from the court reporting service. According to the instructions given, the earliest that the period for public comments should have commenced would have been September 28, 2017. An alternate reading of the instructions would set commencement of the public comment period as beginning on October 28, 2017.

Public comments were solicited by the SRC from September 15, 2017 through October 16, 2017. (CAB HO-3, at 10, A-21; HO 28).<sup>7</sup> The SRC did not render its decision until December 14, 2017, after the SRC’s Hearing Officer issued his Report. Only one public comment was received by the SRC which was an email from August 10, 2017. Although the email technically pre-dated the 30-day period of public comment, the email was still considered as public comment. The email came from a “Khepera Teacher” with the following message: “Khepera board is refusing to pay teaching staff what they owe them for July and August salaries!!! It is time to hold them accountable. We were paid 6 weeks late our June pay. They

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<sup>7</sup> The page numbering in the Hearing Officer’s Report below has duplicate pages 38 through 42. This will be noted where applicable.

have caused us all some form of hardship!!” (HO 29). The Hearing Officer below provided the public comments received to counsel for the parties on November 1, 2017. (HO 30).

Neither Khepera nor anyone else submitted additional public comments to the SRC or the SRC’s Hearing Officer after October 16, 2017. Khepera has never produced anything to CAB in which it claims someone wanted to submit comments but did not do so because of the confusion over the public comment period. Any perceived errors in the timeframe for submitting comments were not prejudicial and did not rise to a due process violation. If Khepera had supportive comments it wished to have CAB consider, it could have requested supplementation of the record to include those comments pursuant to Section 1729-A(d) of the CSL.

**B. Estoppel by Laches**

The SRC’s decision revoking Khepera’s Charter occurred on December 14, 2017, but Khepera did not file with CAB a Petition of Appeal until February 20, 2018, 68 days after the SRC’s decision and 67 days after Khepera admits receiving notice of the SRC’s action. There is no deadline for filing a Petition of Appeal in either the CSL nor regulations.<sup>8</sup> While it is customary to have a 30-day or 60-day time period for filing, in the absence of a written requirement, CAB must consider the School District’s estoppel by laches argument.

Estoppel by laches is a doctrine “that bars relief when a complaining party is guilty of want of due diligence in failing to promptly institute an action to the prejudice of another.” *Stilp et al. v. Hafer*, 718 A.2d 290, 292 (Pa. 1998). A party asserting laches must establish two essential elements: (1) a delay arising from the complaining party's failure to exercise due diligence; and (2) prejudice to the asserting party resulting from the delay. *Id.* Whether the

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<sup>8</sup> CAB acknowledges that the Commonwealth Court has urged this Board to establish regulations governing the deadline for filing a Petition to Appeal. *Greystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 124, 131 (Pa. Cmwlth. 2014).

complaining party acted with due diligence depends upon what that party might have known by use of information within its reach, and prejudice may be found where some change in the condition or relation of the parties occurs during the period the complaining party failed to act. *Id.*; *Nigro et al. v. City of Philadelphia*, 174 A.3d 693, 699 (Pa. Cmwlth. 2017), citing *In re Estate of Leitham*, 726 A.2d 1116, 1119 (Pa. Cmwlth. 1999).

The School District claims that it has been prejudiced by the delay because Khepera could continue its operations for some time into the 2018-2019 school year. This is because the CSL permits a charter school that has had its charter revoked or not renewed to continue operating, with its charter in effect, until final disposition by CAB. 24 P.S. § 17-1729-A(f).

Had Khepera filed its appeal by January 13, 2018, this matter *might* have been adjudicated during the summer months and it is *possible* that students would have been able to begin the 2018-2019 school year in some new school if the revocation litigation could have been completed swiftly. However, it is speculative that any litigation of the seriousness of a revocation action would have been so quickly decided even if the Petition of Appeal had been filed earlier.<sup>9</sup> Obviously, the 2018-19 school year is nearly half over and only now is this case ready for disposition after extensive briefing and oral argument. On this record and given all of the circumstances, CAB does not believe that there has been prejudice to the School District sufficient to grant an estoppel by laches.<sup>10</sup>

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<sup>9</sup> CAB's appointed Hearing Officer denied the School District's motion for expedited relief on the grounds that it had shown "no compelling reason to deviate from the usual efforts by the Charter School Appeal Board to provide a timely and efficient hearing." (CAB HO-9).

<sup>10</sup> CAB cautions that this holding related to estoppel by laches is limited to the specific facts and circumstances of this case.

## II. Grounds for Revocation

### A. Khepera Failed to Meet Generally Accepted Standards of Fiscal Management or Audit Requirements

The School District argued that Khepera failed to meet generally accepted standards of fiscal management and audit requirements because, *inter alia*: (1) Khepera failed to make payroll to its own employees during the Summer of 2017, with payroll problems continuing beyond June 2017; (2) Khepera was forced to end the 2016-2017 school year a few days early because payroll could not be made; (3) Khepera failed to pay educational service providers in a timely way; (4) Khepera did not make payments to Khepera's landlord in a timely manner such that the landlord instituted several confession of judgment actions against Khepera beginning in May 2017, all of which cost Khepera financial penalties and large attorney fees; (5) Khepera failed not only to pay PSERS for member and employer contributions in a timely fashion, but it also failed to file work reports with PSERS providing the information necessary for PSERS members to have benefits properly calculated and payments remitted; (6) Khepera allowed its employee health care coverage to lapse in December 2016 and May 2017 and offered no evidence that health care insurance had been reinstated thereafter; and (7) Khepera did not provide ESY services to all students who required them because it could not afford to pay its employees.

Furthermore, Khepera failed to prepare a consolidated federal program application for the 2016-2017 school year until September 2017 which was approximately 14 months after the time during which it should have been submitted to PDE. Because Khepera had not complied with federal program requirements, PDE required Khepera to submit a plan for remediation; but Khepera failed to submit that plan by the deadline. Consequently, Khepera was not able to

receive any federal funds for 2016-2017 or 2017-2018 until such applications were completed. Even now, Khepera has not provided CAB with any supplemental information showing that its serious deficiencies have been rectified. Similarly, Khepera failed to submit the School Health Annual Request For Reimbursement System (SHARRS) reimbursement in a timely manner, despite numerous reminders. Khepera ultimately lost the opportunity to seek some reimbursement for health services provided during the 2015-2016 school year.

With respect to its independent audit responsibilities, Khepera did not complete the 2013-2014 independent financial audit until December 2016, which was approximately two years after it was due. By the conclusion of the SRC hearing process, the 2014-2015 and 2015-2016 independent financial audits had not been completed and possibly had not even been started based upon the testimony of its auditing firm. As of now, independent financial audits for school years ending June 30, 2015, June 30, 2016, and June 30, 2017 should certainly be complete. None of those audit reports for the 2014-15, 2015-16, and 2016-17 school years is in the record before CAB. In fact, during argument before CAB, counsel for Khepera admitted that those audits are still not complete.

The only excuse provided by Khepera for its noncompletion of independent financial audits is the suggestion that the Force Majeure clause in the 2014 Charter somehow excuses it because the failure is the result of negligence or poor service by Khepera's financial services provider, Auphsite. Negligence by a charter school's contractor and the charter school's corresponding failure to take sufficient actions to address that negligence or cancel the services of the errant contractor does not excuse Khepera's failure to complete the audits. The responsibility to complete audits is that of Khepera and Khepera's Board of Trustees.

Khepera cannot explain how the Force Majeure language in the 2014 Charter applies here. The Force Majeure clause states as follows:

Force Majeure. Neither party shall be liable if the performance of any part or all of this Charter is prevented, delayed, hindered or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, sabotage, accident or any other casualty or cause beyond either party's control and which cannot be overcome by reasonable diligence or without unusual expense.

(SDP 2, at 26).

Khepera argues that all its fiscal crises were caused by circumstances beyond its control such as the District's withholding of payments to Khepera based upon Khepera's failure to make PSERS payments. Khepera contends that this action rendered it unable to pay its employees on designated paydays. However, Khepera fails to acknowledge that these withholdings by the District were a direct consequence of Khepera's failure to properly make PSERS payments for its employees.

Khepera asserts that it has now cured the lease defaults on its rented premises at the 926 Sedgley Avenue location. The landlord's attorney was called by Khepera to testify at the September 11, 2017 hearing session, but he testified that the three confession of judgment actions against Khepera remained pending at that time. The evidence established that Khepera's failure to pay rent, or to pay it on time, cost it thousands of dollars in penalties and attorneys' fees. In addition to the July nonpayment, Khepera made a \$78,000 payment around September 7, 2017 for the August and September rent. This testimony established that Khepera's August rent was also not paid on time. Even if Khepera had paid all the past due amounts owed to the landlord as of the hearing session on September 11, 2017, this would not negate the fact that its repeated failures to pay rent on time constituted a failure to meet generally accepted standards of fiscal management.



The numerous examples of Khepera's failure to meet generally accepted standards of financial management and audit requirements is alarming. Khepera failed to pay employees in a timely manner and permitted their healthcare coverage to lapse. Khepera missed opportunities to apply for state and federal funds despite the need for those additional funds. Khepera failed to serve students based upon its poor financial management by having to end a school year early and failing to offer ESY. Most shocking is Khepera's failure to complete independent financial audits for years; so it is unclear what has caused Khepera's serious and pervasive financial issues. In its defense, Khepera has offered virtually no credible excuse for its complete and utter failure to manage the finances of this charter school. CAB has previously held that the failure to submit timely financial reports violates audit requirements, and "[t]ermination of a charter is appropriate when the charter school has repeatedly failed to conduct and report independent financial audits, as required by the CSL." *In re: Renaissance Charter School*, Docket No. CAB 2008-07, at 9. The "reason for requiring the regular filing of financial audits by a charter school is to promote accountability and to enable the chartering school district, which has oversight of the charter schools it authorizes, to identify possible financial mismanagement before it becomes a serious problem." *Graystone Acad. Charter Sch. v. Coatesville Area Sch. Dist.*, 99 A.3d 125, 140-41 (Pa. Cmwlth. 2014). In this case, Khepera has been delinquent in filing financial reports for years. In the interim, the financial condition of the charter school has continued to deteriorate. *See generally, Thurgood Marshal Academy Charter School*, CAB No. 2001-5; *Creative Educational Concepts Charter School*, CAB No. 1999-15; *Ronald H. Brown Charter School*, CAB No. 2005-08; *RAPAH Charter School*, Docket No. CAB 2007-03.

As such, CAB strongly agrees with the School District and finds that it met its burden of proving that Khepera has failed to meet generally accepted standards of financial management

and audit requirements warranting revocation. These grave financial issues alone support revocation of Khepera's Charter; but there are multiple other issues, as detailed below, which further justify the School District's revocation.

**B. Khepera Failed to Meet Student Performance Requirements**

The School District further argues that the revocation of Khepera's Charter was appropriate based upon its failure to meet student performance requirements set forth in law and the terms of its Charter. The Commonwealth Court has held that a "consistently low percentage of students scoring proficient or better on the PSSA constitutes a failure to satisfy Chapter 4 student performance requirements and is a valid ground for nonrenewal . . . where the charter school's proficiency rates are lower than those of its school district's schools as a whole and no clear pattern of significant improvement in its PSSA results is shown." *New Hope Academy Charter School v. School Dist. of York*, 89 A.3d 731, 737 (Pa. Cmwlth. 2014). In the present case, since Khepera's Charter was renewed in 2014, Khepera has had a consistently low percentage of students scoring proficient or better on the PSSA; there has been no clear pattern or significant improvement in Khepera's PSSA results; and Khepera's proficiency rates on the PSSA are significantly lower than the School District's schools serving the same grade levels as Khepera, as well as other comparison groups.

Not only was Khepera's academic performance in math, ELA, and science in each of three years consistently low and declining, but Khepera's performance was also substantially below the performance of three comparison groups serving the same grade levels of students as Khepera: (1) School District schools; (2) brick and mortar charter schools operating in Philadelphia; and (3) a group of peer schools operating in Philadelphia. There is no factual support to conclude that the characteristics or demographics of Khepera's student body are so

vastly different from the comparison groups that the comparison groups are improper. Neither does this record support Khepera's argument that its move from the Mt. Airy neighborhood to its present location in a more economically disadvantaged neighborhood resulted in higher performing students transferring out of Khepera. (See 9/12/17 N.T. at 101-102).

The academic assessment evidence in the record establishes a significant decline in PSSA proficiency performance by Khepera students following Khepera's renewal in the 2013-2014 school year. In math, Khepera's aggregate proficiency rates have declined from 9.39% in 2014-2015; to 4.51% in 2015-2016; and down to 2.4% in 2016-2017. (SDP 09 Table 1; HO 41). In ELA, similar declines were seen in proficiency scores: 28.57% in 2014-2015; down to 21.81% in 2015-2016; and further down to 15.7% in 2016-2017. (SDP 09, Table 2; HO 40). In science, proficiency scores went up slightly from 28.6% in 2014-2015 to 29.8% in 2015-2016. (SDP 09, Table 3).

Simultaneously, the percentage of students at Khepera scoring below basic in math has risen from 65.6% in 2014-2015 to 74.6% in 2015-2016 to 85.3% in 2016-2017; the percentage of students scoring below basic in ELA has risen from 27.1% in 2014-2015 to 31.3% in 2015-2016 to 36.5% in 2016-2017; and the percentage scoring below basic in science fell from 48.8% in 2014-2015 to 45.7% in 2015-2016 but then again rose to 52.3% in 2016-2017. (SDP 04; SDP 05; HO 33).

In the 2012-2013 school year, PDE created a new metric for measuring academic achievement, the School Performance Profile (SPP) and Federal Designation system which was approved by the United States Department of Education and replaced Adequate Yearly Progress (AYP) in Pennsylvania. *Imani Education Circle Charter School v. School District of Philadelphia*, CAB No. 2014-08, at 33-34. "The SPP is a system that incorporates various data

points including raw test scores on the PSSA and Keystone Exams (as applicable), PVAAS scores as well as a host of other measurable factors such as graduation rates and Advanced Placement Test scoring.” *Id.* at 33-34.

Under the SPP accountability system, PDE did not issue an SPP score for Khepera (or any other school serving grades 3-8) for the 2014-2015 school year due to the realignment of the PSSA. (CAB HO-3 at A-22; 8/11/17 N.T. 75-76). In the 2015-2016 and 2016-2017 school years, Khepera did receive an SPP score from PDE. In the 2015-2016 school year, Khepera’s building level score was 46.1 out of 100, putting Khepera in the lowest tier of academic performance for purposes of state accountability. Khepera’s SPP score was below both the School District average (52.5) and the charter sector average (56.7) in the same time period. For the 2016-2017 school year, Khepera’s SPP score fell to 36.3, which was a drop of almost 10 points from the prior year. (SDP 9, Table 5; HO 34).

Khepera also failed to meet the explicit academic performance conditions in its 2014 Charter. The failure to achieve an SPP score of 70 or better; failure to meet the PVAAS and AGI growth measures during the Charter term; and performance in the bottom level of the School District’s School Progress Report (SPR) for two consecutive years all violate the terms and requirements of Khepera’s 2014 Charter.

Khepera’s assertion that “magnet schools” are improperly included in comparison groups should be rejected. Khepera did not raise any of these arguments before the SRC; has not made a record that would support the conclusion that unidentified “magnet schools” “selectively admit only the very best students”; and has not attempted to supplement the record before CAB with such information.

The Charter School disagrees that it “consistently failed” to meet student performance

requirements. It argues that the School District only relied upon test scores from two academic years (2014-2015 and 2015-2016) which is distinguishable from *New Hope*. In *New Hope*, the examination was of academic performance of New Hope Academy over the *entire life* of its charter. In Khepera's case, the two school years used by the School District in its data comparison occur within the first two years of Khepera's 2014 Charter. Khepera also faults the comparison with schools which are capable of selecting students based upon academic performance. According to Khepera, it admits students without consideration as to the academic capabilities of the student. In contrast, Khepera argues that magnet schools employ admission testing. These schools, while ostensibly drawing from the same District-wide pool of students, selectively admit only the very best students, with the School District then effectively penalizing Khepera for failing to have its students meet the same standard. Because Khepera admits all students who show up on its doorsteps, comparing it to schools which do not is unreasonable and unfair.

Khepera further argues that it has been disadvantaged by considering the scores of students with IEPs. In the 2014-2015 school year, the percentage of special education students with IEPs at Khepera who took the required PSSA was 14%; the percentage of IEP students at the School District who took the state standardized tests in 2014-2015 is not in the record. In the 2015-2016 school year, the percentage of special education students with IEPs at Khepera who took the required PSSA increased to 18%, while 16% of students at the School District who took the state standardized tests had an IEP in 2015-2016. (SDP 13). In the 2014-2015 school year, 58% of Khepera's student body was economically disadvantaged. (SDP 12). In 2015-2016, that number fell slightly to 53%. (SDP 13).

Khepera continues to downplay that its academic performance has generally declined, no matter what comparison group is used. The conclusion must remain that academic performance

has been poor and that it is not expected to improve given Khepera's overall track record and lack of any plan to remediate the poor academic results. Khepera says it met AYP for roughly 12 years prior to its move from zip code 19119 to zip code 19140 (9/12/17 N.T. at 119-121), and that this move should, at least in part, be considered in reviewing student performance. Khepera has not cited in the record any evidence that was disregarded by the SRC or that would justify a contrary outcome as a result of the decision made by Khepera to relocate.

Demographics, including the number of special education students and the smaller student body of a school, can have a significant impact on standardized test score results. *See Gillingham Charter School v. Pottsville Area School District*, CAB No. 2016-11, at 32. But here, the evidence of poor student performance and the lack of a clear plan to address this poor performance support the conclusion that Khepera's Charter should be revoked for failure to meet the requirements for student performance pursuant to section 1729-A(a)(2) of the CSL. 24 P.S. § 17-1729-A(a)(2).

**C. Khepera Failed to Meet Requirements of its Charter and the Law**

The School District also argued that Khepera violated one or more material terms of its written Charter and violated provisions of law further justifying its revocation. Those additional issues are addressed below.

*1. Highly Qualified Teacher (HQT) Requirements*

All public schools, at least through the end of the 2015-2016 school year, were required to have highly qualified teachers teaching core academic subjects. 20 U.S.C. § 6319(a)(2). Beginning with the 2016-2017 school year, the Every Student Succeeds Act eliminated the definition of "highly qualified" under NCLB and eliminated the requirement that special education teachers be "highly qualified," leaving teacher certification and qualification decisions

to the Commonwealth. (Official Notice – Every Student Succeeds Act (Pub.L.No. 114-95 (Dec. 10, 2015) 129 Stat. 1802). Khepera asks that CAB entirely reject the charge based upon HQT because it has been eliminated as a requirement and the No Child Left Behind Law is “outdated and disavowed.” However, Khepera violated the HQT standards while they remained in effect during the 2014-2015 and 2015-2016 school years. At Khepera, 37.3% of the core subjects were not taught by HQT in the 2014-2015 school year, and 7.4% were not taught by HQT in the 2015-2016 school year. Khepera does not dispute these findings.

## *2. Teacher Certification Requirements*

The CSL requires that at least 75% of a charter school’s professional staff must hold appropriate State certification. 24 P.S. § 17-1724-A(a). The SRC found, and CAB agrees, that based on Khepera’s own admissions, the percentage of certified professional staff members employed by Khepera during the 2014-2015 school year was 72% and 55% (or less) during the 2016-2017 school year. Khepera did not file an Annual Report for the 2015-2016 school year, which is the document in which Khepera would report professional certification information, and did not produce any information to refute the allegations about certified teachers, either during the hearing process or thereafter. If Khepera had information in its possession to establish, as it now contends, that 75% or more of its professional staff were appropriately certified in the 2015-2016 school year, it should have introduced that evidence at the hearings below or before this Board. Therefore, Khepera failed to meet the required percentage of certified professional staff as required by law.

### 3. Board Membership

Khepera's 2014 Charter states: "The Board of Trustees agrees that it shall comply with the Charter School's Bylaws by adding additional Board members to reach at least seven Board members but no more than nine Board members by December 31, 2014." (SDP 2, at p. 5, ¶ 3). The Charter further stated that Khepera was to comply with its Bylaws during the Charter term. As found by the SRC, Khepera's Board of Trustees for the 2015-2016 school year included only six members, and at the time of the hearing session on September 11, 2017, Khepera's Board included only five members.

CAB does not find persuasive Khepera's argument that it complied with the requirement in the Charter to have seven Board members by December 31, 2014 but that the requirement did not mean that Khepera had to *maintain* seven Board members after that date. A reasonable reading of the pertinent language is that this requirement was to be met for the duration of its Charter, not for one isolated period of time. The School District was correct in finding that Khepera failed to "*continuously* have at least seven Board members." (CAB HO-3 at first p. 42, *emphasis added*). CAB agrees with the SRC's findings and conclusions that Khepera's Board composition is in violation of its Charter.

### 4. Ethics Act Violations

The CSL provides that administrators of charter schools are public officials who must comply with the Ethics Act. 24 P.S. § 17-1715-A(12); 65 Pa.C.S. § 1104(a). The Ethics Act requires the filing of Statements of Financial Interest every year by board members and others who are deemed public officials or public employees. 65 Pa.C.S. § 1104(a). The Commonwealth Court has determined that a failure of a board member to file Ethics Act statements cannot be imputed to the corporation itself because filing is an individual



responsibility, not the corporate responsibility of a charter school. *School District of the City of York v. Lincoln Charter School*, 889 A.2d 1286, 1289, N. 7 (Pa. Cmwlth. 2006). However, the Charter itself required that this be done. (SDP 02 at 6, ¶12).

Khepera's violation of the terms of its own Charter and provisions of the law, if considered in isolation, may not constitute material violations warranting revocation. However, considering these multiple violations in the aggregate lend additional support to the conclusion that Khepera's Charter was properly revoked.

### **CONCLUSION**

For the foregoing reasons, CAB finds that the record strongly supports the SRC's revocation of Khepera Charter School's Charter. Accordingly, CAB makes the following Order:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
STATE CHARTER SCHOOL APPEAL BOARD

KHEPERA CHARTER SCHOOL

v.

THE SCHOOL DISTRICT OF  
PHILADELPHIA

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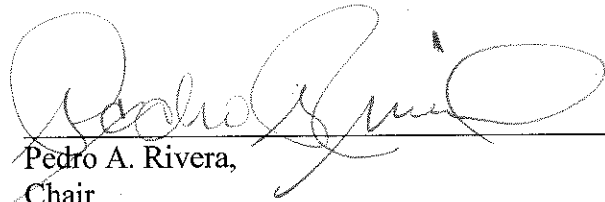
CAB Docket No. 2018-01

**ORDER**

AND NOW this 17<sup>th</sup> day of December, 2018, based upon a thorough review of the testimony and other evidence of record and the vote of this Board<sup>11</sup>, Khepera's appeal is **DENIED**; and the revocation decision of the School District of Philadelphia is **AFFIRMED**.

**IT IS FURTHER ORDERED** that the Charter School Appeal Board's decision will not take effect until the end of the 2018-19 school year, provided that Khepera cooperates with the School District of Philadelphia to ensure the proper transition of all records, including student records and access to family information. In the event that Khepera fails to cooperate with the School District of Philadelphia, or the health or safety of the school's pupils is placed at risk, the Charter School Appeal Board reserves the right to make this Order effective immediately.

For the State Charter School Appeal Board

  
Pedro A. Rivera,  
Chair

Date of mailing: 12/17/18

<sup>11</sup> At the Board's meeting of October 30, 2018, the revocation of the charter was granted by a vote of 5 to 0 with members Rivera, Munger, Cook, Yanyanin, and Peri voting. Board Member Miller was absent.